

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of:

Comments Sought on the Eligibility
Of Bundled Components Under the
Schools and Libraries Program
Adopted April 23, 2013

Schools and Libraries Universal
Support Mechanism

DA 13-592
GN Docket No. 09-51
CC Docket No. 02-6

Comments of E-Rate Provider Services, LLC.

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E-Rate Provider Services Intro

E-rate Provider Services (“EPS”) respectfully submits these comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) Public Notice regarding the “Comments Sought on the Eligibility Of Bundled Components Under the Schools and Libraries Program.” E-rate Provider Services is a consulting firm serving Service Providers in the E-rate program. E-rate Provider Services’ purpose is to assist E-rate Service Providers in navigating the complexities of the program, providing sales and compliance assistance, cost allocation services, bid and proposal review, and staff training.

Bundled Handsets

Introductory Comments

The original language in the Bureau’s 2010 Gifting Rule Clarification Order carved out an exception in the gifting rules to allow school and libraries to take advantage of the common practice in the cell phone industry, which is to give an allowance of approximately fifty-dollars for a new phone with a two-year contract, or more for a smart phone with a data plan. The language further allowed this exception to cover other similar services if it was common practice in the industry in question, which opened the door for a number of non-cellular service providers to sell their customers on the idea that their particular piece of end-user equipment was covered by this “exception of similarity.” Rumors abound about the breadth of different pieces of equipment under discussion, including handsets for Priority One VoIP providers, iPads or other tablets, Codecs, and more. E-rate Provider Services notes that it seems unlikely that the FCC intended on creating such a “slippery slope” with its original language, and commends the FCC on clarifying, and thus closing, any further erosion in the line between eligible and ineligible, or Priority One and Priority Two, goods and services.

General Comments

E-rate Provider Services fully supports the FCC’s decision to clarify the ineligibility of all bundled end-user equipment. E-rate Provider Services comments that the original language in the Bureau’s “2010 Gifting Rule Clarification Order” was ambiguous, open-ended, and raised, ultimately, issues of transparency and fairness that were not adequately addressed in the original Order.

E-rate Provider Services agrees with SECA that there is significant upward pressure on the aggregate funding requests for Priority One services, that bundling ineligible end-user equipment will not relieve this pressure in any way, and may have the opposite effect. E-rate Provider Services further comments that while there are some services or practices that represent cost efficiencies to the program in Priority One, simply allowing ineligible goods to be bundled in is not such a practice. E-rate Provider Services comments that if the growth of Priority One funding is not curbed, not only will there be no Priority Two funding available, but there will no longer be enough Priority One funding for all eligible requests. While a review of the overall fund is not within the scope of this proceeding, commenting on the cost-effectiveness of the policy in question and its effect on the overall fund is appropriate.

Technology Neutrality

E-rate Provider Services comments that, in addition to the effect on the overall fund, there are issues of technology neutrality. E-rate Provider Services comments that the language in the latest FCC request for comment that proposes prospectively ruling that no end-user equipment can be bundled without cost-allocation in a Priority One service does not specifically address the previous ruling on cell phones. In short, does the latest ruling reverse the earlier ruling on cell phones, or does that exception remain in force?

E-rate Provider Services comments that while it understands the FCC's rationale behind the original exception, in the interest of technology neutrality, that is, maintaining a level playing field for all vendors and not giving favorable treatment to any single industry or service provider, allowing cellular providers to bundle handsets in, and not allowing other similar, competing technologies to do the same, gives cellular providers an advantage over hosted VoIP providers.

While E-rate Provider Services is sensitive to SECA's assertion that "*the Bureau's decision to exempt free cell phones... has simplified the application process,*" E-rate Provider Services comments that such simplification cannot take precedence over a fair, technologically neutral playing field for all service providers.

E-rate Provider Services therefore recommends that the FCC reverse its earlier clarification, and disallow cellular providers from bundling cell phones or smart phones, and respectfully requests the FCC either clearly reaffirm or retract its previous stance.

E-rate Provider Services also comments that while the cellular industry has contracted to a handful of national, large providers, there are K12 specific hosted VoIP providers, who could not meet the standard of offering the bundled service to other sets of non-E-Rate clients because they are K12 providers exclusively. Further, rumors abound of providers who signed a few non-E-rate customers to contracts with bundled handsets in order to meet the requirement, but did not pursue this business energetically. E-rate Provider Services summarizes by commenting that ambiguous rules encourage practices that violate the spirit of the program.

Last, E-rate Provider Services comments that it feels great empathy with the FCC in this matter. What seemed, on the surface, to be a straightforward and non-controversial exception in the original gifting rule clarification went “off the rails” in a spectacular fashion, causing great concern and uncertainty in the larger E-Rate community, which has persisted through three funding cycles. E-Rate Provider Services comments that perhaps a small, informal advisory group, comprising different constituent types, may provide critical perspective and input to avoid similar situations in the future.

Cost-Allocations & Ancillary Goods/Services

Introduction

E-rate Provider Services comments that it acknowledges that the SLD and SOLIX have the extremely difficult task of adjudicating cost-allocations, and do an excellent job.

E-Rate Provider Services comments that USAC and SOLIX are often delayed by the need to wait for the FCC to set policy on eligibility issues, particularly in the area of technology innovations, which could save critical program funds. For example, many of the video equipment manufacturers offer a software-only codec package that would run on a user-owned PC, or a one-piece laptop/software combination, and deliver the same functionality much more cost-effectively, yet USAC has not been allowed to fund this configuration. E-Rate Provider Services comments that a broader interpretation of eligibility, focusing on function, not configuration, might yield cost-effectiveness by allowing the applicant to choose the most cost-effective solution, not the most cost-effective *eligible* solution.

E-Rate Provider Services also comments that, regarding eligibility, the pace of innovation outpaces the ability of the FCC to set policy and standards. For example, posting captured videos online, in light of the precipitous drop in the price of storage, has become a reality. Yet no guidelines exist for the amount of storage that is acceptable with a hosted web offering. Is 20 GB per student eligible? 30 GB? 50 GB? Without this guideline, it is impossible to cost-allocate the offering in question, and products that feature this functionality sit in a state where they cannot, with any certainty, state their percentage of eligibility, nor get submitted applications funded.

E-Rate Provider Services comments that there are products that utilize technologies that change so rapidly, and use highly subjective measurements, such as bandwidth and storage, as to require more frequent standards adjustments. In short, web-based storage that is excessive one year may be quite reasonable the next, yet no mechanism exists to manage a rapidly changing standard.

E-Rate Provider Services comments that currently it is solely the FCC's province to set eligibility policy, and without this guidance, service offerings languish, unfunded, and questions linger, unanswered. E-Rate Provider Services comments that the internal staff at USAC is the best positioned to make the determinations in question, and encourages the FCC to delegate more of the responsibility for this function to the staff at USAC.

E-Rate Provider Services comments that there has been a constant tension between manufacturers/developers, who generally add more and more features every year to their products, and the program rules, which tend to be slow to embrace new features. In the commercial world, adding new features to a product, year after year, encourages equipment sales and exerts downward pressure on pricing. However, within the confines of the E-Rate Program, this practice often proves counterproductive, as new features frequently require a new cost-allocation to be submitted, taking up significant program resources for what is often a de minimus change.

In addition, E-Rate Provider Services notes that there are many types of cost-allocations, between hardware, software and usage-based allocations, and often the result, by necessity, is a subjective, negotiated percentage. In other words, if you have a Priority One email package which offers email archiving which is not priced separately, how can a realistic, accurate value for this feature be determined? Ultimately, it cannot be objectively calculated, which leaves the service provider and the fund manager to arrive at a mutually agreeable 'guesstimate', which passes a subjective 'sniff test'. E-Rate Provider Services comments that there is no more objective way to cost-allocate small features of large software packages, and therefore encourages the FCC to broaden its interpretation of "Ancillary" features to include these small features, not severable from the whole, which comprise useful functions but are not the main function of the package.

E-Rate Provider Services further comments that it may be possible to simplify the cost allocations for Priority One software packages by "roughing out" the main functionality of a package into its larger functions, and concentrating less on each individual line item functionality. A package that includes email (eligible), web hosting (eligible) and student information systems (ineligible) would be 2/3rds eligible, or 67%.

Summary

E-Rate Provider Services appreciates this opportunity to provide commentary and feedback to the FCC about these important matters, and as always, commends the Commission, USAC, and SOLIX for their hard work on behalf of the constituents of the E-Rate program. We summarize our comments as follows:

Bundled Handsets

E-Rate Provider Services:

- Supports the FCC's change of policy to make all end-user equipment ineligible to be bundled into a Priority One service;
- Recommends that this change take effect for FY 2013, not FY 2014;
- Recommends this change include cellular handsets; that is, requiring cellular handsets be cost-allocated as well.

Cost-Allocations & Ancillary Services

E-Rate Provider Services:

- Recommends delegating more responsibility for eligibility interpretation to USAC;
- Recommends establishing a more relaxed standard for "ancillary";
- Suggests revisiting the methodology for determining the eligibility for Priority One software packages.

General Comments

E-Rate Provider Services respectfully comments that there are many people, including applicants, service providers, and consultants, in or around the program, with many years of experience in the program, and a deep and abiding commitment to the health and integrity of the process, willing to lend support, by informal advice and counsel. As always, we stand ready assist.