

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	CC Docket No. 02-6
Schools and Libraries Universal Service)	
Support Mechanism)	GN Docket No. 09-51
)	

**CTIA’S APPLICATION FOR REVIEW OF
OR, IN THE ALTERNATIVE, REQUEST TO STAY
THE WIRELINE COMPETITION BUREAU’S MAY 23, 2014 ORDER**

I. INTRODUCTION

Pursuant to 47 CFR § 1.115, CTIA – The Wireless Association (“CTIA”) hereby seeks review of the Wireline Competition Bureau’s May 23, 2014 Order (“Order”) revising the guidance for how ineligible components bundled with eligible services must be treated under the Schools and Libraries universal service support program (known as the “E-rate program”).¹ As explained herein, CTIA respectfully requests that the Commission review or, in the alternative, stay the Order to require more specific cost allocation guidance for applicants and providers. Guidance regarding how to comply with the Bureau’s new cost allocation requirements, which was not included in the Order, is vital to ensuring the ability of applicants and service providers to participate in the program with certainty regarding the appropriate levels of support to request,

¹ The Order stems from a petition filed by the State E-rate Coordinators Alliance (“SECA”) seeking clarification on whether certain end-user devices could be purchased in bundles without cost allocation and proposing standards for purchasing bundled ineligible components without cost allocation. *See Order* at ¶ 4 (citing *SECA Petition for Clarification Pertaining to the Eligibility of Free VoIP Handsets and Other End-User Equipment*, CC Docket No. 02-6, GN Docket 09-51 (filed July 27, 2012)). CTIA initially did not submit comments in response to the Bureau’s Public Notice seeking comment on the SECA petition. However, the Bureau’s Order went beyond the relief requested by the SECA petition, thereby necessitating CTIA’s involvement at this stage. Moreover, CTIA member companies previously filed comments individually in response to the Public Notice, and it is the interests of efficiency for CTIA to now seek review of the Bureau’s Order collectively on behalf of its membership.

as well as ensuring that applicants that have already entered into existing contracts handle cost allocation issues in a consistent manner.

II. THE COMMISSION SHOULD PROVIDE GUIDANCE REGARDING HOW TO COMPLY WITH THE BUREAU'S NEW COST ALLOCATION REQUIREMENTS OR STAY THE 2014 BUNDLING ORDER

If an E-rate applicant submits a request for E-rate support for a product or service that includes both eligible and ineligible components, the applicant typically must allocate the cost between the eligible and ineligible components in the request, so that E-rate support is provided only for the eligible components.² However, the Bureau previously issued guidance that permitted E-rate applicants to seek E-rate support for purchases of eligible services that were bundled with ineligible components in certain circumstances, without having to provide a cost allocation separating out the value of the ineligible components.³

That guidance recognized what was taking place in the market and simplified the governing rules, allowing E-rate customers to accept free or discounted devices like cell phones (“ineligible components”) without cost allocation because providing discounted phones with the purchase of a service contract is standard industry practice.⁴ With the Order, the Bureau now reverses its prior guidance and would require cost allocation of free or discounted phones and other ineligible components in all instances beginning with funding year 2015. However, the Bureau’s Order fails to provide clear, practical guidance about how the new cost allocations should be done.

Prior to issuing its Order, the Bureau recognized that “applicants may desire additional guidance on how to best derive the costs of ineligible end-user devices” and asked “whether [the

² See 47 C.F.R. § 54.202(e).

³ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324 (Wireline Comp. Bur. 2010) (“*2010 Clarification Order*”).

⁴ See *2010 Clarification Order*, 25 FCC Rcd 17324, at n.25.

Commission] should further clarify our current standard for cost allocations to provide additional guidance concerning end-user equipment.”⁵ Indeed, the Order notes that multiple parties sought precisely such “additional guidance” in the comments they filed in response to the Public Notice: “[s]everal commenters have asked for guidance on the Commission’s cost allocation requirements.”⁶ Those commenters raised various practical concerns and asked various questions regarding how to allocate costs under a new Bureau approach – seeking guidance regarding such issues as amortization and determining standalone prices.⁷

Despite acknowledging these myriad requests and concerns, the Bureau’s Order does not specifically address any of them. Instead, the Order states that, while “cost allocation requires some administrative effort, . . . compliance with the requirement is relatively simple” – leaving commenters’ valid implementation questions unanswered. Among other open questions, the Order does not address commenters’ requests regarding:

- How to handle allocating costs for an ineligible handset/phone when the customer has a multi-year service agreement. For example, if the customer enters a two-year service agreement, it is unclear whether all costs must be allocated to the first funding year or over the length of the service contract.
- How to determine the cost allocations if the customer does not have any service contract or there is no set contract term.
- How to account for the fact that many customers entered into multi-year contracts or arrangements prior to the Order that will extend into the period in which the new rules take effect. Those customers entered into agreements with the understanding that they

⁵ *Wireline Competition Bureau Seeks Comment on the Eligibility of Bundled Components Under the Schools and Libraries Program*, Public Notice, 28 FCC Rcd 4212 (2013) (“*Public Notice*”) at ¶ 10.

⁶ Order at ¶ 12.

⁷ *Id.* at ¶12, n.36 (collecting comments).

would not have to pay the full amount for bundled devices. Yet, the Order does not “grandfather” such contracts in under the prior guidance that was in effect at the time they were entered.

- How to handle allocations in the wireless context, where the price of the eligible service contract often is the same, regardless of whether a customer also purchases an ineligible wireless device (discounted or not) or provides his or her own device(s).⁸ For many wireless providers, there is no “usual price” for the separate components to serve as a baseline when allocating costs because they do not sell devices (*e.g.*, cell phones, tablets, etc.) to the public that are not associated with an active line of service on their network.
- How to handle the cost of wireless equipment that is routinely offered at free or reduced prices in connection with a service plan.

If the Bureau is to reverse course now and require cost allocation of ineligible wireless devices, CTIA respectfully requests that there should be clear guidance as to how the new required allocations can be done in practical terms. This guidance is critical to facilitate the application process for the upcoming 2015 Funding Year and to provide the basis for review of cost allocation methodologies during PIA reviews or any subsequent program audits. Such guidance will facilitate the ability of applicants and service providers to participate in the program with certainty regarding the appropriate levels of support to request, as well as ensuring that applicants that have already entered into existing contracts handle cost allocations in a consistent manner. In the absence of FCC cost allocation principles, E-rate customers will be disadvantaged by this uncertainty, as different vendors may base their bids on different allocation formulas. Timely clarification will ensure that applicants are able to select the most cost-

Comments of Verizon and Verizon Wireless at 4.

effective solution based on the merits rather than a particular vendor's interpretation of the cost allocation rules..

III. CONCLUSION

The Order leaves open a great number of important questions about how cost allocation must be done under the Bureau's new guidance, leaving the possibility that different E-rate customers and providers may allocate in different ways. Specifically, E-rate customers will be harmed by this uncertainty. In the absence of FCC cost allocation principles different vendors may base their bids on different allocation formulas. As a result, the FCC should clarify its allocation rules to ensure that applicants can select the low cost bidder. Accordingly, the Commission should review and/or stay the Order to require more specific guidance regarding how to implement the required cost allocations in order to minimize confusion for applicants and service providers alike.

Respectfully submitted,

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