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Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

Re: Docket No. 3545 - Rules and Regulations Governing the Telecommunications Education Access Fund

Dear Ms. Massaro:

Verizon Rhode Island ("Verizon RI") files these comments regarding the Commission's proposed Rules and Regulations Governing the Rhode Island Telecommunications Education Access Fund ("the Fund").

Before addressing the proposed Rules, Verizon RI must respond to the suggestion by Cox Communications at the public hearing on September 17, 2003, that Verizon RI should be disqualified from receiving payment from the Fund for Internet access services it may provide to the Department of Education during the first six months of 2004 under the federal E-Rate program. Cox provided no coherent rationale for its position, nor did it seek the right to provide Internet access services itself. Rather, Cox seems to argue that G.L. §39-1-61 ("the Statute") prohibits use of the Fund to pay for services provided under an award granted by the Department prior to enactment of the Statute. The Statute, however, says no such thing. It does require the Department to obtain the Commission's approval of its request for proposals for Internet access services. It does not, however, require that approval to be obtained at any particular time. In fact, nothing in the Statute requires the Department to obtain such approval before it publishes its RFP. Further, nothing in the Statute purports to abrogate Verizon RI's right to provide services and receive payment therefor, awarded pursuant to the federal E-Rate regulations in a bidding process acknowledged by all to have been open, objective and fair. (Cox, of course, was free to participate in that process but chose not to.) The Commission cannot and should not read into the Statute such an extraordinary provision, that the General Assembly did not see fit to include.

Moreover, the preamble to the Statute is clear that the General Assembly intended to ensure continued funding for the Department's Internet access program. Cox, however, would have the

Commission find that the Statute does not provide substitute funding for that program for the first six months of 2004. Cox cannot square that result with the expressly stated purpose of the Statute.

Cox's suggestion that Verizon RI is somehow required to continue subsidizing the Internet access program after December 31, 2003, is simply specious. No provision of Verizon RI's award from the Department requires such a subsidy. Likewise, the Commission approved the Settlement Agreement in Docket 3445 on the basis of a clear record that Verizon RI's obligation to subsidize the program would terminate once a new funding mechanism was in place. The provision of the Settlement Agreement concerning the Internet access program, paragraph M, states that the reason for Verizon's agreement to continue funding past December of 2002 was "to provide a sufficient period of time to investigate and determine an equitable mechanism by which to fund internet access for Rhode Island K-12 schools and libraries ...." Obviously, Verizon RI's agreement was intended as a stop-gap measure to provide funding until another mechanism was adopted. Once telecommunications service providers begin billing their subscribers the surcharge in January of 2004 pursuant to the Statute, an alternative funding mechanism will be in place, and Verizon RI's subsidy obligation terminates. Testimony provided in response to questioning by Cox's attorney at the hearing on the Settlement in Docket 3445 could not be more clear:

> Mr. Fitzgerald: And if an alternative funding scheme is implemented, is it Verizon's position that it would be obligated to continue to provide the $4 million specified in the settlement, or would that obligation be terminated?
>
> Ms. O'Brien: That obligation would be terminated once an alternative mechanism is provided for.

Transcript of hearing on December 11, 2002, at 52; see also, Brief of Verizon Rhode Island, Docket 3445, at 16. The Statue provides just such an alternative funding mechanism, and further expressly states that, "The effective date of assessment for the Telecommunications Education Access Fund shall be January 1, 2004." Verizon RI, then, cannot be required to subsidize the program after that date.

Finally, Verizon RI points out that the effect of Cox's position would be to force Verizon RI to provide up to $1,000,000 in free services against its will, despite its valid, federally-sanctioned and fully enforceable contract. In the unlikely event that the Commission is inclined to entertain Cox's position, it should not do so in the context of this rulemaking proceeding. In such event, fundamental notions of due process would require the Commission to allow Verizon RI the benefit of discovery and a full hearing.

Verizon RI submits the following comments on particular provisions of the proposed Regulations.

1. Part II, section 7. In response to the Commission's question at the hearing on September 17, Verizon RI believes that it is reasonable, in fact required, to read the Statute as applying the Telecommunications Education Access Fund surcharge only to telephone bills for local exchange service. The Statute clearly and unambiguously states that the surcharge is "hereby determined to be twenty-six cents ($.26) per access line or trunk." G.L. §39-3-61(2). Of course, an access line can be and usually is used to provide local telephone service as well as inter-LATA or long distance service.

If each of the providers of these types of services included the surcharge on its bills, most if not all of the access lines in the state would be surcharged, in the aggregate, two or three times the amount of the surcharge provided in the Statute. For example, if a residential customer having a single POTS line receives local exchange service as well as long distance service on that line, the customer would receive bills from each of his or her carriers (which may or may not be a single company), each assessing a surcharge of $0.26, for a total surcharge on that one line of $0.52 or more. Given the General Assembly's express statement that the surcharge is $0.26, and its failure to specify that every provider of services over a given access line must assess the surcharge independently, any regulation that effectively assessed a surcharge of $0.52 or more per access line would be contrary to the Statute.

Accordingly, Verizon RI suggests that the Commission revise Part II, Section 7 of the proposed Regulations to clarify that the surcharge will be billed by local exchange carriers only. In this vein, Verizon RI also suggests that the Regulations should clarify that the surcharge (unlike the E-911 surcharge) does not apply to wireless devices and carriers, as is evident by the language in paragraph (d)(1) of the Statute. Verizon RI's suggested changes are shown in redline below:

> "Telecommunications services provider" means any person, party or entity which provides local telecommunications services by way of a land-line wire connection.

2. Part III, Section 1. This section should expressly state that public pay phones and DID lines are subject to the surcharge. In addition, because centrex equivalent trunks and ISDN/PRI systems can serve multiple end-users or stations, it would be helpful for the regulations to specify how the surcharge should be applied to these products. As is the case with the E-911 surcharge, Verizon RI suggests that it is appropriate to assess centrex equivalent trunks one surcharge for every eight stations served by the system. ISDN/PRI systems should be assessed as if each system represented five access lines, to be consistent with the ratio of 5 to 1 used by the federal government in assessing subscriber line charges on such systems. Direct statements of these ratios are the most accurate way of taking account of the fact that these systems provide service to multiple users or stations. Verizon RI suggests the following line edits to Section 1:

> SECTION 1. Pursuant to R.I.G.L. § 39-1-61(d)(1), a surcharge, in an amount determined by the General Assembly, is to be assessed upon each residence and business telephone access line or trunk in the state, including public pay phones, DID lines, PBX trunks and centrex equivalent trunks (the latter to be assessed one surcharge for every eight stations serviced by the centrex system). Due to the aggregate nature of ISDN/PRI systems, the surcharge shall be assessed on each such system as if it were five access lines.

3. Part III, Section 2. The Statute does not define the term "quasi-governmental agencies" and leaves it to the Commission to provide an appropriate definition by regulation for purposes of this program. In light of the stated purpose of the Statute "to provide a continued source of funding for internet access for eligible public and private schools and libraries" to replace the funding formerly provided by Verizon RI, see G.L. §39-1-61(a), the Commission should defined this term restrictively, so as to limit the scope of the statutory exemption and further the fundamental statutory goal.

4. Part III, Section 3. The Commission should add the phrase "to its retail end-users" following the first use of "telecommunications service provider." Verizon RI has both retail end-user customers and wholesale customers like AT&T who resell our services or lease access lines owned by Verizon RI. This proposed change is necessary to clarify that Verizon RI and other wholesale providers need not bill the surcharge to their wholesale customers, but that such wholesale customers should be billing their own retail end-users.

5. Part III, Section 5. Verizon RI suggests that the timeframe allowed by this section for telecommunications services providers to transfer amounts collected via the surcharge to the Telecommunications Education Access Fund is insufficient to allow proper processing of those funds. As written, Verizon RI and other carriers would have only 30 days from the end of a month in which to transfer the collected funds. Verizon RI proposes a slight increase of that time to 45 days as a more realistic timeframe for carriers to meet. Also, in order to establish a clear transfer process, it would be helpful if the Regulations specify the title and address of the recipient of the transfers. A redlined version of Section 5 showing Verizon's changes follows.

> SECTION 5. Commencing March 15, 2004, and continuing on the fifteenth day of each month thereafter, each telecommunications services provider shall transfer to the Telecommunications Education Access Fund of the Public Utilities Commission, the amount collected from its subscribers through the Telecommunications Education Access Fund surcharge during the month two months earlier. Such transfers shall be directed to the "Telecommunications Education Access Fund Restricted Receipt Account," care of Commission Clerk, Rhode Island Public Utilities Commission, 89 Jefferson Boulevard, Warwick, RI 02888.

6. Part III, Section 6. If the General Assembly changes the amount of the surcharge in the future, as anticipated by §39-1-61 (d) (2), Verizon RI will need a reasonable amount of time to implement the necessary changes in its software and billing systems. We assume that other service providers will also need time to implement the changes. Consequently, Verizon RI proposes that the Commission add the following as Section 6 of Part III of the Regulations.

> In the event that the General Assembly changes the amount of the surcharge, each telecommunications services provider shall commence billing the new surcharge amount no later than 120 days after the effective date of the General Assembly's act instituting such change.

Verizon Rhode Island appreciates the opportunity to comment on this important new program and thanks the Commission for consideration of the above comments. As always, I am available to address any questions the Commission may have on the above.

Very truly yours,

Alexander W. Moore

cc: Ms. Teri O'Brien
Mr. William Fiske
Leo J. Wold, Esq.
Jennifer J. Marrapese, Esq.