

September 8, 2012

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: SECA Petition Seeking Clarification Regarding the
Eligibility of Bundled End User Equipment under the
Schools and Libraries Program
DA 12-1325 and CC Docket No. 02-6

Dear Ms. Dortch:

E-Rate Central wishes to thank SECA for formally raising the issue of the eligibility of “free” or bundled end-user equipment as a part of a Priority 1 service, and to thank the Commission for formally following up by requesting comments on SECA’s petition. This is an issue that has become a growing source of confusion both for applicants and service providers.

The Dangers of Eligibility Creep:

The end-user bundling issue needs to be addressed. We sympathize with the FCC’s early attempt to recognize a market reality in cellular service. Permitting cellular carriers to bundle basic cell phones as a part of a multi-year monthly service plan without requiring cost allocations, was a seemingly practical and simple approach. Unfortunately, the clarifying footnote in the FCC’s *Clarification Order* opened the door for bundling other, more sophisticated, types of end-user equipment (explicitly including iPads), without requiring cost allocations, as long as such bundled services were “available to the public or a designated class of subscribers.”

Last year, with that door open (or at least ajar), a VoIP provider began offering bundled digital telephone sets with their hosted VoIP services, claiming full E-rate eligibility. The provider noted that, just like cellular, its bundled service is available to a broad class of customers. In support of this position, the provider cited correspondence from the SLD’s Client Service Bureau indicating that the principle is the same. When SECA pushed the SLD for clarification, it was told that guidance was being sought from the FCC. SECA’s petition was another attempt to obtain such guidance.

The basic problem is the following: If the only constraint on the eligibility of a bundled service is that it be generally available to a public class of subscribers, there is no end to the types of otherwise ineligible equipment (or even services) which can be bundled into general service offerings — essentially undermining the existing allocation rules.

Consider, for example, a company bundling Web hosting with a full complement of Web creation tools. Heretofore, such a service would have to be cost allocated. Only the basic Web hosting would be eligible. But if the cellular eligibility model becomes a governing principle, the entire Web bundle would become eligible.

E-Rate Central views the possible extension of the cellular model to VoIP services to be a form of eligibility creep. But worse, if the cellular bundling principle were to be applied to a broader range of services, “creep” would be an understatement. By tearing cost allocation asunder, the demand for E-rate funding would skyrocket.

Establishing Guidelines for Bundled Services:

Assuming that the Commission does not want to get rid of cost allocation altogether, there appear to be two options for dealing with bundled services.

The first option, representing a reversal of the earlier cellular bundling policy, would be to require cost allocation on any bundle of eligible and ineligible services. Since the FCC presumably meant its cellular exception to be of a limited nature, its elimination would not be a major change.

If this approach is adopted, we would encourage the FCC to instruct USAC to work with CTIA or the individual cellular carriers to develop consistent eligibility percentages, or safe harbor limits, for bundled equipment and service packages. Such eligibility percentages could be developed and publicized in much the same way that USAC currently handles Web hosting, Internal Connections equipment, and other eligible/ineligible products and services.

The second option would be to modify the current cellular exception, perhaps broadening it to include other commonly bundled services — but only by more narrowly defining the conditions under which bundling would be allowed without cost allocation.

The SECA petition, while primarily seeking clarification, does suggest four conditions which might be adopted to narrow the cost allocation exemption for bundled services. If the FCC adopts the second option, E-Rate Central would encourage the FCC to adopt conditions consistent with those suggested by SECA. In particular:

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.” This condition would be consistent with existing ancillary service rules. Presumably, it would require cost allocation for higher cost end-user type equipment such as iPads or notebooks, and for services such as Web-based applications.

2. “The bundled service offering must be deemed a commercially common practice within the industry, not a unique offering of an individual service provider.” This condition would tend to discourage new bundling of “free” services by aggressive service providers.
3. “The arrangement must be currently available to the public and not just to a designated class of subscribers.” This condition would mitigate attempts to creatively define unique classes of subscribers.
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.” (Perhaps the wording here should be that the service provider “does not offer,” rather than “is not permitted to offer,” eligible services at a lower price.) If a service provider does provide such a lower-priced service, without an ineligible component, then the maximum discount on a bundled service should be no more than the discount on the lower-priced service. As an example, consider two hypothetical plans that a carrier might consider as business models with equivalent returns:

Plan A: \$75 per month on a 2 year wireless Internet access plan, including a notebook.

Plan B: \$50 per month on a 2 year wireless Internet access only plan.

Under current FCC rules, the full monthly cost of each plan is E-rate eligible. Discounts under Plan A, therefore, would be provided on an additional \$600 over the course of two years, effectively discounting the cost of the otherwise ineligible notebook. Under the proposed condition, allocation would be required. In this example, only \$50 per month would be eligible.

Should the FCC decide to stay with the second option, and to adopt SECA’s four conditions (or equivalent criteria), E-Rate Central would encourage the FCC to instruct USAC to develop implementing procedures to minimize the burden on applicants to certify that these conditions apply. Since these are primarily service provider-driven conditions, rather than applicant-driven conditions, the burden should be placed on the service providers to certify that any bundled offering, advertised as not requiring cost allocation, is fully compliant.

E-Rate Central encourages the Commission to provide additional guidance on bundled end-user equipment prior to the opening of the FY 2013 application window.

Sincerely,



Winston E. Himsworth
Executive Director