

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

In the Matter of)	
)	
Modernizing the E-rate Program for Schools and Libraries)	WC Docket No. 13-184
)	
Connect America Fund)	WC Docket No. 10-90
)	
Schools and libraries Universal Service Support Mechanism)	CC Docket No. 02-6
)	

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

December 5, 2016

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I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in response to the September 19, 2016 Public Notice² released by the Wireline Competition Bureau (“Bureau”) in the above-captioned proceedings. The Public Notice seeks comment on separate petitions filed by Microsoft Corporation, et al., (“Microsoft Petition”)³ and the Boulder Valley School District, et al., (“BVSD Petition”)⁴ (collectively “Petitions” or “Petitioners”). The Petitions seek “clarification” or waivers of existing Federal

¹ NTCA represents more than 800 independent, community-based telecommunications companies. All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities.

² Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-rate Supported Connectivity, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, Public Notice, DA 16-1051 (rel. Sep. 19, 2016) (“Public Notice”).

³ Joint Petition for Clarification or, in the Alternative, Waiver, of Microsoft Corporation, et al., WC Docket No. 13-184 (fil. Jun. 7, 2016) (“Microsoft Petition”).

⁴ Petition for Waiver, on behalf of Boulder Valley School District, et al., WC Docket No. 13-184, WC Docket No. 10-90 (submitted May 16, 2016) (“BVSD Petition”).

Communications Commission (“Commission”) rules in order to enable the extension of Universal Service Fund (“USF”) Schools and Libraries Program (“E-rate”) supported telecommunications facilities to residential settings.

The Bureau should decline to grant the Petitions. As the record compiled in response to the Public Notice demonstrates, the Petitions raise several troubling questions, including whether the use of E-rate funds as requested by Petitioners would be inconsistent with Section 254(h) of the Communications Act of 1934, as amended (the “Act”). The Petitions also raise several additional issues, such as: (1) whether the Petitioners can ensure continued compliance with the Children’s Internet Protection Act (“CIPA”); (2) whether grant of the Petitions would inject additional complexity into an already complex program; and (3) whether grant of the Petitions would blur, if not forever obliterate, the distinction between the High-Cost, E-rate and even Lifeline programs in a manner that turns them into competing initiatives that undermine the common goal of enabling sustainable communications access in rural communities. Each of these are novel questions of law and policy that cannot be settled by looking to existing precedent and previous Commission guidance. Thus, while NTCA urges the Petitions to be dismissed outright as contrary to law and good public policy, absent such dismissal, the issues raised herein must be considered by the full Commission.

All this being said, it must be acknowledged that the problems that the Petitions seek to solve are very real. However, they are the symptom of a larger broadband availability problem that must be solved by ensuring that all four universal service programs are properly functioning and coordinated to make high quality and affordable broadband available to every kind of end user – whether a residential user, a business, a school, a library, a hospital, or some other anchor institution. Rather than adopt proposals that would blur (if not obliterate) the

important distinctions between the discrete universal service programs, the Commission should look to coordinate and ensure the harmonized focus and nature of these programs as initially designed and set forth in the Act itself. Grant of the Petitions would turn the individual but interconnected programs that target support in a complementary manner into competing and conflicting programs that waste resources that could be used to promote affordability and instead produce the deployment of redundant networks. It would be particularly troubling – and in fact could substantially erode the public’s belief in the integrity of the USF – to allow for funding of networks via E-Rate to the *very same locations* where the High-Cost program already supports networks in place. A better approach would be the careful coordination of the interconnected USF programs, by looking in the first instance to the High-Cost USF program as the means of making the underlying network available and affordable for residents, businesses, schools and libraries in rural America in areas of the nation where there would otherwise be no business case to do so. Only then can the E-rate (and Lifeline) programs do their own important work, leveraging existing networks and providing discounts on service to as many schools and libraries and low-income consumers as possible.

II. THE PETITIONS SHOULD BE DISMISSED, AS THEY CONTRADICT SECTION 254(H) AND THREATEN TO OBLITERATE THE DISTINCTION BETWEEN DISCRETE BUT COMPLEMENTARY USE PROGRAMS; AT THE VERY LEAST, THE ISSUES RAISED BY PETITIONS MUST BE DECIDED BY THE FULL COMMISSION BEGINNING WITH THE ISSUANCE OF A NOTICE OF PROPOSED RULEMAKING

- A. Grant of the Petitions would contradict the clear and express language contained in Section 254(h) of the Act, which states that E-Rate supported services are to be provided to schools and libraries for “*educational purposes*” only.**

As NTCA noted in initial comments,⁵ the plain and unmistakably clear language contained in Section 254(h) of the Act delineates the outer bounds of the purposes for which E-rate funding can be utilized. Section 254(h)(1)(B) states in relevant part that:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.⁶

As USTelecom correctly states, grant of the Petitions “would unlawfully expand the scope of the program that is expressly limited under the statute solely to services provided ‘to elementary schools, secondary schools, and libraries.’”⁷ While the Commission has in several instances clarified the definition of “educational purposes,” and although it has otherwise

⁵ Comments of NTCA, CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (fil. Nov. 3, 2016).

⁶ 47 U.S.C. § 254(h)(1)(B) (emphasis added). In addition, Section 254(h) also directs the Commission to adopt competitively neutral rules “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school *classrooms*.” 47 U.S.C. § 254(h)(2)(A) (emphasis added).

⁷ Comments of USTelecom, CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (fil. Nov. 3, 2016), p. 4 (citing 47 U.S.C. § 254 (h)(1)(B)); *See also*, Comments of ITTA – The Voice of Mid-Size Communications Companies (ITTA), CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (fil. Nov. 3, 2016), p. 1.

stretched the statutory text beyond receipt of services to permit self-construction of networks, it has never before strayed beyond the bedrock principle that “the purpose for which support is provided [is] for educational purposes *in a place of instruction*.”⁸ In addition, in no case has the agency authorized the extension of E-rate supported services or facilities to *a residential setting*. For example, the Commission in 2003 clarified that “educational purposes” includes “services to be used by support staff not involved in instructional activities.”⁹ As part of that clarification, the *2003 Second Report and Order* went on to state that certain, limited off-campus uses of E-rate supported services would be considered “activities that are integral, immediate, and proximate to the education of students.”¹⁰ Examples of such uses included “a school bus driver’s use of wireless telecommunications services while delivering children to and from school [or] the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event.”¹¹

Most telling, the *2003 Second Report and Order* stated that “[w]e find that our clarification is consistent with *statutory mandates* that the purpose for which support is provided be for educational purposes *in a place of instruction*,”¹² and not at a residential setting. In two separate 2010 Orders, the Commission also clarified the definition of

⁸ See, Public Notice, fn. 6, citing Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 03-101 (rel. Apr. 30, 2003) (“*2003 Second Report and Order*”), ¶20. See also, Public Notice, fns 4-6 (citing nearly two decades of Commission commitment to the principle of “educational purpose” being ultimately tied to “a place of instruction.”).

⁹ See, *2003 Second Report and Order*, ¶ 17.

¹⁰ *Id.*, fn. 28.

¹¹ *Id.*

¹² *Id.*, ¶ 20 (emphasis added).

“educational purposes” for “community use” of E-rate supported facilities and services during non-school hours.¹³ In doing so it adopted a temporary limited waiver (later made permanent) to allow “schools the option to open their facilities to the general public to utilize services and facilities supported by E-rate during non-operating hours, such as after school hours, on the weekends, on school holidays, or during the summer months when schools are not in session, for other purposes, such as adult education, job training, digital literacy programs, and online access to governmental services and resources.”¹⁴ Again, the Commission at no time considered or authorized the extension of E-rate supported services or facilities to *a residential setting*.

Perhaps most striking is Petitioners’ near disregard for the requirements of Section 254(h). Neither Petition makes a serious attempt to address the provision other than to state that previous Commission decisions serve as precedent or that grant of the Petitions will have no dollar impact on the E-rate program because the services at issue will be used outside of normal school hours. As to the former, as discussed above, previous Commission decisions cited by Petitioners at no time considered or authorized the extension of E-rate supported services or facilities to *a residential setting*; to the contrary, every Commission precedent on point *precludes* such usage, making it entirely inappropriate for such requests to now be resolved via delegated waiver authority. As to the latter, an argument about the potential E-rate budget misses the point entirely. Even if such were true, as USTelecom correctly states,

¹³ See, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, FCC 10-33 (rel. Feb. 19, 2010) (“*Community Use Order*”), ¶ 7.

¹⁴ *Id.* See also, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, A National Broadband Plan For Our Future, GN Docket No. 09-51, Sixth Report and Order, FCC 10-175 (rel. Sep. 28, 2010) (“*6th Report and Order*”) ¶ 22 (making permanent the “community use” waiver adopted in the *Community Use Order*).

“[s]uch use of E-Rate funds was not contemplated by Congress and would represent a substantial departure from the statute and current Commission precedent.”¹⁵

As discussed further below, NTCA supports the goal of ensuring that every home has a high-quality broadband connection (and in particular those containing students), but this goal must be achieved – and, indeed, can be achieved – by thoughtful coordination of the High-Cost, E-rate, and Lifeline USF programs that will enable each program to fulfill its respective purpose as created by Congress and articulated clearly in the Act’s carefully designed text.

B. Grant of the Petitions would run counter to the clear and express language contained in Section 254(h) of the Act, which bans the resale of supported network capacity.

Section 254(h)(3) explicitly states that “[t]elecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money *or any other thing of value*.”¹⁶ The Petitions as structured potentially run afoul of this provision. More specifically, BVSD seeks to partner with local housing authorities that, while using their own equipment, will use BVSD’s excess capacity¹⁷ to extend service to students’ homes. The Microsoft Petition proposes a substantially similar use of E-rate supported entities’ excess capacity. However, the inclusion within Section 254(h)(3) of the terms “sold” and “resold” indicates that Congress contemplated circumstances in which an E-rate supported entity would retain ownership of its facilities yet lease excess capacity to entities not eligible for E-rate support.

¹⁵ USTelecom, p. 5.

¹⁶ 47 U.S.C. § 254(h)(3) (emphasis added).

¹⁷ BVSD Petition, pp. 2-3.

With this in mind, the Petitions should give the Commission substantial pause. For one, BVSD clearly contemplates a broad, nationwide application of its proposed approach. Specifically, BVSD states that “[b]y partnering with local housing authorities or other entities willing to purchase the equipment needed to connect school districts’ networks to affordable housing complexes, districts could provide service to students residing in those complexes with no need for additional E-rate funding.”¹⁸ This raises the possibility that school districts and libraries all across the nation will seek to take advantage of their excess capacity in contravention of Section 254(h)(3). That BVSD or Microsoft fail to propose any safeguards to ensure that such excess capacity (either generally or specific to their own circumstances) is not resold for “money or any other thing of value”¹⁹ is a concern as well. Indeed, as noted further in Section II. C. 1., neither Petitioner proposes any meaningful safeguards to ensure that access is provided to the homes of students only or will be limited to use for educational purposes. This raises the possibility that Petitioners’ partners will utilize their excess capacity for commercial purposes in contravention of the statute.

Moreover, as USTelecom discusses, there is substantial evidence that grant of the Petitions could open the door to a monetization of E-rate supported facilities in violation of Section 254(h)(3). Specifically, USTelecom points to a 2014 BVSD memorandum to the City of Boulder that discusses initiatives on which BVSD staff and the City of Boulder are collaborating.²⁰ In this memorandum BVSD notes that it “has a significant asset in our fiber

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 254(h)(3) (emphasis added).

²⁰ USTelecom, pp. 10-11 (citing Letter from Don Orr, Assistant Superintendent of Operations, to Bruce Messinger, Ph.D., Superintendent, *Current BVSD/City of Boulder joint initiatives* (July 2, 2014))

network that can be monetized over the next 3-5 years”²¹ and references certain challenges that “restrict our ability to monetize our fiber assets.”²² That BVSD so seeks to “monetize” its fiber assets and seeks broadly applicable relief that could possibly enable school districts all across the nation to run afoul of Section 254(h)(3) raises troubling questions that should cause the Bureau to dismiss the Petitions.

C. The record demonstrates that the Petitions raise several troubling and complicated questions that are not sufficiently addressed by the Petitioners or those filling in support.

1. Waiver of the E-rate cost-allocation rules could undermine the integrity of the program.

Petitioners and those filing in support suggest that the Commission (or even the Bureau) waive (seemingly on a blanket basis) the Section 54.504(e) E-rate program cost-allocation rules. The Commission should be cautious with respect to waiving such rules in any circumstance as such action could undermine the integrity of the E-rate program or blur the line between “educational purposes” and non-permissible use of program resources.

The Commission’s cost-allocation rules ensure that the services or facilities supported by E-rate funds are used only for “educational purposes” as required by the statute. Thus, any non-eligible services (including off-campus use of E-rate supported services) must be cost-allocated out of a school’s E-rate funding request. While the Commission has waived this requirement under certain circumstances, as noted above, one circumstance in which it has done so, “a school bus driver’s use of wireless telecommunications services while delivering children

(“BVSD Memo”) (available at: [http://www.boarddocs.com/co/bvsd/Board.nsf/files/9LW2UC687ED1/\\$file/City%20of%20Boulder%20partnerships%20%207.9.pdf](http://www.boarddocs.com/co/bvsd/Board.nsf/files/9LW2UC687ED1/$file/City%20of%20Boulder%20partnerships%20%207.9.pdf)) (visited October 31, 2016)).

²¹ BVSD Memo, p. 1.

²² *Id.*

to and from school [or] the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event”²³ is far different than what is proposed here, the extension of network facilities to a residential setting.

Even worse, as ITTA notes in its comments, the BVSD Petition, “makes clear that they are seeking relief on behalf of all school districts anywhere that comply with their few conditions.”²⁴ Specifically, the BVSD Petition states that “[w]e request a waiver of the cost allocation rule in 47 C.F.R. § 54.504(e) to allow school districts to provide Internet access to students at home using E-rate subsidized broadband networks in cases where student families do not already have Internet access at home and the service imposes no additional cost to the Universal Service Fund.”²⁵ The Microsoft Petition seeks a Commission Declaratory Ruling that would “enable the Participating Schools, *and those similarly-situated*, to avail themselves of technological advancements that permit schools to close the homework gap for their students, extending the reach and power of E-rate funds at no additional cost to the E-rate program.”²⁶ This too would function in practice as a broad waiver of the Commission’s cost-allocation rules.

Such a broad waiver of the E-rate cost-allocation rules would be problematic for several reasons. For one, these rules effectuate the statutory directive contained in Section 254(h) that E-rate funds be used only for “educational purposes.” Absent the requirement that program applicants perform the cost-allocations and separate out ineligible services from their funding requests, the Commission has no other method by which to ensure that services with absolutely

²³ 2003 Second Report and Order, fn. 28.

²⁴ ITTA, p. 15.

²⁵ BVSD Petition, p. 1.

²⁶ Microsoft Petition, p. 14 (emphasis added).

no connection to school or library purposes are not funded by the E-rate program. The cost-allocation rules thus function as a check on the integrity of the program.

In addition, beyond the fact that Petitioners fail to successfully address the inconsistency between the result they seek and the plain language of the statute, neither Petition offers any *meaningful* safeguards to ensure that broadband access provided to residential settings as proposed would only be utilized for educational purposes. While the Microsoft Petition asserts that only students with unique authentication credentials can utilize the connection, that alone does not ensure that the connection once accessed is used for an “educational purpose” only. In addition, as ITTA notes, “[e]ven when the Commission amended its rules to allow community use of E-rate supported services to potentially include some non-educational usage, it was only *at school facilities*, where they would still primarily be used for educational purposes, and where those facilities would only be available to the public during non-school hours.”²⁷ Here, the use of E-rate supported facilities would take place entirely outside the walls of the school facilities in a manner never before authorized by the Commission.

In addition, Petitioner BVSD fails to demonstrate (or even discuss at all) how the Commission can ensure that only households with students have access to the E-rate supported services. To be sure, Petitioner Microsoft does account for this problem, as it proposes the use of a specialized access point only in the homes of the students, but this yet again fails to ensure that such access in students’ homes is only used for educational purposes. Absent strong and enforceable safeguards (that may impose significant administrative burdens on schools, the Commission and the Universal Service Administrative Company (“USAC”)), the Commission

²⁷ ITTA, pp. 10-11.

cannot be assured that grant of the Petitions would not eliminate entirely the “educational purpose” requirement that has been the foundation of the E-rate program since its inception.

Finally, it should also be noted that both Petitions and those filing in support repeatedly assert that waiver of the cost-allocation rules or grant of the petitions is warranted because there will be no impact to the E-rate program. USTelecom correctly points out that such argument “misses the point” because “[i]f the Petitions are granted as proposed, the E-Rate program will be funding services that are provided to residential end users with no assurances such use will be limited to educational purposes.”²⁸ That other parties are financing Petitioners’ proposed extension of schools’ broadband networks to residential settings does not by itself ensure that the use of E-rate program funded facilities are used for educational purposes only. Thus continued application of the Section 54.404(e) cost-allocation rules remains critical to the integrity of the program.

2. The Petitions fail to acknowledge the practical difficulties of compliance with the Children’s Internet Protection Act *in a residential setting*.

As the Commission knows, CIPA was enacted by Congress in 2000 to prevent children from accessing obscene or harmful content over the Internet. It imposes the requirement on schools and libraries utilizing E-rate supported services to “certify that they have an Internet safety policy that includes technology protection measures [that] block or filter Internet access to pictures that are: (a) obscene; (b) child pornography; or (c) harmful to minors (for computers that are accessed by minors).”²⁹ While Petitioners make passing reference to the requirements

²⁸ USTelecom, p. 5.

²⁹ Federal Communications Commission, Children’s Internet Protection Act *Consumer Guide*, available at: <https://www.fcc.gov/consumers/guides/childrens-internet-protection-act>.

of CIPA, the Petitions raise several questions that the Commission must consider. For one,³⁰ it is unclear if a school district has the authority or wherewithal to deploy and update filtering software on the devices in private residences of the low-income housing units where the Petition seeks to deliver service. It is also unclear whether a school should be placed in the position of monitoring the activities of minors and/or their parents within a private residence or whether schools have the resources to take such responsibility. Finally, how USAC will conduct compliance audits is an unaddressed question raised by the Petitions. Clearly, Petitioners fail to recognize the very serious practical implications of their proposals.

3. Grant of the Petitions would introduce substantial complexity into a program that many schools and libraries already struggle to navigate.

As discussed above, the Petitions raise several administrative issues in addition to the questions of statutory authority that merit their dismissal. These administrative issues raise the very real possibility that grant of the Petitions will introduce substantial complexity into an E-rate program that already taxes the limits of school and library (and USAC) resources. As the Commission well knows, the E-rate program has only grown more complex over time, with a large number of schools and libraries running afoul of the program's rules due to inadvertent oversight or failure to properly understand the program's complex rules.³¹ Resolution of the issues raised above can only serve to *increase* the burden on both program beneficiaries and

³⁰ In fact Petitioner BVSD does not acknowledge CIPA at all in its Petition or comments it filed in support of its own Petition.

³¹ As the Commission correctly stated in 2014, “complexity and delay discourage participation and ultimately result in fewer schools and libraries fully investing in needed high-speed broadband connections.” Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-199 (rel. Jul. 23, 2014) (“*E-rate Modernization Order*”), ¶ 55.

USAC. New safeguards to ensure compliance with the “educational purposes” requirements of Section 254 will tax both school administrators, USAC, and the Commission, whereas the current cost-allocation rules are time-tested and understood by all parties involved. Adherence to the requirements of CIPA will require school administrators to design compliance plans for dozens or even as many as thousands of residential settings, a task far more complicated that administrators face today.

In short, the potential for increased complexity is the direct result of the regulatory “square peg, round hole” approach that the Petitions represent. In seeking to utilize the E-rate program for purposes for which it was never intended – and attempting to do so via a one-off waiver rather than in the form of informed, considered, measured rulemaking – Petitioners will only increase the complexity of the program to the detriment of schools and libraries. A better approach, at least in rural areas, would be to enable the High-Cost program to fulfill its purpose in the first instance, with both the E-rate and Lifeline programs fulfilling theirs as intended by Congress, ensuring that access once available is affordable for schools, libraries and low-income consumers.

D. The Petitions raise novel questions of law and policy that cannot be decided by the Wireline Competition Bureau pursuant to delegated authority.

As the record makes clear, the Petitions raise substantial questions with respect to both the Commission’s statutory authority to grant the Petitions and whether such action would introduce needless complexity into the E-rate program. NTCA therefore joins other parties in urging the Bureau to dismiss the Petitions and, as noted further below, utilize and improve upon the complementary High-Cost program that can, if structured properly, work with both the E-rate and Lifeline programs to make progress towards closing the “homework gap.”

Absent dismissal by the Bureau, at the very least, the Petitions and the statutory and administrative issues they raise must be considered by the full Commission. Section 0.291 of the Commission's rules grants the Wireline Competition Bureau the delegated authority to perform certain actions. This delegated authority is limited, however, and requires full Commission consideration of wireline matters to the extent the question at issue concerns "applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."³² The issues raised by the Petitions are novel and, as discussed elsewhere herein, go far beyond mere "clarifications" or waivers of existing rules and definitions. The Petitions contemplate a use of E-rate supported services and facilities that is simply without precedent in the two decade history of the program (as discussed more fully in Section II.A. *supra*), as they each seek to extend the use of E-rate supported facilities to a residential setting in a manner that runs counter to Section 254(h) specifically and to the very structure of the four discrete USF programs more generally. One cannot reasonably argue that such a fundamental repurposing of the E-rate program is not a "novel question of fact, law, or policy" that should be undertaken by the full Commission via a formal rulemaking process.

Moreover, the Petitions as structured also raise "opening the floodgates" questions that at the very least merit full Commission scrutiny. As ITTA correctly notes, "[n]owhere do the Boulder Valley Petitioners explain how circumstances particular to the Boulder Valley School District merit relief. In fact, their petition makes clear that they are seeking relief on behalf of all school districts anywhere."³³ Indeed, OTI filing in support of the Petitions proposes that the

³² 47 C.F.R. § 0.291 (a)(2).

³³ ITTA, p. 15.

Commission should grant the waivers as requested but extend such ruling to situations beyond the disadvantaged students identified in the Petitions.³⁴ OTI asserts that “the FCC should grant the petitions and issue a declaratory ruling stating that, in general, extending a school’s E-rate supported network into its surrounding community need not be cost-allocated and may even indeed *qualify for additional E-rate funds*, so long as the network continues to serve primarily an educational purpose and is being used by the network’s intended beneficiaries.”³⁵ That even supporters of the Petitions recognize their potential to “open the floodgates” should give the Bureau (and the full Commission as well) substantial pause.

In addition, BVSD argues that “[w]hile the ban on off-campus use aims to limit the fund in important ways, it also limits the efficiency of already provisioned fiber.”³⁶ BVSD also goes on to state that “grant of their Petition would enable schools with self-provisioned networks near low-income student housing to optimize their use of E-rate funds and further the Commission’s public interest goals. This waiver will convert a disincentive to an incentive to promote the goals of broadband connectivity to all Americans.”³⁷ While BVSD seeks to promote a worthy goal (broadband connectivity to all Americans), as even they recognize, the “ban on off-campus use aims to limit the fund in important ways” and two-decades of Commission policy in limiting the use of E-rate supported services “to” schools and libraries for “educational purposes” should not be cast aside absent a full Commission proceeding

³⁴ Comments of the New America Foundation, Open Technology Institute, Center for Rural Strategies, National Hispanic Media Coalition, Public Knowledge, X-Lab, and United Church of Christ, OC Inc (“OTI”), CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184 (fil. Nov. 3, 2016), p. 10.

³⁵ *Id.* (emphasis added).

³⁶ BVSD Petition, p. 7.

³⁷ *Id.*

examining the consequences of such action. Indeed, because the Petitions raise novel questions of law and policy never seriously considered by the Commission in the past (and because they raise several important statutory and administrative concerns) existing precedent does not grant the Bureau the authority to grant the Petitions on delegated authority.

III. THE LEGITIMATE PROBLEMS THAT THE PETITIONS SEEK TO ADDRESS ARE THE SYMPTOM OF A LARGER BROADBAND AVAILABILITY PROBLEM THAT MUST BE SOLVED BY ENSURING THAT ALL FOUR UNIVERSAL SERVICE PROGRAMS ARE PROPERLY FUNCTIONING AND COORDINATED TO MAKE HIGH QUALITY AND AFFORDABLE BROADBAND AVAILABLE TO EVERY KIND OF END USER – RESIDENTIAL, BUSINESS, SCHOOL, LIBRARY, OR OTHER ANCHOR INSTITUTION

While NTCA urges dismissal of the Petitions, it cannot be said with enough emphasis that Petitioners' underlying goal of universal broadband connectivity is clearly a worthy endeavor driven by good intentions. NTCA and the small community-based broadband providers it represents recognize that broadband Internet access service is in fact a necessity of daily life, enabling full participation in our economy by every American and full participation in the learning process by students of all ages. Rather than reinvent or stretch each USF program in tortured ways to serve a given circumstance, the Commission should seek to ensure that the four discrete but complementary and interconnected USF programs work in concert to ensure that no home, business, school, library or rural health care facility goes without advanced communications services in a time when going without is simply not an option in our increasing connected world.

That said, the Commission should be concerned about the prospect lurking within the Petitions of blurring (if not totally obliterating) the carefully drawn statutory distinctions between the discrete universal service programs. Grant of the Petitions threatens to turn the individual but interconnected programs that target support in a complementary manner into

competing and conflicting programs that produce the deployment of redundant networks or the “cream-skimming” of certain customers or neighborhoods to the detriment of those that live in outlying areas. At bottom, it would be particularly troubling – and in fact could substantially erode the public’s belief in the integrity of the programs – to allow for funding of networks via E-Rate to the *very same locations* where the High-Cost program already supports networks in place. Despite repeated assurances by Petitioners and those filing in support that the proposed use of E-rate support services would be for “educational purposes” only, the result would still be the same; redundant networks funded by two separate USF programs delivering service to a single residence. And, the lack of any real proposed safeguards to prevent such a result (and in fact the administrative complexity for both E-rate applicants and USAC of enforcing any safeguards) is an indication that the ramifications of the Petitions are not fully understood.

A better approach would be the careful coordination of the interconnected USF programs, particularly in rural areas, by looking in the first instance to the High-Cost USF program as the means of making the underlying network available and affordable for residents, businesses, schools and libraries in rural America in areas of the nation where there would otherwise be no business case to do so. It cannot be forgotten that the High-Cost USF program functions as much more than a simple “deployment” or “availability” program; this program in fact both stimulates deployment *in the first instance* by helping to solve the business case for providers and *then* facilitates ongoing customer (residential, business, school, library, and health care facility) use of networks in high-cost areas. It does so by ensuring that consumers’ and schools’ and libraries’ rates on those networks, once built, will in rural areas be reasonably comparable to those in urban areas, in turn ensuring that broadband networks in these areas will be useful and sustainable over the long term. Only then can the E-rate (or Lifeline as the case

may be) programs do their own important work, through leveraging existing networks and providing discounts on basic and advanced services to as many schools and libraries and low-income consumers as possible.

NTCA notes once again as it did in initial comments that it does not dispute that gaps remain to be filled and that additional work needs to be done. The Petitions highlight the fact that there remain areas of the nation where geography, topography, or a lack of a business case limit the availability of high quality broadband to residences where students and other Americans live. Yet filling these gaps can and should be done through careful coordination of the four USF programs as created by Congress, rather than by haphazard grant of one-off petitions that may open the door to conflicts among the programs and deployment of redundant networks that are *both* funded using USF dollars. While well-intentioned, grant of the Petitions would blur, if not obliterate, the distinction in rural areas between the High-Cost and E-rate programs and turn each into competing initiatives to enable access in rural communities. Put another way, grant of the Petitions would attempt to solve with E-rate funds problems that Congress intended the High-Cost and Lifeline programs (to the extent service is available yet not quite within reach of a low-income consumer) to tackle. Granting one-off waiver petitions is not the proper means to promote coordinated efforts to overcome such challenges.

IV. CONCLUSION

For all of the reasons set forth above, the Wireline Competition Bureau should decline to grant the Petitions. To the extent that the subject matter presented by the Petitions raises very important public policy and statutory interpretation questions, such matters should properly be addressed by the full Commission through appropriate notice-and-comment rulemaking procedures.

Respectfully submitted,



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