

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

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

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these comments in response to 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.

I. THE COMMISSION SHOULD GATHER ADDITIONAL DATA ON SCHOOLS’ AND LIBRARIES’ CONNECTIVITY NEEDS AND MORE GENERALLY COORDINATE USF BUDGET REVIEWS WITH USF CONTRIBUTIONS REFORM

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.³ As discussed below, the Commission must weigh several factors into its ultimate determination on this issue – key among these being the unique needs of individual schools and libraries for access to additional

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 (rel. Jul 23, 2014) (“*E-rate Modernization Order*” and “*FNPRM*”).

³ *FNPRM*, ¶ 269.

bandwidth and the availability of existing network assets in place to meet those needs. A data-driven approach to sizing USF “budgets” will be critical to accomplishing the goals of the E-rate mechanism and other universal service programs.

The *FNPRM* seeks comment on the “gap between schools’ and libraries’ current connectivity and the specific connectivity targets”⁴ adopted in the *E-rate Modernization Order*. Reform of the E-rate mechanism must account for the unique need that each individual school or library has in the first instance (whether that be a connection to the facility in the first place, a more robust connection, an affordable connection, or internal connections). An essential condition precedent to reaching any conclusions on further reform is a gathering of data that can be used to assess and validate such needs. The inquiries posed in the *FNPRM* might function as a useful baseline of data upon which to judge the state of connectivity to schools and libraries as compared to the goals set forth by the *E-rate Modernization Order*. However, the Commission must move beyond such an initial step to ensure that the E-rate program can cost-effectively deploy its resources to meet the needs of individual schools and libraries. A specific and meaningful data collection requires more than a call for comments and input in the context of a Commission *FNPRM*; 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 that may not participate in proceedings such as the one here.

Similarly, although informative, the current maps that the Commission has published showing fiber connectivity at schools and libraries⁵ are incomplete and likely contain significant

⁴ *Id.*

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

errors or omissions. To be clear, NTCA applauds the Commission’s initial attempt at gathering and publishing such data. NTCA has actively encouraged its members to review and advise the Commission of needed corrections or updates to those maps, and we are aware that several dozen of the association’s members alone have contacted the Commission to provide corrections to the map. Presumably other providers and educational or library representatives have taken similar steps. This being said, while such efforts may have helped to improve the accuracy of the maps to some degree, the “one-off” corrections submitted thus far only highlight the fact that the maps are almost certainly still missing critical, accurate data from hundreds or even thousands of other providers, schools, and libraries that participate in the E-rate program. Thus, even if informative, 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. Instead, a more accurate and comprehensive accounting of available network assets is critical to ensure that E-rate funds are directed to areas that lack access to such assets and to ensure that existing network facilities are otherwise leveraged to the greatest extent possible.

In addition to gathering additional data, the Commission must take into account that the *E-rate Modernization Order* adopted several significant reforms to the E-rate mechanism, including focusing additional resources towards broadband⁶ and supplying greater support for internal connections.⁷ The effect of these reforms on funding requests for the current funding year will not be fully understood for some time. It would seem advisable for the Commission to harness the data available from current funding year applications and analyze demand to

⁶ *E-rate Modernization Order*, ¶¶ 134-154.

⁷ *Id.*, ¶¶ 76-117.

determine if the additional resources it has directed towards broadband related services in general and internal connections in particular have the desired impact on schools' and libraries' access to and ability to fully utilize broadband connectivity.

Furthermore, while the *FNPRM* seeks comment on the gap between schools' and libraries' existing connectivity and the connectivity goals adopted in the *E-rate Modernization Order*, it does not appear to contemplate a discrete examination of the differences that may exist between schools and libraries in terms of their bandwidth demands. As the data provided in NTCA's prior filings in this proceeding demonstrate,⁸ NTCA members have made fiber-based connections available to a large number of the schools and libraries in the areas they serve, and most importantly this has been done in accordance with demand and what individual school and library budgets dictate. As the data also show, the broadband speeds available to these institutions in the areas served by NTCA's RLEC members typically far exceed the capacity purchased; the data also show that schools in these areas typically purchase higher capacity connections than libraries. Thus, NTCA urges the Commission to gather data regarding both availability and demand for schools and libraries separately; such an examination is needed to ensure that the connectivity targets set in the *E-rate Modernization Order* are in line with the

⁸ See, Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 16, 2013), p. 12. In those comments, NTCA discussed a member survey which found that of the 1,208 K-12 schools identified by NTCA members as located within their serving areas, 75% of those are already connected by Fiber-to-the-Premises ("FTTP") and another 11% are connected by Fiber-to-the-Node ("FTTN"). The fiber connectivity numbers for libraries were 46% for FTTP and 13% for FTTN. Of those connected schools, NTCA members reported offering maximum speeds of 912 Mbps (mean) and 100 Mbps (median), while the average speed purchased is 128 Mbps (mean) and 20 Mbps (median). Of those connected libraries, NTCA members reported offering maximum speeds of 248 Mbps (mean) and 40 Mbps (median), while the average speed purchased is 13 Mbps (mean) and 6 Mbps (median). *Id.* See also, letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 13-184 (fil. Jul. 7, 2014) (providing survey from a June 2014 survey of NTCA's members, which found a similar percentage of schools and libraries connected to fiber).

needs – and budgets – of schools and libraries individually. Oversubscription based upon broad estimates of need or demand and inaccurate forecasts could consume E-rate resources that could be used more efficiently to “pay down” the price of services on existing networks.

To be clear, NTCA’s members are committed to providing the highest quality broadband connections possible to each and every possible user – *whether residential dwelling, enterprise, school, or library*. As the data previously submitted show, NTCA members have worked to deploy fiber deeper into their networks over time and closer to customer premises as demand and local school and library budgets dictate. NTCA urges the Commission to consider any questions surrounding revisions to the E-rate budget with such data in mind and to ensure that E-rate resources are targeted where they are needed most. By ensuring that E-rate dollars are used to solve the problem of “availability” or “affordability” as presented at each institution – rather than assuming that the issue is one of availability based upon incomplete maps or a misplaced conflation of availability and subscription data – the Commission can make the best use of E-rate resources and come closer to achieving the goal of making available high-speed, affordable, and sustainable broadband services to schools and libraries throughout rural America.

Finally, in considering budgets, it is important to recognize that the E-rate program is one important part of a more comprehensive USF fabric. Working together but in tailored ways, all of the vital USF programs are aimed at ensuring consumers of different kinds can obtain affordable access to critical communications services. In rural areas in particular, the E-rate program and the high-cost program are important complements to one another in achieving the broader, more comprehensive universal service mission. As NTCA has specifically noted in comments both in the context of the Connect America Fund and the E-rate program, greater coordination between the two mechanisms is essential to leverage the best aspects of both and

maximize the use of USF resources.⁹ Similarly, expansion of 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. Thus, it is critical that each program is designed and rightly sized to solve for the specific problem(s) presented.

To this end, the Commission recently requested recommendations from the Federal-State Joint Board on Universal Service regarding potential modifications to the USF contribution mechanism.¹⁰ As the Commission noted, the Joint Board will look into how the mechanism affects the Commission’s ability to meet the statutory principles of universal service in light of changes in technology and industry dynamics.¹¹ The recommendations that flow from the Joint Board will provide the Commission with valuable insight as to how each individual USF mechanism can be sized going forward. As this recommendation will be available before the next E-rate funding year is even complete – the Order directs the Joint Board to provide recommendations by April 7, 2015 – awaiting Joint Board recommendations before taking

⁹ See, Comments of NTCA, WTA, ERTA, and NECA, *et al.* (“Rural Associations”), WC Docket No. 10-90, *et al.* (fil. Aug. 8, 2014), pp. 40-41 (stating that all would-be eligible telecommunications carriers and unsubsidized competitors should be required to offer robust connectivity to community anchor institutions and that the Commission should carefully coordinate the E-rate mechanism and the High-Cost program to enable them to be successful in their respective missions); Comments of NTCA and WTA, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 9 (stating that a modernized E-Rate program must be coordinated with, rather than compete against, other important and complementary federal Initiatives, including the high-cost USF program).

¹⁰ 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. 14, 2014).

¹¹ *Id.*, ¶ 1.

further action on the E-rate budget should not delay any reforms the Commission may ultimately adopt.

III. THE COMMISSION MUST REMAIN VIGILANT IN ENSURING THAT CONSORTIUM PURCHASING DOES NOT LEAD TO “BIG SELLING” AND WASTEFUL OR INEFFICIENT USE OF E-RATE FUNDS

The *FNPRM* seeks comment on additional measures to encourage schools’ and libraries’ use of consortium purchasing arrangements. 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.

The *E-rate Modernization Order* adopted several reforms to encourage the increased use of consortium purchasing; as a matter of good public policy, it would be prudent to assess the effect of these reforms prior to taking additional steps. As an initial matter, NTCA appreciates and is supportive of the *E-rate Modernization Order’s* directive that “consortia do not need to solicit or select a single vendor able to provide service to all members of a consortium.”¹² But this is only an admonition – and it certainly 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.

Indeed, the *FNPRM* seems to take a step backward by suggesting measures 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

¹² *E-rate Modernization Order*, ¶ 179.

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.¹³ The lure of the five percent discount and a desire to work with only one provider for simplicity’s sake may cause a consortium to choose a single vendor that has little or no incentive to provide services at the lowest possible or most efficient rate for any given school or library, contrary to the guidance provided in the *E-rate Modernization Order*. 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. 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. However, the Commission must avoid injecting itself into local or state-level decision-making 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

¹³ See, Reply Comments of NTCA, WC Docket No. 13-184 (fil. Apr. 21, 2014), p. 7. In its April 7 reply comments, NTCA referenced an attached “Declaration” of an NTCA member discussing that company’s inability to even offer a competitive bid to a consortium. As NTCA stated in those reply comments, “[b]ecause of the design of this [Request for Quote process used by the consortium], the local RLEC provider was given no opportunity to submit a proposal to compete against the larger provider that was ultimately awarded the contract. More problematically for the school and the E-rate program, *the local provider had the ability to provide the school district at issue with a less costly alternative that would have better fulfilled their needs.*” *Id.*, p. 7. Emphasis added. The Declaration goes on to note that “the consortium at issue (a state education network) typically purchases service from larger providers only, even in cases where the smaller local provider is better situated to meet the needs of the schools and libraries in its specific service area.” *Id.*

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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