



December 3, 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 Monday, December 1, 2014, the undersigned and Brian Ford on behalf of NTCA–The Rural Broadband Association (“NTCA”) met with Jonathan Chambers, Chief of the Office of Strategic Planning and Policy Analysis, Patrick Halley, Wireline Competition Bureau Associate Bureau Chief, Trent Harkrader, Wireline Competition Bureau Associate Bureau Chief, and Lisa Hone, Telecommunications Access Policy Division Deputy Division Chief. The parties discussed the Universal Service Fund (“USF”) Schools and Libraries (“E-Rate”) program.

As an initial matter and as a backdrop to the issues discussed below, NTCA reiterated its support for a “data-driven,” surgical approach to ensuring that all schools and libraries across the nation have access to robust and affordable high-speed broadband service. NTCA applauds the goal of closing the “fiber gap” where it exists, yet cautions the Federal Communications Commission (the “Commission”) to view E-rate modernization on a holistic basis that accurately identifies and solves the problem presented in each instance, while also leveraging existing networks and the success of existing federal mechanisms that already support and sustain broadband deployment. More specifically, E-rate reform must address the unique needs of each individual institution – any connection at all in some locations, a more robust connection in others, better Wi-Fi availability in others still, or a more affordable connection for those with fiber already in place. Efficiently and cost-effectively solving these issues should proceed from a comprehensive inventory of what schools and libraries already have. Taking such an inventory first can help ensure that reforms do not inadvertently lead to inefficient or even wasteful uses of E-rate funds; such steps are also important to facilitate coordination between the E-rate mechanism and the High Cost USF program in particular, so that broadband can have a truly *community-wide* impact in rural areas, promoting affordable access to a high-capacity broadband connection for students *both at school and at home*.

To the extent that reform proceeds without such a complete inventory of data and identification of issues presented at individual institutions, NTCA recommended certain safeguards intended to minimize any potential “overbuilding” and competitive risks that could arise out of an increased occurrence of “self-construction” on the part of schools and libraries or consortia of such entities.

As a first step, NTCA noted that the Commission should build upon certain provisions contained in the 2012 Healthcare Connect Order,¹ while also strengthening other necessary protections. For example, in the context of the HealthCare Connect Fund, the Commission specifically limited the amount of USF resources available to facilitate outside plant deployment, in substantial part because of concerns such as those raised here.² Similar provisions for the E-rate mechanism would enable the Commission to provide an adequate amount of funding for “total unavailability” situations where self-construction makes the most sense, while still reserving resources for other needs such as affordability of services over existing network connections. Moreover, a defined pool of resources for self-provisioning would likely incent all applicants to look more closely at leveraging the assets of existing providers and to focus builds on “finishing” nearby fiber connections in lieu of constructing entirely new wide-area networks from scratch.

Moreover, where “self-provisioning” of networks may be under consideration, NTCA suggested the Commission needs to adopt a more meaningful and precise definition of “cost-effective” that is based on a long-term, objective “total cost of ownership” perspective. This must include a realistic and validated analysis of not only initial construction costs, but the costs of equipment procurement, maintenance, and upgrade over time as well as a demonstration that the institution seeking funds for self-construction has fully and realistically considered all of the ongoing operational costs – including middle-mile and other network leasing costs – that exist and will be incurred over the decades-long life of typical network facilities. This is particularly important to “get right” for entities that otherwise do not typically construct or operate telecommunications networks and may therefore have little experience in estimating the true “total cost of ownership.”

NTCA further proposed that, as part of any competitive bidding process, E-Rate applicants seeking funding for any physical outside plant infrastructure construction should post Request for Proposals (“RFPs”) on a publicly-available Universal Service Administrative Company (“USAC”) website for a period of 60 days and certify that they have taken additional steps to seek out the services of local providers. Any application for self-construction funds must either certify that no existing providers have responded to such RFP with a bid to make the services requested available within a 180 day period or that the application for self-construction meets the above-proposed “cost-effectiveness” standard.

¹ Rural Health Care Support Mechanism, WC Docket No. 02-60, Report and Order, FCC 12-150 (2012) (“HealthCare Connect Fund Order”).

² *Id.*, ¶ 47.

NTCA noted that it is sensitive to the need to avoid overly complicated or administratively complex “cost-effectiveness” determinations that either hamper the ability to review applications in a timely manner or burden applicants unnecessarily. In this regard, a recent proposal by USTelecom provides an example of how safeguards such as those proposed above can be translated into a functional and administratively simple process.³ Under this approach, an applicant could “check the box” on Form 470 as to whether or not it already has access to a fiber-based broadband connection, with that designation certified to or verified by the Universal Service administrator. Those designating themselves as unserved by a fiber connection would function as a “target group” that would be published and thus brought to the attention of potential providers. Those providers that may have inadvertently failed to respond to an initial RFP would then get the chance to do so. This would allow the Commission to focus “self-construction” funds on the portion of this target group that does not receive a bid for the requested service.

NTCA further observed that the Commission, in its 2012 HealthCare Connect Fund Order, found that a 35 percent matching contribution was appropriate to ensure that participants had a sufficient stake to seek the most cost-effective method of obtaining services.⁴ By contrast, in the event that the Commission’s E-rate reforms provide additional “kicker” discounts to schools or libraries that receive matching state funds, additional safeguards such as those proposed above become that much more necessary. Indeed, such a “kicker” could result in schools or libraries bearing little to no cost themselves for self-provisioning of a network. In such cases, in the absence of any “skin in the game,” self-construction is likely to appear – as a subjective matter – to be a more “cost-effective” option for the individual school or library than procuring services on an existing network, even as objectively such a result may be *less* cost-effective for the program as a whole and other schools and libraries that are themselves in need of E-rate resources.

At bottom, the safeguards that have been proposed by NTCA over the course of this proceeding are intended to ensure four basic objectives: (1) E-rate funds should be used in the most cost-effective manner possible; (2) the Commission should target resources surgically to close the “fiber-gap” where it actually exists; (3) sufficient resources should remain available for those schools and libraries that already have access to robust connections for continued procurement of services on those networks; and (4) E-rate resources must be used in coordination, rather than in competition, with other federal programs that ensure community-wide connections not only for schools and libraries, but also for the students, teachers, librarians, and residents at home. It is essential as part of any reforms that the Commission signal to institutions that existing providers and the networks they own and operate – many of which, in rural areas, are supported already via high-cost universal service funding – should serve as a starting point in each and every request for service.

³ USTelecom, *ex parte*, WC Docket No. 13-184 (fil. Nov. 17, 2014).

⁴ HealthCare Connect Fund Order, at ¶ 91.

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In closing, NTCA reiterated its support for the E-rate mechanism and its commitment to working with the Commission to make effective and continuous improvements to the program. In particular, NTCA appreciates and shares the Commission's commitment to ensuring that no rural school or library goes without affordable access to robust broadband. If done right, E-rate modernization can be transformative 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 and 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: Jonathan Chambers
Patrick Halley
Lisa Hone
Trent Harkrader