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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") is responding to the comments on the above regulations filed by Cox Telecom on September 29, 2003. Cox's assertion that the new Telecommunications Education Access Fund cannot be used to pay for services provided by Verizon RI is nothing more than a blatant attempt to exploit this rule-making proceeding to reap competitive advantage for Cox, cloaked in an alleged concern for the students of Rhode Island. Cox's position rests solely on legal sleight of hand, mischaracterizations of fact and a misunderstanding of the nature of the program Cox purportedly seeks to protect. We address the issues in the order Cox has raised them.

First, Cox argues that Verizon RI should not be allowed to receive payment from the Fund because that money was "contributed by the end users of all Telecommunications Service Providers in the State…," apparently implying that the Fund must be distributed equally to all service providers in the state. That is, of course, directly contrary to the purpose of the Statute in creating the Fund, which is to pay the carrier that provides Internet access services to schools and libraries under the federal E-Rate program. Thus, whichever telecommunications service provider wins the E-Rate award from the Department of Education for the 2004-2005 year – be it Verizon RI or another carrier -- will receive payment from the Fund.[1] Cox has failed to explain how the fact that the Fund comes from a surcharge on all access lines makes it sacrosanct for the first half of 2004 but not the remainder of the year.

[1] Moreover, the federal E-Rate funds that have paid for the bulk of the services provided under the Schools and Libraries Internet Access program were generated by a surcharge on consumers nationwide. No one has ever suggested that Verizon RI should not be allowed to receive those funds.

Second, Verizon RI has already addressed in its Comments, filed on September 30, Cox's groundless assertion that the Fund is off-limits to Verizon RI because the E-Rate award for the current year was made before the Statute was passed. As noted, nothing in the Statute restricts the Fund to payment on future awards only. Indeed, the Statute adds no substantive criteria to the process of determining the annual E-Rate award. Consequently, Cox cannot point out any way in which Verizon RI or its services may have qualified for the E-Rate award for the current year but would fail to qualify for consideration now, under the Statute. Thus, the fact that Verizon RI received the current E-Rate award before the Statute was passed is irrelevant to any real-world basis for prohibiting the Department of Education from paying Verizon RI from the Fund.

Third, the fact that Verizon RI allegedly "did not place any qualifications upon its ability to provide the services it bid on for the period July 1, 2003 – June 31, 2004" is also irrelevant. No one has claimed here that Verizon RI has failed to provide services requested by the Department or is unable to do so. Nor was Verizon RI required to have expressly stated in its E-Rate bid that it would seek payment for its services; the award itself grants the exclusive right to provide service in return for payment, not the right to provide services for free. Cox's conclusion that "the DOE had good reason to rely upon Verizon's continuing commitment" to subsidize the Internet access program, is groundless. Mr. Fiske, testifying for the Department, made no claim whatsoever that the Department was relying on Verizon RI to continue its subsidy past 2003. In any event, no such reliance would be warranted in light of Verizon's clear statements on the public record in Docket 3445 that it intended to discontinue the subsidy when a new funding mechanism was put in place – which the General Assembly has now done.

Fourth, as demonstrated in Verizon RI's Comments, the Settlement Agreement approved by the Commission in Docket 3445 does not require Verizon RI to subsidize the Internet access program through December 31, 2004. Rather, as Cox is fully aware from its questioning at hearing in that Docket, Verizon RI's funding obligation terminates with the implementation of an alternative funding mechanism. That mechanism will be in place on January 1, 2004.

Fifth, Verizon RI takes great exception to Cox's remark that it is "disappointed" that Verizon RI "appears to be retreating from its commitment to Rhode Island's schools and libraries, but more importantly to Rhode Island's students." Verizon RI has provided more than $15 million in funding to the Schools and Libraries Internet Access program over the course of 11 years, while Cox provided exactly $0 in funding for the program. Moreover, Cox chose not to submit a bid on the Department's RFP for the E-Rate program last year (and in prior years), when the winning bidder was expected to subsidize the program. Only now, when the Fund eliminates the subsidy borne by the providing carrier does Cox suddenly profess an interest. Cox even goes a step further and claims that Verizon RI, having supported the program for all these years, should be penalized and required to continue the subsidy even though the General Assembly has provided for a new source of funds. Given Cox's failure to support the program in the past, it should not be heard now to chastise Verizon RI for limiting its own contribution to $15 million.

Sixth, Cox asserts that "the *potential* for great harm exists" (emphasis added) in allowing the Department to use the Fund to pay Verizon RI for services rendered in the first half of 2004. In identifying this "great harm," however, the best Cox can do is speculate that the surcharge set by the General Assembly might prove to be insufficient to fund the Education Access program at a particular

level, in which event "it would be *helpful* to have a 'cushion' built up during the first six months of 2004 to plug the gap…." (Emphasis added.) Of course, this "cushion" would be financed solely by Verizon RI, for the benefit of whichever carrier wins the E-Rate award for 2004-2005. In any event, the General Assembly was fully aware of the possibility that the surcharge might be too low, yet it chose not to provide for the creation of a "cushion" or rainy day fund in the Statute. The Commission should not and cannot step in to create such a fund (at the sole expense of Verizon RI, no less) where the General Assembly did not.

Finally, Cox has no basis for its claim that the Commission must order Verizon RI to continue to subsidize the Internet Education Access program in order to create "a competitively neutral program." Competitive neutrality means that the bidding process cannot be structured so as to unfairly favor one qualified bidder over another, and that bids must be evaluated objectively on their merits and on the merits of the bidders. An order directing one competitor, Verizon RI, to subsidize this program for six months in order to create a pot of money to reduce the business risk that another competitor, such as Cox, would face if it prevails in the RFP process for next year's E-Rate award is about as far from "neutral" as can be.

For these reasons and those stated in Verizon RI's Comments filed on September 30, the Commission should deny Cox's request for an order directing Verizon RI to continue to fund the Internet Education Access program after December 31, 2003.

Very truly yours,

Alexander W. Moore

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