

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)
)

PETITION FOR RECONSIDERATION AND/OR CLARIFICATION¹

Pursuant to 47 C.F.R. § 1.429, Verizon seeks reconsideration and/or clarification of certain, limited aspects of the Commission’s July 23, 2014 *Modernization Order*.² In that order, the Commission took major steps toward modernizing the E-rate program for schools and libraries. To ensure that the new framework is applied in an efficient and consistent manner, the Commission should provide targeted clarification and/or reconsideration of the *Modernization Order* with respect to: (i) application of the new Category 2 budget; (ii) use of wireless data plans; and (iii) complicated and unnecessary cost allocation requirements.

DISCUSSION

I. The Commission Should Clarify the Application of the Five-Year Budget for Category Two Services.

The *Modernization Order* adopts a five-year budget approach for applicants that receive Category 2 support in funding years 2015 and 2016. The Commission should clarify the application of the five-year Category 2 budgets in two respects.

First, the Commission should confirm that the budget for Category 2 support – including managed Wi-Fi – is the \$150 per-student amount described in paragraph 107 of the

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively, “Verizon”).

² See *Modernizing the E-rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, ¶ 1 (2014) (“*Modernization Order*” or “*Order*”).

Modernization Order and that the reference in paragraph 125 to “\$30 per student per year” for managed Wi-Fi services is merely an example (that assumes the \$150 per student amount is spread evenly over five years). In other words, the Commission should make clear that there is no separate \$30 per-student per-year cap for managed Wi-Fi and that there is no requirement that support for managed Wi-Fi services be level for the term of the contract. Indeed, any such requirement would be inconsistent with the Commission’s intent to provide applicants with the flexibility to plan their own networks over the five year period – and instead would require fixed amounts to expended every year.

Second, the Commission should clarify the interplay between the two-year “test” of the budget approach and applicants’ five-year budgets. According to the *Order*, “for schools in districts seeking funding in years 2015 and 2016, we adopt a rolling funding cycle of five years for category two services and remove the two-in-five rule that applied to priority two internal connections.”³ One of the primary benefits of using five-year budgets is that it eliminates the incentive for applicants to “overbuy” – *i.e.*, request as much funding as possible at the first opportunity (even if not needed then) for fear that funding may not be available later, instead allowing schools to “decide the rate at which [their] networks are updated.”⁴ The Commission should not undermine the benefits of “allow[ing] applicants to plan how to deploy their networks over five years”⁵ by creating uncertainty about whether schools’ budgeted, but unused, support will in fact will be available in later years of the five-year budget cycle. Such uncertainty would only create incentives for applicants to overbuy at the first available opportunity for Category 2 funding and undermine the Commission’s test of the budget approach.

³ *Modernization Order*, ¶ 107.

⁴ *Id.* ¶ 112.

⁵ *Id.*

To avoid inadvertently creating such uncertainty, the Commission should take the following steps. With respect to managed Wi-Fi, in particular, the Commission should reconsider paragraphs 125 and 196 of the *Modernization Order* in a limited and targeted manner to allow multi-year commitments of funding (up to five years) for managed Wi-Fi services. Pairing multi-year commitments with the ability to enter multi-year contracts will help ensure that a school or library that is comparing managed Wi-Fi services to other options does not choose what is otherwise a less-efficient offer because of perceived uncertainty about future funding.

More generally, the Commission should clarify that it expects Category 2 support will be available up to the budgeted amount to those applicants that request it, regardless of *when* in the five-year budget period they request it. In particular, the Commission should reiterate that it expects to have \$1 billion per year in Category 2 support available not just in 2015 and 2016, but in 2017 and beyond.⁶ Moreover, the Commission should make clear that, regardless of how the Category 2 rules operate in 2017 and later years for new applicants, applicants that received Category 2 support in 2015 or 2016 will have priority to the available Category 2 funds, up to their unused budgeted amount.

II. The Commission Should Clarify the Cost-Effectiveness Test for Wireless Data Plans.

The *Modernization Order* addresses when support will be provided for “data plans and air cards for mobile devices,” providing that “applicants that seek funding for individual data plans must be able to demonstrate either that installing a WLAN is not physically possible, or must provide a comparison of the costs to implement an individual data plan solution versus a

⁶ *See id.* ¶ 78 (“to give applicants longer-term visibility into our approach, we also set a funding target of \$1 billion annually for category 2 services on an ongoing basis”).

wireless local area network solution.”⁷ To ensure that the right comparison is being made, the Commission should clarify that the term “wireless local area network solution” includes not only the cost of the Wi-Fi connectivity *within* the school, including services for the operation, management, and/or monitoring of eligible Wi-Fi components, but also the connectivity *to* the school (as well as the Internet access).

After all, wireless data plans do not merely provide connectivity within the school building. They are a Category 1 Internet access service, providing devices in the school with external connectivity to the Internet. Accordingly, the proper cost comparison under paragraph 153 of the *Modernization Order* should not be to simply compare the cost of the Wi-Fi component of a potential WLAN solution to the cost of a more comprehensive data plan solution. Instead, the comparison should include the cost of all components of a WLAN solution – Internet access, connectivity to the school and Wi-Fi within the school. Clarifying that this is the appropriate cost comparison helps ensure that applicants can choose the wireless connectivity solution best suited to their circumstances.⁸ In addition, the Commission should clarify that – while cost is the primary factor in the cost-effectiveness test – entities also may continue to consider “other relevant factors” in choosing their wireless connectivity solution.⁹

The Commission also should clarify how the cost-effectiveness test operates if an applicant cannot receive Category 2 support because of the limitations on the availability of that support. The *Modernization Order* assumes that “many more [schools] will be able to install high-speed internal broadband networks” because of the “increased availability of E-rate

⁷ *Id.* ¶ 153.

⁸ *See, e.g., id.* n.359 (“cellular data plans and air cards may be the only feasible or cost-effective option for some extremely rural applicants”).

⁹ *Id.* n.363.

funds.”¹⁰ But Category 2 support will not necessarily be available to every school in a given funding year. The Commission should clarify whether an applicant’s cost-effectiveness showing may take into account limitations on the availability of Category 2 support.

III. The Commission Should Reconsider the Modernization Order’s Cost Allocation Requirements.

The new rules promulgated by the *Modernization Order* create multiple new instances in which cost allocation will be required. In order to reduce the burdens these cost allocation requirements place on applicants and the Universal Service Administrative Company (USAC), the Commission should reconsider certain aspects of the *Order* to reduce the sheer number of cases in which cost allocation is required and should further clarify the cost allocation rules.

Voice Mail, Components of Telephone Service, and Email. Beginning with funding year 2015, the E-rate program will no longer provide support for voice mail and for components of telephone service – including directory assistance charges, text messaging, custom calling services, direct inward dialing, 900/976 call blocking and inside wire maintenance plans – and instead will require cost allocations separating out the cost of such components from other, eligible services.¹¹ While the *Modernization Order* presumes that implementation of cost allocation requirements here should be straightforward because these components are “often presented as separate line items on telephone bills,”¹² that often is not the case. Even when it is, pulling out specific line items for differential application of E-rate discounts – rather than applying the same discount to the bill as a whole – is extremely complicated for schools and libraries, service providers, and USAC reviewers alike. Furthermore, pulling out specific line

¹⁰ *Id.* ¶ 152.

¹¹ *See id.* ¶ 145-46.

¹² *Id.* ¶ 149.

items creates the need to cost allocate surcharges and fees, which are calculated for the bill as a whole, and not on a line-item by line-item basis.

The complications associated with these cost allocations significantly outweigh any benefit to the E-rate program. Indeed, the *Modernization Order* itself acknowledges the point made by several commenters that “removing these services will not result in sizable cost savings for the Fund.”¹³ Plus, any savings to the program from separating out these components are temporary, diminishing rapidly as support for voice is phased out.

Accordingly, the Commission should not immediately eliminate support for telephone components – or for voice mail services, for which the same considerations apply.¹⁴ Rather, the Commission should treat voice components and voice mail the same way the *Modernization Order* treats voice services generally, and phase out support for these components on the same schedule as for voice services generally. Similarly, the Commission should not eliminate support for email when offered as part of an Internet access service; instead, the rules for the email component should be the same as for the associated Internet access service.

Free or Discounted Cell Phones. Further complicating the cost allocation task is the Wireline Competition Bureau’s May 23, 2014 Order¹⁵ – adopted before the *Modernization Order* – that revised previous guidance to require cost allocation of free or discounted cell phones. Previously, the Bureau had permitted E-rate applicants to accept free or discounted devices such as cell phones without cost allocation because providing discounted phones with the purchase of a service contract is standard industry practice. As CTIA explained in its still-pending

¹³ *Id.* ¶ 148.

¹⁴ *See id.* ¶ 150. Similar considerations apply to email when offered as part of Internet access service.

¹⁵ *See Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, Order, 29 FCC Rcd 5457 (2014) (“*Bureau Order*”).

Application for Review,¹⁶ the *Bureau Order* failed to provide clear, practical guidance about how the new cost allocations should be done and left unanswered several specific questions about the new cost allocation requirements.

With the adoption of the *Modernization Order*, it is now clear that the cost allocation burdens imposed by the *Bureau Order* will far outweigh any benefits to the program. Because the *Modernization Order* phases out support for voice services, any savings to the E-rate program from a cost allocation requirement for cell phones that begins in 2015 would be temporary and diminish rapidly as support for voice services is phased out. To minimize the burden on schools, service providers, and USAC, the Commission should grant the pending CTIA Petition regarding the *Bureau Order* and permit E-rate applicants to continue accepting free or discounted cell phones without cost allocation while support for voice services is phased down.

“*Capacity Dedicated to Providing Voice Services.*” In addition, the Commission should clarify its approach to the circuit capacity associated with voice services. The *Modernization Order* provides that the reduced discount rates for voice services will apply to “all costs incurred for the provision of telephone services and circuit capacity dedicated to providing voice services.”¹⁷ However, the Commission should clarify the term “circuit capacity dedicated to providing voice services.”¹⁸ It is unclear whether and to what extent the *Order* imposes a cost allocation requirement on circuits that may carry both voice and broadband traffic. In particular, the Commission should clarify the following:

¹⁶ See CTIA Application for Review of or, in the Alternative, Request to Stay the Wireline Competition Bureau’s May 23, 2014 Order, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, GN Docket No. 09-51 (July 14, 2014) (“CTIA Petition”).

¹⁷ *Modernization Order* ¶ 141.

¹⁸ *Id.*

- If a school district leases a circuit for a private voice network operated by the district, is that circuit considered to be “circuit capacity dedicated to providing voice services”?
- If a school district leases a circuit for a WAN that carries both voice and broadband traffic, to what extent is that circuit considered to be “circuit capacity dedicated to providing voice services”?
- If a carrier provides both voice and broadband services over the same circuit, to what extent is that circuit considered to be “circuit capacity dedicated to providing voice services”?

The Commission should avoid an approach that requires cost allocation of individual circuits between “voice” and “broadband,” given the difficulties associated with making those determinations and the ensuing burdens of applying two different E-rate discounts to the same service. In particular, the Commission should make clear that service providers are not expected to monitor usage of circuits leased by an applicant or conduct traffic studies. One approach that would avoid cost allocation requirements would be to treat a circuit either as a “voice” circuit or “broadband” circuit, depending on the applicant’s certification as to the primary use of the circuit.

Bundled Services. Finally, the Commission should take steps to simplify the calculation of E-rate discounts for “bundled” service plans that combine services of differing eligibility and discount percentages for a single price, such as wireline bundles of voice and broadband or wireless bundles of voice, text messaging, and broadband. Because the *Modernization Order* establishes different eligibility rules and discount percentages for common bundle components, the *Modernization Order* will vastly expand the number of cases in which cost allocation will be required. Separating each bundle price into different components, each subject to a different discount percentage, will significantly complicate billing and reimbursement and thus impose significant burdens on schools, service providers, and USAC reviewers. To reduce these burdens, the Commission should simplify the calculation of discounts for bundles by, for

example, allowing schools to treat a bundle as either primarily “voice” or “broadband,” permitting the use of safe harbors, or creating a special discount percentage for bundles.

CONCLUSION

The Commission should reconsider and/or provide targeted clarification of the *Modernization Order*, consistent with the foregoing.

Respectfully submitted,

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