

technology needs of schools and libraries are complex and unique.⁴ It found that, rather than forcing applicants to conform to FCC-mandated technology requirements, schools and libraries should be permitted to develop their technology plans based on their individual educational needs and objectives, and to select the services and equipment that best meet those needs and objectives, so long as they select the most cost-effective means of meeting their technology goals.⁵ The FCC thus allowed schools and libraries to retain control over their technology decisions while mandating financial accountability.

EPS argues the Commission should ignore this long-standing policy and, instead, impose a technology mandate because, it claims, wireless access points are always a more economical solution than cellular data plans. But, E-Rate Provider Services provides no data to support this proposition.

More fundamentally, E-Rate Provider Services ignores the fact that wireless access points do not provide the same functionality as cellular data services, and thus do not necessarily meet the educational needs of all schools and libraries. While wireless access points can provide excellent Internet access service for on-premise, stationary use, they provide less than optimal service for inter-building use and are completely useless for off-campus access. Recognizing the benefits of anytime/anywhere learning, schools increasingly want to provide their faculty and students with the most versatile service options to help facilitate learning both on and off campus and are willing to adhere to the Commission's cost-allocation requirements for the ineligible portion of the services. Schools should continue to be able use all of their educational needs, including on and off campus learning, as a factor in their technology choices. Thus, E-Rate Service Providers' proposal must be rejected.

⁴ *Id.* See also Schools and Libraries Universal Service Support Mechanism, *Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202 (2003) at paras. 17 – 21.

⁵ 47 C.F.R. §54.503(c)(2)(vii).

2. Telecommunications Surcharges and Fees

AT&T agrees with Funds for Learning and Kellogg & Sovereign that reviewing surcharges and fees associated with E-rate eligible services has become an administrative burden. However, as stated in AT&T's previous comments on this subject, AT&T believes that approving all surcharges and fees is overly broad, and could create additional fraud and/or abuse in the program.⁶ Instead, AT&T proposes that the Commission create guidelines that service providers and USAC can use along with the existing rule, to determine eligibility for surcharges and fees. For example, surcharges and program fees that service providers are mandated to bill by federal, state or local governments should be eligible. While government-mandated fees may not always meet the definition of a "tax," service providers are required to collect for them as if they were taxes, and thus, like taxes, should be eligible for e-rate funding.⁷ While, in most circumstances, USAC has concluded that government-mandated fees are eligible for program funding, a statement by the Commission would provide clarity to service providers and would prevent disparate treatment by USAC audit staff.

Similarly, surcharges and program fees that service providers are expressly permitted by federal, state or local governments to bill should be eligible for funding. Service providers are frequently required to contribute to federal, state or local governmental programs. Although, in many cases, the applicable governmental entity does not mandate that the service provider pass such fees through to end users, it typically allows service providers the option of passing along their program contributions to end users, e.g. the federal Universal Service program and applicable fees.⁸ In many cases, the service providers' contributions to these programs is not a

⁶ Reply Comments of AT&T on the FY 2012 Draft Eligible Services List for Schools and Libraries Universal Service Program, CC Docket 02-6, filed July 25, 2011.

⁷ For example, the state of Texas created the Emergency Services Fee, which requires local exchange carriers and wireless telecommunications providers to collect a fee from their end users for to support 9-1-1 services in the state. Texas HS Code §771.071. *See also*, Illinois State Infrastructure Maintenance Fee, 35 ILCS 635/15, 35 ILCS 635/25 (Requiring all telecommunications retailers to charge each customer an additional charge equal to the state infrastructure maintenance fee attributable to that customer's service address).

⁸ 47 C.F.R. §54.712.

direct input to the services they provide, even though program participation is a requirement to conduct business within the respective governmental jurisdiction. Just as universal service fees are eligible for E-rate funding, other such governmental program fees should also be eligible for E-rate funding because they are likewise incurred by the service providers as a condition of providing services. Since there are no guidelines available for USAC auditors, different auditors often come to different conclusions about the eligibility of these fees and surcharges. The Commission thus should provide further guidance on this issue to prevent such disparate treatment in future.

If, however, the Commission is not prepared to rule that all such fees and surcharges are eligible for e-rate funding, it should establish a process for service providers to submit applicable fees and surcharges for expedited review either by USAC or Commission staff. Such a process would ensure that similar fees and surcharges are treated the same across all service providers and it will make USAC's invoice review process more efficient as the eligibility decision will be pre-determined.

Respectfully submitted,

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