

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

Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

**REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to comments filed on the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (“Commission”) in conjunction with the *E-rate Modernization Order*.² The *FNPRM* seeks comment on several discrete issues related to modernization of the Universal Service Fund (“USF”) Schools and Libraries (“E-rate”) program.

The *FNPRM* seeks comment on the size of the E-rate budget going forward in light of the numerous changes to the mechanism adopted by the Commission in July 2014.³ As NTCA stated in initial comments, the Commission must adopt a “data-driven” approach to consideration of the E-rate budget that focuses on assessing first the unique needs of individual schools and libraries for access to additional bandwidth and the availability of existing network assets in place to meet those needs without consuming USF resources inefficiently. This is critical

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. Jul 23, 2014) (“*E-rate Modernization Order*” and “*FNPRM*”).

³ *FNPRM*, ¶ 269.

because the E-rate program is one important part of a more comprehensive USF fabric that, working in a coordinated and tailored manner, ensures that consumers of different kinds can obtain affordable access to critical communications services. Thus, the Commission should reserve any judgment as to the size of the E-rate budget until it conducts a comprehensive accounting of available network assets through a meaningful data collection that goes beyond a call for comments and input in the context of a Commission *FNPRM* or, as discussed below, inviting one-off corrections to maps published on a website. A more detailed and comprehensive inquiry is essential to enable the Commission to gather data from individual providers, schools, libraries, and school districts and library systems.

In terms of that data, commenters raise concerns similar to those of NTCA as it relates to certain of the data that the Commission currently possesses. Specifically, as NTCA noted in initial comments,⁴ the current maps that the Commission has published showing fiber connectivity at schools and libraries⁵ are incomplete and likely contain significant errors or omissions. Verizon points to similar concerns, stating that “virtually every school district in the Washington, DC area has fiber to every school, but the Commission’s map shows them either without fiber or uncounted.”⁶ NTCA has actively encouraged its members to review and advise the Commission of needed corrections or updates to those maps, and several dozen of the association’s members have done so. Yet, as can be seen from the volume of corrections

⁴ Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 15, 2014), pp. 2-3.

⁵ FCC E-rate Maps of Fiber Connectivity to Schools and Libraries, available at <http://www.fcc.gov/maps/E-rate-fiber-map>.

⁶ Comments of Verizon, WC Docket No. 13-184 (fil. Sep. 15, 2014), pp. 4-5.

submitted and the Verizon comments, the maps are almost certainly still missing critical data from hundreds or even thousands of other providers, schools, and libraries that participate in the E-rate program. Thus, the maps do not yet constitute the kind of reliable evidence upon which informed decisions can be made about gaps in availability and corresponding budgets. A comprehensive data collection focused on inventorying the availability of existing assets in place to meet schools' and libraries' needs should be the Commission's number one priority to the extent that it desires to reposition E-rate resources to support outside plant construction and/or revisit the E-rate budget.

In addition, there is agreement that reforming the USF contributions mechanism should be part and parcel of the conversation around re-sizing the E-rate budget. As ITTA notes, “[a]ddressing long overdue reform of the universal service contribution mechanism could result in a greater amount of funding being made available for all worthy programs.”⁷ The Commission recently requested recommendations from the Federal-State Joint Board on Universal Service regarding potential modifications to the USF contribution mechanism,⁸ and the recommendations that flow from the Joint Board should provide the Commission with valuable insight as to how each individual USF mechanism can be sized going forward and will be available before the next E-rate funding year is even complete.⁹ These Joint Board recommendations should contribute to an already substantial record on the need to stabilize and

⁷ Comments of ITTA, WC Docket No. 13-184 (fil. Sep. 15, 2014), p. 5. *See also*, comments of CenturyLink, WC Docket No. 13-184 (fil. Sep. 15, 2014), pp. 3-7.

⁸ Federal State Joint Board on Universal Service, WC Docket No. 96-45, Universal Service Contribution Methodology, WC Docket No. 06-122, A National Broadband Plan For Our Future, GN Docket No. 09-51, Order, FCC 14-116 (rel. Aug. 7, 2014).

⁹ The Order directs the Joint Board to provide recommendations by April 7, 2015. *Id.*, ¶ 1.

broaden the contribution mechanism to enable it to meet the Commission's broadband deployment and adoption goals, and to ensure that all components of the USF fabric – E-rate, high-cost, low-income, and Rural Health Care – can be “right-sized” for their respective missions.

Indeed, substantial (*e.g.*, non-inflationary) expansion of any one USF mechanism without consideration of the impacts on other USF programs could do long-lasting damage to the broader concept of universal service, to the detriment of the residents, businesses, and also schools and libraries and the many other community anchor institutions that are beneficiaries of these critical programs – especially in rural areas.¹⁰ Thus, it is critical that each program is designed and rightly sized to solve for the specific problem(s) presented. “Solving” for the “problem” requires a gathering of data that pinpoints schools’ and libraries’ need to ensure that resources are available to meet those needs, and that data collection should be job one at this time.

III. THE RECORD DOES NOT SUPPORT ADDITIONAL PROVISIONS TO ENCOURAGE CONSORTIUM PURCHASING

As NTCA has previously stated, consortium purchasing poses unique risks that the Commission must guard against to ensure that E-rate funds are utilized in the most cost-effective manner possible. As an initial matter, it is worth reiterating that a number of NTCA members provide service to consortia today,¹¹ and a number of RLEC-owned state networks provide service over large geographic areas encompassing dozens or more schools, school districts, and libraries that have banded together to seek out cost efficiencies. In some cases, a consortium

¹⁰ *See*, Comments of USTelecom, WC Docket No. 13-184 (fil. Sep. 15, 2014), p. 3.

¹¹ CenturyLink, which expresses concerns similar to NTCA as to consortium purchasing, also notes that it serves several schools and libraries consortia nationwide. CenturyLink, p. 14.

may indeed be the most efficient method by which a group of schools and/or libraries receive the broadband connectivity they need. Having said that, the Commission should not artificially encourage consortia or otherwise inject itself into organic local or state-level decision-making about whether and to what degree consortium purchasing makes sense.

As one commenter notes, “the defining requirement of consortia must be efficiency; they should not receive direct or indirect artificial subsidies or incentives.”¹² While the *E-rate Modernization Order* took a positive step in the direction of promoting efficiency – by stating that “consortia do not need to solicit or select a single vendor able to provide service to all members of a consortium,”¹³ – it unfortunately proposes to “take at least one step back” with a measure that could promote the pairing of “big buyers” with “big sellers.” In particular, the proposal to provide an additional five percent discount rate for consortia meeting minimum size standards would seem to encourage the formation of larger consortia that are more likely to find solutions from one large provider. Encouraging large consortia – in this instance those serving 30 percent of the students or 30 percent of the local education agencies in the state, for example – artificially encourages formation of consortia for the sake of the additional discount, to the potential detriment of individual schools’ and libraries’ needs and without taking account of the availability of existing network assets and providers that may be able to provide a more efficient, tailored solution locally.

Like NTCA, Cox Cable is appreciative of “the Commission’s clarification that consortia may invite vendors to bid on services to a subset of consortia members, [but] concerned that

¹² *Id.*, p. 14.

¹³ *E-rate Modernization Order*, ¶ 179.

adoption of the proposal to provide an additional five percent discount for consortia ultimately would undermine the ability to do so.”¹⁴ It is worth stating again that while NTCA appreciates the *E-rate Modernization Order’s* admonition in this regard, it is after all only an admonition. As such it leaves the door open for consortia purchasers to take “the path of least resistance” and seek out a “big seller” if that would make things easier as an administrative matter. The fact that this is so, that a school or library may possibly seek to enter into a consortium for the purposes of administrative simplicity rather than based on a comprehensive evaluation of the efficiencies involved in either entering a consortium or going it alone certainly speaks to the oft-repeated conclusion that a streamlining of the E-rate processes is in order.¹⁵

In addition, USTelecom raises a good point in addressing schools and libraries that may not be contiguous to a consortium and therefore unable to participate. Indeed, a number of schools or libraries may have this, or numerous other, valid reasons for declining to participate in such arrangements. As such, “[d]espite sound reasons for not participating in qualifying consortia, these schools and libraries would be effectively punished through increased costs in comparison to consortia participants receiving the additional discount.”¹⁶

NTCA supports efforts to ensure that E-rate funds are used in the most cost-effective manner possible and, in some cases, a consortium may indeed provide a useful answer.

However, the Commission must avoid injecting itself into local or state-level decision-making

¹⁴ Comments of Cox Cable, WC Docket No. 13-184 (fil. Sep. 15, 2014), p. 3.

¹⁵ See, CenturyLink, p. 15 (“As bulk buying arrangements, however, consortia provide genuine convenience for applicants. They can provide an ease of doing business and make the E-rate application process less daunting. In part, that speaks to the E-rate program’s complexity, which underscores the continuing need to find ways to streamline the program where possible.”).

¹⁶ USTelecom, p. 5.

about whether and to what degree consortium purchasing makes sense. These are decisions best left to local and state school and library administrators, without artificial incentives being supplied through tinkering with E-rate policies that may only serve to undermine, rather than promote, competition in the provision of E-rate supported services.

Respectfully Submitted,

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