November 21, 2014

Ex Parte **Notice**

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

On Wednesday, November 19, 2014, the undersigned on behalf of NTCA–The Rural Broadband Association ("NTCA"), spoke via telephone with Patrick Halley, Wireline Competition Bureau Associate Bureau Chief, regarding modernization of the Universal Service Fund ("USF") Schools and Libraries ("E-rate") mechanism.

NTCA applauds efforts by the Federal Communications Commission (the "Commission") as part of this modernization initiative to gather and publish data such as those contained in the recently released "E-rate Data Update" Staff Report.[1] Such data can certainly help inform the direction and scope of actions that need to be taken to achieve effective modernization. At the same time, additional, more granular efforts to gather and analyze data remain necessary to ensure that reforms can make the most difference to schools and libraries all across the nation. More specifically, while the Updated Staff Report contains a large amount of data related to schools' and libraries' needs and the various barriers they may face to meeting those needs, the record continues to lack a comprehensive, reliable inventory of the network assets that are already in place in the majority of locations to meet those needs.

Accurate recognition of the availability of existing facilities is essential to ensure that our nation's broader universal service objectives can be achieved and sustained. As the Commission is well aware, the High-Cost USF program has helped in making broadband more widely available and more affordable *on a community-wide basis* in areas served by rural carriers. The Broadband Technology Opportunities Program, the Broadband Infrastructure Program, and other financing programs available through the U.S. Department of Agriculture's Rural Utilities Service have also made possible the deployment of substantial, robust broadband network assets to rural areas of the nation. Thoughtful coordination with these vital programs in the context of E-rate reform is needed to enable the Commission to leverage the network assets already in place and to avoid undermining all of these programs.

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[1]   Wireline Competition Bureau and Office of Strategic Planning and Policy Analysis, E-rate Data Update, WC Docket No. 13-184 (rel. Nov. 17, 2014) ("Updated Staff Report").

As one example of how such "inventory data" could make E-rate modernization more effective and efficient, "near-net" fiber could be utilized to facilitate more robust access for schools and libraries at a much lower cost than building entire middle-mile or long-haul networks to achieve the same objective.[2] As NTCA noted in its prior comments, if the last-mile is lacking, it will undoubtedly be more efficient to "repave the driveway" than to "build a new interstate highway." Such targeting of resources[3] in a more efficient manner can help to ensure that greater E-rate resources remain available to help that next school or library "down the road," or in the next county, that may already have a fiber connection but lacks access to sufficient funding for Wi-Fi services or needs sufficient E-rate support for discounts on services offered over the existing network.

By contrast, if the highest-volume users (such as schools and libraries) in sparsely-populated rural areas are selectively extracted from the broader customer base even where facilities already exist, this risks stranding network assets and leaves only the most costly-to-serve portions of rural communities to the carrier of last resort. This would not only increase rural carriers' reliance upon (and demand for) High-Cost USF support, but it could also place upward pressure on end-user rates in the broader community or limit carriers' ability to improve the quality and reach of their networks. A careful eye toward these _community-wide_ impacts of E-rate reform is thus important, as affordable access to a high-capacity broadband connection is essential for students _both at school and at home_.

It is also important that the Commission's next steps in this proceeding take account of the potential "overbuilding" and competitive risks that could arise out of consortium purchasing.[4] If incentives are not properly structured, consortium purchasing poses a real risk of turning "bulk buying" into "bulk selling" – promoting multi-site builds and service delivery even if a smaller provider could deliver services more efficiently and cost-effectively to a single school or library. Local providers able to meet the needs of schools and libraries, at competitive rates, should not be artificially removed or disqualified from the "competitive bidding" process simply because

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[2]   Comments of NTCA and WTA, WC Docket No. 13-184 (fil. Sep. 16, 2013), p. 15.

[3]   USTelecom has also submitted for the record in this proceeding proposals for how the Commission can "target and direct support to the schools and libraries that, for whatever reason, have been unsuccessful in obtaining support for broadband." USTelecom, _ex parte_, WC Docket No. 13-184 (fil. Nov. 17, 2014). This proposal includes a method by which the Commission can create a "Target Group" using data provided by schools and libraries themselves via Form 477. This would help the Commission to gather accurate data as to the needs of schools and libraries and would enable the Commission to apply any reforms adopted specifically and only to those institutions lacking adequate broadband connectivity. USTelecom also notes its belief that its proposal could be implemented quickly and without disrupting the E-rate funding cycle.

[4]   It is important to emphasize once again that NTCA recognizes that a consortium may be a cost-effective answer for certain schools and libraries. A number of NTCA members provide service to consortia today, 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. To the extent that consortium purchasing can result in a more cost-effective use of E-rate funds, it should exist as one option open to E-rate applicants, at their discretion, and the Commission should not adopt incentives that tip the balance in favor of or against such an approach.

their size does not match a gargantuan buying consortium footprint. To serve both the ends of competition and community-wide access, the Commission should make clear that consortia not only should, but *must*, consider bids from all local providers of broadband service if E-rate resources will be used in connection with the procurement, even if the smaller providers can fill only piece parts of larger projects or initiatives.

Finally, to the extent the Commission considers possible additional measures or resources to enable "self-provisioning" or "bulk buying" by schools and libraries, certain safeguards should accompany such measures to protect against inefficient overbuilding. Such safeguards are particularly necessary in the event that the Commission provides additional "kicker" discounts to schools or libraries that receive matching state funds. In other universal service programs, the Commission has correctly recognized that users having "skin in the game" creates better incentives to seek out the most cost effective method of obtaining needed communications services.[5] To ensure that such efficiencies can continue to be realized and to safeguard against the overbuilding risks noted above, for those institutions seeking to use E-Rate funds to support construction of new physical broadband outside plant infrastructure, the Commission should adopt rigorous safeguards that include:

- a robust, public challenge process that requires an E-Rate applicant seeking funding for any physical outside plant infrastructure construction to demonstrate that they have sought out existing providers or access to existing network facilities and that no such facilities are in fact available to support broadband services that are needed in the reasonably foreseeable future;

- a 60-day period in which an existing provider can demonstrate that their network facilities are capable of connecting, within 180 days, the school or library in question to broadband services meeting the target speed;

- a meaningful matching funds requirement that is the same for the purchase of services from an existing provider and the deployment of broadband infrastructure;

- a bright-line prohibition on using revenues from excess capacity as a source of matching funds; and

- a requirement that institutions demonstrate the cost-effectiveness of their proposed deployment of telecommunications infrastructure that includes a long-term "total cost of ownership" view of that infrastructure. This analysis must include realistic and validated costs of equipment procurement, and also take account of the capabilities of an entity that

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[5]   In another context, the HealthCare Connect Fund, the Commission found that a 35 percent matching contribution was appropriate to ensure participants had sufficient incentives to participate, while ensuring that they have a sufficient stake to seek the most cost effective method of obtaining services. Healthcare Connect Fund Order, 27 FCC Rcd at 16717-19, ¶ 91 (2012) ("HealthCare Connect Fund Order").

does not regularly conduct telecommunications business to maintain and upgrade a network over its decades-long life.[6]

NTCA applauds the Commission for looking to make continuous improvements in its E-rate program, and for looking more specifically to ensure that no rural school or library goes without affordable access to robust broadband. NTCA wholeheartedly shares these objectives, and believes that, if done right, E-rate modernization can be a boon for both rural schools and libraries and the communities they serve. Indeed, working together, each of the discrete programs that make up the USF can improve the reach and sustainability of broadband-capable networks and ensure the affordability of innovative IP-enabled communications services *to schools and libraries <u>and</u> also throughout rural communities*. This cannot happen, however, if each program is not designed to identify and then solve for the specific problem(s) presented and carefully calibrated to work in concert with one another.

Thank you for your attention to this correspondence. Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

                                        Sincerely,
                                        /s/ *Michael R. Romano*
                                        Michael R. Romano
                                        Senior Vice President – Policy

cc: Patrick Halley

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[6]   *See also*, National Cable & Telecommunications Association, *ex parte*, WC Docket No. 13-184 (fil. Nov. 17, 2014) ("With respect to allowing schools and libraries to use E-rate funds to construct their own facilities, the Commission should adopt the same safeguards that are currently used in the universal service rural healthcare program, including requiring a demonstration that this option is the most cost-effective method. In making this determination, the Commission must ensure that applicants conduct an apples-to-apples comparison of the costs of self-provisioning versus purchasing provider-offered services, taking into account all of the costs associated with activating, maintaining and managing high-speed broadband connections."). It is also worth noting that, in the HealthCare Connect context, the Commission specifically adopted limits on the amount of resources available to facilitate outside plant deployment, in substantial part because of concerns such as those raised here. HealthCare Connect Fund Order, ¶ 47.