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May 23, 2013

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

Re: Comments regarding DA 13-592, Eligibility Of Bundled Components Under The Schools And Libraries Program

Within the E-rate program there are several areas which bundle ineligible services as part of an eligible service. The FCC has already ruled on several of these areas but recent events have evidently triggered another review of how the Schools and Libraries Division of USAC is spending its money. Recent events include the allowed bundling of desk top phones by Jive Communications as part of their VOIP services and continued pressure on the E-rate program caused by substantial increases in Priority 1 bandwidth funding. Reasons for these bandwidth increases are due to added governmental requirements for online student testing, increased demand for increased educational services delivered via the internet, pushes toward “Bring Your Own Device” adaptation of electronic textbooks, and an overall desire to remain globally competitive by providing our educational systems with the most up-to-date technologies.

Cellular and VOIP phone services

In the case of cellular phone services, USAC applicants are allowed to receive a free, albeit ineligible device, because the public at large is given this same incentive from cellular service providers. The FCC has ruled that this is not a violation of the Gift Rule, and this author agrees. In theory, the phone does not cost the applicant any additional money. More recently, this ruling has been extended to desk telephone sets from those VOIP vendors who also offer this incentive to the public at large. In reality, all of the devices have a cost which is built in to the service providers’ monthly fee.

It has been commented by some that the cost for these services should be allocated out by E-rate applicants so that the financial burden is relieved from USAC funding. While this author agrees that USAC should not be burdened by this cost. He further believes schools and libraries should not be financially hurt by this allocation process. For example, a school district may have a choice of one or two cellular service providers each of which have adequate service coverage in their geographic area and will have to do a cost-effectiveness analysis as part of their competitive bidding evaluation. Almost all cellular service providers are likely to offer a free phone with a contract of some sort and, clearly, the cost of the phone will be built in to the monthly fee. If the school district does not choose to take the telephone devices, there is often no lower price offered by the phone companies for not taking the devices. Since the public-at-large receives a subsidized phone, almost all service plans available include some unpublished amortized price per month for the cost of the “free phone”. If the cost of these devices must then be allocated out by the applicant, the district ends up paying for the phone anyway (it’s built into the service contract price) and then has to deduct the price of a phone it never received. There could be an artificial burden put on the E-rate applicant for taking or not taking a free phone. The only reduction in cost to USAC would be that amount allocated out by the applicant. If the applicant takes the phone there is a real cost which, through some method or another, can be determined. If an applicant chooses not to take a “free” cellular device, then there should be no need for allocation. However, when an applicant elects not to take the phone, the monthly service fee paid by the applicant then supports other phone company users who did take the phone. So, without allocation USAC realizes no savings, while through the monthly service charges, the phone company continues to recoup its costs associated with the device. In this scenario, the phone company wins and both USAC and the applicant gain nothing.

One suggestion would be to require cellular and VOIP service providers to offer phone services with the cost of any devices removed, that is, already allocated out. This would, in fact, remove the calculation complications identified by E-rate Central in their May 17, 2013 Comment to the FCC. Cellular and VOIP phone services, also in a continuing upward “price-creep” (to borrow from E-rate Central’s “eligibility creep” should be price tested to ensure that the device allocation results in a realistic reduction in the monthly line-service charge. In that way, schools and libraries will not be paying for services included in the price which are not eligible and for which they have no need. The “Lowest Corresponding Price” without any devices should be lower than comparable plans with these “free” devices included. Of course, pricing is likely to increase with time as demands on these services increase.

Further, unless a service provider willingly provides realistic cost allocation information, an applicant would sustain an undue burden in trying to ascertain the actual cost of the ineligible device.

<u>Wireless Internet Services</u>

More recently there have been some cases of applicants applying for “wireless internet services” wherein Priority 2 items, such as wireless access points and call managers, become transformed via bundling, into Priority 1 services. The Tennessee Order should apply to all telecom and internet based services. That is, any equipment used in the ultimate delivery of a service, especially Priority 2 equipment such as wireless access points, wireless controllers or call managers, should be considered Priority 2 equipment and remain as such with only one device per building being eligible for the transition from the external network to the school or library network.

<u>Eligibility Creep, Funding Cap Crawl, High Cost Sprawl, Service Providers’ Reach</u>

As noted earlier, E-rate Central noted the phrase “Eligibility Creep” to describe the slowly and constantly added services to the eligible services list. Match this with the very slow increase in the Schools and Libraries funding cap (changed only in the last few years because of the now allowed indexing) and the large amount of money which has gone annually unfettered to the High Cost USAC program area and the accounting shows that Priority 1 funding will soon have to be limited or allocated in some way. Lastly, when further coupled with the dominant positions of Comcast, Time Warner, AT&T and Verizon (New York Times Article, May 19, 2013 by David Carr referencing Susan Crawford’s book, “Captive

Audience: The Telecom Industry and Monopoly Power in the New Gilded Age") continuously higher costs of telecom coupled with increased demands will keep pressures on USAC's funding for the Schools and Libraries division until some structural changes are enacted within the family of USAC funds or a new way of equitably distributing funding is determined.

Lastly, this author must note that as more and more E-rate applicants seek lower telecom costs and adopt VOIP technologies from regional or local government agencies which hold exemptions to the FCC 499 filer contribution rules, Universal Service contributions will continue to decrease. This may create an even greater burden on end users whose Universal Service Fees fund this very successful program as well put additional competitive pressures on those service providers who are contributing to the fund. One can only hope that some combination of restructuring and reasonableness can be reached by the FCC and its commissioners over the next year so that the USAC Schools and Libraries Division continues to provide the connectivity, cost-balancing, and opportunities it has provided so many millions of students over the years.

I thank you very much for your time and your careful consideration of all sides of the "unbundling" issue.

Sincerely,

Steve Kaplan

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