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October 25, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Written Ex Parte Presentation in CC Docket No. 02-6

Dear Ms. Dortch:

On behalf of Hewlett-Packard Company (HP), we are submitting this letter to bring to the Commission's attention an area that needs clarification to ensure that the Commission's Gift Rule does not interfere with the routine sales process in the Information Technology (IT) sector and prevent schools and libraries from receiving quality advice and consulting services.

Earlier this year, HP filed comments highlighting IT vendor demonstration programs, under which company products may be loaned to customers for demonstration, test and evaluation purposes.¹ We analogized such demonstration programs to test driving a car, and explained that while a short-term loan of equipment may technically meet the Gift Rule's definition of a gift of "any other thing of value," 47 C.F.R. 54.503(d), prohibiting such loans would be contrary to both common sense and the public interest. It is contrary to common sense because a "test drive" of equipment for a limited period of time is a standard part of the sales process and is not a "gift" but a part of product assessment. It is contrary to the public interest because eligible schools and libraries have scarce and precious taxpayer dollars to spend, and that money should be spent prudently and wisely. One way to spend prudently and wisely is to determine whether specific equipment meets one's needs, and that is the purpose of the demonstration program.

HP now requests clarification in another analogous area, the provision of consulting and related services to schools and libraries for no charge, as part of a typical sales process. Like demonstration programs, such consulting arrangements enable a customer to evaluate whether a

¹ Letter from Gerard J. Waldron to Marlene Dortch in CC Docket No. 02-6 (April 21, 2011).

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vendor's products and services meet the customer's needs and are compatible with existing equipment or systems, and thus assist the customer in making informed IT decisions. Because of the breadth of the Gift Rule, it could be read to preclude any no-charge assistance a vendor may provide to a school or library in assessing its needs and the available technology, whether or not E-rate dollars or E-rate eligible products are involved. The purpose of the E-rate program, however, is to provide affordable telecommunications and information services to schools and libraries, which the FCC has recognized "can serve as anchor institutions for their communities." The FCC has affirmed its commitment to "keep[] the E-rate program in sync with modern needs and technological capabilities" and help schools and libraries "make their limited dollars go further," while at the same time preventing waste, fraud, and abuse. *Sixth Report and Order*, ¶¶ 1, 3, 5 (Sept. 28, 2010). Consulting arrangements for no charge provide many benefits to a public entity with limited resources. IT experts can help ensure that the systems a public entity has purchased do not simply turn on, but actually work in an efficient and effective manner, and that additional expenditures will be consistent with the public entity's needs. Everyone who has dealt with IT problems at work or at home knows the challenge of obtaining the right pieces of equipment and software and then getting them to work in an optimal way.

In our April 21, 2011 *ex parte* letter concerning demo programs, we proposed conditions that the Commission should consider as it formulates guidance in that area. In a similar manner, we suggest that the Commission should determine that consulting services provided at no charge are consistent with the Gift Rule if the following conditions are met:

- (1) Consulting services are provided pursuant to a defined program;
- (2) The program is applicable or available to a variety of public sector customers, *i.e.*, not just schools and libraries.
- (3) The consulting services are provided for a reasonable period of time, agreed to by the parties; and
- (4) The process or factors for determining that services will be provided at no charge (or at a substantial discount) is the same for educational institutions as that generally used outside of the education context.

We urge the Commission to give guidance to the IT industry and schools and libraries that participate in the E-rate program that the kind of no-charge consulting services described above are permissible because they are properly seen as part of the sales process and should not be deemed as a "gift" under the Commission's Rules. A consulting arrangement that complies with these conditions should be allowed without regard to whether it leads to a transaction involving E-rate dollars, though if an E-rate transaction ensues, price reductions should be properly accounted for in the pre-discount price. The public interest is greatly benefitted by having our schools and libraries be the most informed when it comes to making IT decisions, not the least informed.

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Please direct any questions to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Waldron". The signature is written in a cursive, flowing style.

Gerard J. Waldron
Counsel to Hewlett-Packard Company

CC: Ms. Rebekah Bina (WCB)