



**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**PETITION FOR CLARIFICATION
PERTAINING TO THE ELIGIBILITY OF FREE VoIP HANDSETS
AND OTHER END-USER EQUIPMENT**

The State E-Rate Coordinators’ Alliance (SECA) respectfully seeks clarification of the extent to which E-rate rules permit service providers to bundle ineligible end-user devices with E-rate eligible services and still have the underlying Priority 1 service be 100% E-rate eligible.

The FY 2012 Eligible Services List states: “2012 Support is not available for end-user equipment purchased by applicants.” And the FY 2013 Draft Eligible Services List states: “The following charges are **NOT ELIGIBLE** for E-rate support: *End User Equipment*. Support is not available for end-user equipment.”

However, it is our understanding that at least one Priority 1 VoIP service provider is claiming that such bundled handsets are E-rate eligible and other such offerings, such as sophisticated wireless computing devices, may have been approved for funding in previous years. The rationale for this eligibility claim appears to be based on Footnote 25 included with the FCC’s Gift Rules Clarification Order (DA 10-2355 released December 10, 2010) which states:

For example, many cell phones are free or available to the general public at a discounted price with the purchase of a two-year service contract. Schools and libraries are free to take advantage of these deals, without cost allocation, but cannot accept other equipment with service arrangements that are not otherwise available to some segment of the public or class of users. Therefore, 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.

SECA believes this raises three critical questions:

1. How does this eligibility presumption square with the long-standing policies on free services and/or the cost allocation requirement for products and services involving both eligible and ineligible components?

2. If the Commission agrees that such bundles are E-rate eligible, what other types of bundled services then become acceptable? For example, the last sentence in the above referenced footnote indicates that other end user devices, like tablets, can be E-rate eligible if they pass the “bundled to other subscribers” test.

3. What will this do to the demand for Priority 1 E-rate funds which already is growing at a rapid rate and within the next two years likely will exceed available funds?

Allocating costs between eligible and ineligible services has long been a mainstay of the program and justifiably prevents awarding E-rate discounts on ineligible products and services. Further, if done properly, it assures that eligible costs are not inflated to cover ineligible costs. The only exception is that, as an administrative convenience, a minor “ancillary” component can be bundled into a much broader product or service without allocation (although the rules about when ancillary uses may be considered and when they cannot is also blurred and should be addressed).

The exemption of free cell phones, when bundled with cellular service and available to the public or a certain class of users, from E-rate cost allocation requirements has certainly simplified the application process for these services. Indeed, this exemption 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. This practice pre-dated E-rate

rules and simply recognized an existing commercial practice in such a way that it did not unduly penalize E-rate recipients. But 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. We do not believe this is what the FCC originally intended. More specifically we do not believe that the FCC intended to create a new marketing opportunity for vendors to create new service bundles that allow for ineligible end-user equipment to be included in the cost of eligible Priority 1 service and to suspend the usual cost allocation rules.

If the FCC does agree that such VoIP and other end-user equipment bundles (e.g., tablets) are E-rate eligible, is there a line where the Commission would deem such bundles as too extreme? An example would be 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 under the cellular eligibility model, wouldn't the entire Web bundle be eligible? And if cost allocation is torn asunder, the demand for E-rate funding will further skyrocket and will threaten the ability to fund all of Priority 1 requests not to mention funding any Priority 2 requests in future years.

We suggest that the FCC should clarify the guidance contained in the free cell phone footnote in DA 10-2355 by stressing that, to avoid the requirement for allocation:

- 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;
- The bundled service offering must be deemed a commercially common practice within the industry, not a unique offering of an individual service provider;
- The arrangement must be currently available to the public and not just to a designated class of subscribers. For example, 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; and,
- 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.

We therefore request that the Commission clarify the expansion of the cellular eligibility model to other Priority 1 products and services as quickly as possible so schools and libraries can consider such service provider offerings and E-rate eligibility rules when submitting their FY 2013 Form 470s which will widely begin in September 2012.

Respectfully Submitted by:

/s/ Gary Rawson

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