

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	
)	GN Docket No. 09-51

REPLY COMMENTS OF VERIZON AND VERIZON WIRELESS¹

The E-rate program makes funding available to eligible schools and libraries to allow them to obtain certain eligible services, including telecommunications services, at a discount.² By contrast, end-user equipment – such as telephones – generally is not eligible for E-rate support.³ If an E-rate applicant submits a request for E-rate support for a product or service that includes both eligible and ineligible components, the applicant typically must allocate the cost between the eligible and ineligible components in the request, so that E-rate support is provided only for the eligible components.⁴ However, the Wireline Competition Bureau (“Bureau”) has allowed E-rate customers to accept free or discounted cell phones (“ineligible components”) without cost allocation because providing discounted phones with the purchase of a service contract is standard industry practice.⁵ The Bureau now proposes to reverse course and require cost allocation of free or discounted phones in all instances.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (“Verizon”).

² See 47 C.F.R. § 54.502(a).

³ See 47 C.F.R. § 54.502(b).

⁴ See 47 C.F.R. § 54.202(e).

⁵ See *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, Order, 25 FCC Rcd 17324, at n.25 (2010) (“*Gift Rule Clarification Order*”).

Verizon does not have a vested interest either way, but it is not clear from the *Public Notice*⁶ or the initial comment round in this proceeding that a change in practice is necessary. In any event, if the Bureau does move forward with a change, it should provide clear, practical guidance about how the new cost allocations should be done.

DISCUSSION

The Bureau's proposal to modify the *Gift Rule Clarification Order*'s interpretation of the cost allocation rules with respect to discounted wireless devices (*e.g.*, cell phones, tablets, etc.) is based on a concern that "an open-ended interpretation and widespread use and expansion of the [*Gift Rule Clarification Order*'s] exception could lead to further strain on the E-rate fund...."⁷ Verizon shares the Bureau's concerns about strains on the E-rate fund. However, it is not apparent – and the *Public Notice* does not substantively address – whether the common wireless industry practice of offering free or discounted devices to customers actually has had a material impact on the demand for E-rate subsidies. Because the monthly pricing for each wireless service plan is typically the same – regardless of whether the customer purchases no device or purchases a device at \$0, a discounted device, or at a device full retail – it is not apparent how the policy articulated in the *Gift Rule Clarification Order* for wireless devices and services has strained the E-rate fund.

On the other hand, the benefits of exempting devices from cost allocation requirements in these circumstances do seem real for E-rate customers. As the State E-rate Coordinators Alliance explained, the exemption of free or discounted cell phones from cost allocation

⁶ *Wireline Competition Bureau Seeks Comment on the Eligibility of Bundled Components Under the Schools and Libraries Program*, Public Notice, 28 FCC Rcd 4212 (2013) ("*Public Notice*").

⁷ *Public Notice*, ¶ 7.

requirements “has simplified the application process for these types of funding requests.”⁸

Nevertheless, the Bureau now proposes to reverse the *Gift Rule Clarification Order*, such that – beginning with E-rate funding year 2014 – the cost of any ineligible devices or components now must be allocated as ineligible, even if bundled with E-rate eligible services that are offered to the public or some class of users.⁹

Verizon will comply with the cost allocation rules either way. But if the Bureau is to reverse course now and require cost allocation of ineligible wireless devices (*e.g.*, cell phones, tablets, etc.), it should provide clear guidance as to how the new required allocations can be done in practical terms. The existing rules have the benefit of simplifying the E-rate application process by eliminating the need to perform cost allocations altogether in certain limited cases. And, as the initial comments in this docket confirm, changing that approach now could lead to confusion for both applicants and service providers.¹⁰

The *Public Notice* itself recognizes that “applicants may desire additional guidance on how to best derive the costs of ineligible end-user devices” and asks “whether [the Commission] should further clarify our current standard for cost allocations to provide additional guidance

⁸ *Id.* ¶ 4.

⁹ See *Public Notice* ¶ 6. The Public Notice refers to the *Gift Rule Clarification Order* as a short-term exemption to cost allocation requirements for bundled ineligible components. *Public Notice* ¶ 24. However, that should not be read to suggest that cost allocation of ineligible wireless handsets was required prior to the *Gift Rule Clarification Order* in 2010. To the contrary, the *Gift Rule Clarification Order* was interpreting the Commission’s rules as they existed at the time. In other words, the *Gift Rule Clarification Order* was not adopting a new standard; it merely clarified the existing one. Accordingly, no cost allocation for wireless handsets was – or should be – required in prior years. The only short-term aspect of the exemption is the notion of reversing it three years after the *Gift Rule Clarification Order* was issued.

¹⁰ See, *e.g.*, Comments of Sprint Nextel, at 2-3; Comments of Funds for Learning, at 2-3.

concerning end-user equipment.”¹¹ Such “additional guidance” is a must. Indeed, given that cost allocation has not been required for discounted or free wireless devices in the past, none of the examples provided in USAC’s cost allocation guidance specifically addresses cost allocation in the scenario in which a free or discounted wireless device is made available with the purchase of wireless service.¹² One example on the USAC website comes close – discussing discounts on “end-user telephone sets” provided as a package with an eligible telecommunications service.¹³ But that example addresses the circumstance in which the equipment is leased, not purchased. Furthermore, that example assumes there is a “usual price” of separate eligible (transmission) and ineligible (the “telephone sets”) components of the package.¹⁴ In the wireless context, it is very often the case that the price of the eligible service contract is the same, irrespective of whether a customer also purchases an ineligible wireless device (discounted or not) or provides his or her own device(s). And wireless providers generally do not sell devices to the public that are not associated with an active line of service on their network. So, there is no “usual price” for the separate components to serve as a baseline when allocating costs.

As such, it is unclear precisely how an ineligible wireless device should be valued for cost allocation purposes, leaving the possibility that different E-rate customers and providers may allocate in different ways. Accordingly, if the Bureau were to reverse the *Gift Rule Clarification Order*, it should provide more specific guidance regarding how to implement the required cost allocations in order to minimize confusion for applicants and service providers.

¹¹ *Public Notice* ¶ 10.

¹² See <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services/cost-allocations.aspx>.

¹³ *Id.* at “Example 2: A bundle of products and/or services includes a discount.”

¹⁴ See *id.*

Respectfully submitted,

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