



PUBLIC NOTICE

Federal Communications Commission
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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON A PETITION FILED BY THE STATE E-RATE COORDINATORS' ALLIANCE SEEKING CLARIFICATION REGARDING THE ELIGIBILITY OF BUNDLED END USER EQUIPMENT UNDER THE SCHOOLS AND LIBRARIES PROGRAM

CC Docket No. 02-6

Comment Date: September 10, 2012

Reply Comment Date: September 24, 2012

The Wireline Competition Bureau (Bureau) seeks comment on a petition filed by the State E-rate Coordinators' Alliance (SECA) asking for clarification on whether and to what extent the Commission's rules for E-rate (more formally known as the schools and libraries universal service support program) permit service providers to bundle end-user devices and equipment that are ineligible for E-rate support with E-rate eligible services without having to reduce the amount of an applicant's E-rate funding request by the cost of the ineligible end-user devices and equipment.¹ More specifically, SECA is asking for clarification of how the Commission's long-standing policy requiring the cost allocation of ineligible end-user equipment from eligible E-rate funding requests aligns with an order issued by the Bureau in December 2010 (*Clarification Order*) that SECA alleges has been interpreted by some as allowing the bundling of such devices without cost allocation.²

The *Clarification Order* addresses questions received by the Bureau regarding the Commission's decision in the *Schools and Libraries Sixth Report and Order* regarding, among other things, the E-rate program gift rules.³ The *Clarification Order* specifies that "service providers cannot offer special equipment discounts or equipment with service arrangements to E-rate recipients that are not currently available to some other class of subscribers or segments of the public."⁴ At the same time, the

¹ Petition for Clarification Pertaining to the Eligibility of Free VoIP Handsets and Other End-User Equipment, State E-rate Coordinators' Alliance, CC Docket 02-6 and GN Docket No. 09-51, filed July 27, 2012 (SECA Petition).

² SECA Petition; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324 (Wireline Comp. Bur. 2010) (clarifying the funding procedures for basic maintenance of internal connections contracts and gifts rules)(*Clarification Order*).

³ *Order; Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (2010) (*Schools and Libraries Sixth Report and Order*).

⁴*Clarification Order*, para. 11.

Clarification Order explains that because “many cell phones are free or available to the general public at a discounted price with the purchase of a two-year service contract...[s]chools and libraries are free to take advantage of these deals, without cost-allocation...”⁵ However, the *Clarification Order* further states that schools and libraries “...cannot accept other equipment with service arrangements that are not otherwise available to some segment of the public or class of users.”⁶ By way of example, the *Clarification Order* explains that “a service provider may not offer free iPads to a school with the purchase of telecommunications or Internet access services eligible under E-rate, if such an arrangement is not currently available to the public or a designated class of subscribers.”⁷

SECA expresses support for the Bureau’s decision to exempt free cell phones from cost allocation requirements when the phones are bundled with cellular service and available to the public or a certain class of users.⁸ However, SECA expresses concern that “this exemption is now being used by service providers to claim that their newly created service “bundles” for a variety of end user devices are available to a broad class of customers and therefore are also eligible for E-rate.”⁹ SECA asks for clarification on whether and to what extent such bundles are permitted without cost allocation.¹⁰ If other bundles are permitted, SECA suggests that the Bureau’s guidance in the *Clarification Order* should be further clarified and should specify that in order for ineligible equipment to be bundled with service and exempted from cost allocation: 1) The cost of any end-user equipment provided as a part of a bundled service must be considered “ancillary” relative to the cost of the bundle as a whole; 2) The bundled service offering must be deemed a commercially common practice within the industry, not a unique offering of an individual service provider; 3) The arrangement must be currently available to the public and not just to a designated class of subscribers;¹¹ and, 4) The service provider is not permitted to offer a package or packages of equivalent eligible services, without bundled end-user equipment, at a lower price.¹²

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁵ *Id.*, n.25.

⁶ *Id.*

⁷ *Id.*

⁸ SECA Petition at 1 (stating that the cost allocation exemption for cell phones has simplified the application process for cellular telephone services, was based on a long standing industry commercial practice of cellular providers that offered free cell phones to any customer that signed up for a new plan or extended an existing service plan, and is a practice that pre-dated E-rate rules).

⁹ *Id.* at 3.

¹⁰ *Id.* at 3 (claiming that further expansion of exemptions from the Commission’s cost allocation requirements will increase the demand for E-rate funding).

¹¹ For example, SECA suggests that a special bundle available only to the K-12 market that is not available to all other customers should not qualify for the cost allocation exemption. *Id.*

¹² *Id.*

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment

¹³ 47 C.F.R. §§ 1.1200 *et seq.*

filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact Cara Voth, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-7385.

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