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

In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	FCC 13-100

REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE

November 8, 2013

TABLE OF CONTENTS

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

In the Matter of	)
	)
Modernizing the E-rate	) WC Docket No. 13-184
Program for Schools and Libraries	) FCC 13-100

REPLY COMMENTS OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
THE WESTERN TELECOMMUNICATIONS ALLIANCE

I.   INTRODUCTION AND SUMMARY

NTCA–The Rural Broadband Association ("NTCA")[1] and the Western

Telecommunications Alliance ("WTA")[2] (the "Associations") hereby submit their reply

comments in the above-captioned proceeding.[3] The record compiled thus far in this proceeding

demonstrates that the E-rate program is in need of substantial reform to transition the program

toward enabling schools and libraries to obtain higher-capacity broadband connections. The

record, unfortunately, contains a number of proposals for "one-size-fits-all" solutions geared

towards the construction and maintenance of duplicative and/or unnecessary fiber networks in

places where the private sector and/or other federal programs not only stand ready to serve, but

---

[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]   WTA is a trade association that represents more than 250 small rural telecommunications companies that provide voice, broadband and video services in the 24 states west of the Mississippi River.

[3]   *Modernizing the E-Rate Program for Schools and Libraries,* Notice of Proposed Rulemaking, WC Docket No. 13-184, FCC 13-100 (rel. July 23, 2013) ("NPRM").

are in fact delivering high-quality service today over high-speed connections. These proposals
would waste valuable resources in both E-rate as well as other federal and state initiatives. This
unnecessary "cannibalization" of existing broadband networks makes little sense at a time when
each of the individual Universal Service Fund ("USF") mechanisms, much like most other
federal and state funding mechanisms, are presently under pressure to do more with less.
Modernization of the E-Rate program as contemplated by the NPRM can and will only succeed
if: (1) it is coordinated carefully with and builds upon the many successes of other USF
components and other federal programs that serve the complementary objectives of promoting
network deployment and affordable broadband access, and if (2) the essential problem to be
solved is identified on a sufficiently granular basis to tailor a meaningful and cost-effective
solution.

Before rushing ahead to initiate significant reforms to the E-rate program, the
Commission should gather data on the needs of schools and libraries as to their broadband
connectivity needs. The Commission would remiss in failing to gather the data necessary to
understand and then in turn address the specific needs of individual schools and libraries in a
cost-effective manner. Such a data-driven approach can get the most "bang-for-the-buck" in
terms of the use of E-rate funds.

It is also essential that the use of consortium purchasing does not lead to overbuilding at
certain schools and waste of E-rate resources at the expense of prior private investments or other
important federal programs. The Commission should also make clear that consortia are free to –
and should be encouraged to – purchase the communications service(s) that best fit their needs
from multiple providers.

Finally, the Commission should take several steps to streamline the E-rate program, including: (1) an increased use of online filing and an overall improvement of data management practices in the E-rate program; (2) allowing E-rate participants that enter into multi-year contracts of no more than three-years' duration to file a single Form 471 at the agreement's inception if there is no material change in that agreement; and (3) enabling schools and libraries to receive direct reimbursement from the Universal Service Administrative Company ("USAC") when they have paid the provider the full cost of their service.

II. THE COMMISSION SHOULD RESIST CALLS TO USE LIMITED E-RATE FUNDS FOR THE CONSTRUCTION AND MAINTENANCE OF DUPLICATIVE AND/OR UNNECESSARY COMMUNITY OR EDUCATION FIBER NETWORKS

Comments filed in response to the NPRM show a general consensus that the E-rate program is in need of reform to transition support towards funding of higher capacity, more affordable broadband services for Community Anchor Institutions ("CAIs"). However, there is an unfortunate tendency among some commenters to prescribe an economically inefficient, "one-size-fits-all" solution to a perceived lack of broadband service: that is, the overbuilding of existing broadband infrastructure (which may in many, if not most, cases be more than sufficient to meet current and future demand) with community-owned or educational institution-owned fiber networks. As the FCC develops new rules for the E-rate program, it should resist calls to use limited and valuable E-rate funds on the construction and maintenance of duplicative and/or unnecessary fiber networks in places where the private sector and/or other federal programs not only stand ready to serve, but are in fact delivering high-quality service today over high-speed connections.

As discussed in the Associations' initial comments,[4] data collected via an NTCA survey demonstrates that RLECs and the statewide networks they own and operate have already made tremendous progress in delivering high-capacity broadband connections to schools and libraries. In addition, the National Telecommunications and Information Administration's ("NTIA") Broadband Technology Opportunities Program ("BTOP"), and the Rural Utilities Service's ("RUS") Broadband Initiatives Program ("BIP"), among other federal initiatives, have already enabled high-speed broadband connections to thousands of CAIs all across the nation. These programs and the existing assets they have already created should form the foundation of a carefully coordinated and targeted approach that identifies the "gaps" in broadband service with specificity and then tailors solutions to the unique challenges of each school and library. This will ensure that scarce E-Rate resources go further in providing as many schools and libraries as possible with the broadband access they need to carry out their respective missions in an increasingly digital learning environment.

By contrast, the failure to coordinate carefully with these many existing federal programs and/or to leverage existing network assets would have a number of troubling consequences. For one, E-rate funded construction of duplicative broadband infrastructure threatens to undermine existing investment in broadband networks, undercutting the many good and ongoing efforts of commercial actors, other federal and state programs, and the overall goal of the USF. For example, in the areas served by the Associations' members, duplicative networks are likely to "cherry-pick" the most attractive portions of those sparsely-populated areas (especially as large revenue-generating anchor institutions are selectively extracted from

---

[4]   *See*, Comments of the Associations, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 13.

the broader customer base), leaving the most costly-to-serve consumers to the carrier of last resort and thus ironically *increasing* reliance upon (and demand for) High-Cost USF support. This could place upward pressure on end-user rates in the broader community if a number of CAIs are suddenly and artificially extracted from the broader customer base in that community. This unnecessary "cannibalization" of existing broadband networks makes little sense at a time when each of the individual USF mechanisms, much like most other federal and state funding mechanisms, are presently under pressure to do more with less. In particular, it can hardly be said to advance the goal of a more cost-effective E-rate program that the NPRM seeks to promote to direct the program's resources where other funding mechanisms have done and continue to do their job.

In that regard, a "one-size-fits-all" approach that rushes to the conclusion that new network builds are the answer to every broadband access problem introduces the potential for *two supported connections* (one pre-existing via High-Cost or BTOP/BIP or similar programs and a new redundant facility via E-Rate) going to the same rural institution. Such a failure to take stock of and leverage existing assets would exhaust limited E-Rate funds that could be better spent on keeping services affordable, permitting installation of internal connections where needed, or to address the limited circumstances of true and total unavailability of outside plant network assets. Even worse, such unnecessarily duplicative uses of taxpayer/ratepayer dollars undermines the integrity of, and even the public's faith in, funding mechanisms that otherwise

can and must serve an incredibly important role in fulfilling our nation's technology and

education policy.[5]

Instead of promoting the scattershot construction of duplicative broadband solutions and

thereby wasting valuable resources in both E-rate as well as other federal and state initiatives, the

FCC should surgically address each school's particular broadband challenge by analyzing

specifically whether each CAI faces an "Availability" or "Affordability" challenge in the first

instance. The FCC can then tailor a solution for the problem presented – for example, if capacity

is truly lacking in the area surrounding the CAI, the E-rate program might look to support capital

expenditures associated with new outside plant infrastructure. But, if capacity is simply in need

of an upgrade, or if there is already high-speed capacity at a given school or library, the program

should look instead to work with existing broadband providers to either upgrade the existing

connection and/or pay down the price of service for the CAI.[6]

Indeed, to prevent the severe risk of negative outcomes associated with overbuilding pre-

existing broadband networks that have been built through a mix of private capital and/or other

federal and state programs, the FCC should establish an "anti-cannibalization" rule that prohibits

---

[5]   *See*, Letter from Greg Walden, Chairman, US House Energy and Commerce Committee's
Subcommittee on Communications and Technology to Todd Zinser, Inspector General, US Department of
Commerce (dated May 9, 2013) (seeking information on an EAGLE-Net Alliance project funded by the
BTOP program that "built a third fiber connection to an 11-student school…which says that it didn't want
it.").

[6]   Comments of AT&T Inc., WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 6. "E-rate is first and
foremost a Universal Service program; and thus, it should adhere to the same policy goals that drove the
transformation of the High Cost program. As noted above, schools can and should determine what
solutions are most cost- effective for their budgets. But, the FCC must first establish rules that ensure that
E-rate funding is used cost-effectively to meet the national goal of linking all communities with high-
speed broadband. Thus, there is no sound policy reason to utilize government money to build additional,
and especially private, networks in areas where high-speed broadband is already being provided
commercially."

the use of E-rate funds for outside plant construction in areas where current federal or state

programs are already assisting (or have assisted in the past) in the construction or expansion of

broadband networks.[7]   Further, as other commenters have suggested, even where capacity

appears to be lacking altogether to connect a CAI outside of such areas, the FCC should create a

process modeled on the Connect America Fund's ("CAF") challenge system that would allow

service providers with pre-existing networks to challenge E-rate supported infrastructure

construction.[8]

---

[7]   Even in areas that have enjoyed the benefits of network deployments and operations supported through these other federal programs, there may be limited cases in which a given last-mile connection to a school or library at the end of a road or somewhere outside of a rural town, for example, still does not enable access to higher-capacity broadband services of the kind contemplated in the NPRM. This would be the "Partial Availability" circumstance in the basic categorization of the problems as described in the Associations' initial comments. In these narrow instances, where such shortcomings in a given last-mile connection exist notwithstanding the use of BTOP, RUS financing programs or High-Cost USF/CAF support in the area, the Commission should as an exception to the rule permit E-Rate funds to be used only for the narrow purpose of upgrading the existing last-mile outside plant connection. Such upgrades could consist, for example, of a project to "finish" FTTN loops or deploy a last-mile fiber lateral to the school from a nearby fiber route, or a project to upgrade equipment on either end of a fiber route between the existing telco central office or cable provider's facility and the CAI to enable higher speed services to the extent demanded by (and affordable for) the school or library in question. This would help once again to ensure that solutions from the E-Rate program are tailored to solve the problem presented – the need for an upgrade of the last-mile connection to the institution in question to resolve Partial Availability concerns – rather than pretending as if existing facilities were not in place and paying even more for an entirely new "middle mile" transport facility and loop to be deployed.

[8]   The Associations, p. 14. For those institutions seeking to use E-Rate support for the construction of physical broadband outside plant infrastructure (presumably only in areas where other federal programs are not already at work deploying such networks), rigorous safeguards should be adopted. These safeguards should at a minimum include: (1) 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; (2) 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 with broadband services meeting the target speed; (3) a meaningful matching funds requirement that is the same for the purchase of services from an existing provider and the deployment of broadband infrastructure; and (4) a bright-line prohibition on using revenues from excess capacity as a source of matching funds.

The discussion by a couple of commenters as to the supposed benefits of community-owned or consortia-owned fiber networks is worth highlighting. While such a use of E-rate dollars might, at first blush, seem alluring because of purported "savings" to the individual school or library in question, it is also important to recognize, however, the distinction between economically inefficient plans involving investment in duplicative networks as compared to consortia that efficiently utilize and supplement existing broadband networks to connect CAIs and ensure the sustainability of affordable access at all such locations. For an example of the former, the New America Foundation ("NAF") argues that the FCC should use E-rate subsidies to encourage investment in community and school district owned fiber networks.[9] To support this assertion, NAF offers anecdotal evidence of one suburban Florida school district that reportedly saved money on broadband service by constructing a community owned school district fiber network. While noting the considerable upfront expense of building the network, NAF posits that the long-term savings will outweigh the initial investment.[10]

As an example of the latter, the Utah Education Network ("UEN") proposes that the creation of statewide education broadband networks can be an efficient method for obtaining affordable and sustainable broadband for CAIs.[11] Most importantly, in contrast with NAF, the UEN explicitly recognizes the importance of working with private broadband network operators and pledges to "work closely with the private sector to ensure that no duplication of

---

[9]   *See*, Comments of NAF, WC Docket No. 13-184 (fil. Sept. 16, 2013), pp. 3-8.

[10]   *Id*., p. 5.

[11]   *See*, Comments of the UEN, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 5.

infrastructure and overbuilding would take place in addition to utilizing or public/private fiber infrastructure where possible."[12]

While it may be possible that a particular school district could successfully employ public funds to create a dedicated fiber network to its advantage, there are several inherent problems and unintended consequences (in addition to those noted above) of creating a national policy through the E-rate program that would fund and steer school districts towards constructing new broadband networks. Ultimately, such an approach would be cost prohibitive as a model for achieving affordable and sustainable broadband connections at schools, libraries, and other CAIs across the country through the E-rate program. By pushing investment and operating costs onto the community, rather than private industry, such broadband networks will further burden already strained local and state budgets, creating a scenario where only wealthy school districts are able to afford broadband. While higher income communities may be able to afford the upfront expense of construction and the ongoing maintenance costs associated with creating a dedicated broadband system, lower income school districts or districts that must cover many miles (such as those in rural areas), even with support from the E-rate program, will be unlikely to sustain a district or community owned broadband network, thereby further exacerbating broadband divides.

Finally, overbuilding existing private broadband networks will undermine private investment incentives, undermining in rural areas, for example, the High Cost Fund's efforts to serve the educational needs of students outside of school hours. As the FCC has stated, broadband access after school hours is a critical component of digital education efforts, e.g.,

---

[12]   *Id.*

broadband in the home.[13] If E-rate enables duplicative community fiber networks for CAIs, rural

ILECs (crucial carriers of last resort for their rural communities) will be unable to serve CAIs

(key customers in their potential revenue base), thereby creating further reliance on the already

capped and stretched High Cost Fund when serving students at home.

As noted in section IV, *infra*, initial comments in this proceeding demonstrate that

whatever reforms are adopted for the E-rate program, the guiding principle must be a more cost-

effective use of existing resources to meet the connectivity needs of the thousands of schools and

libraries all across the nation. In the absence of unlimited budgets (both for E-rate and for the

local school districts and libraries that would use E-rate supported services), "one-size-fits-all"

solutions geared toward construction of fiber networks in the absence of a real need for them

threatens to deplete E-rate funds and leave little or no funding left for those schools that have

access to an already robust network but require support to make that access more affordable.

And, as also noted below, a data-driven process of reform may reveal that directing additional

funds to, for example, internal connections that go largely unfunded today, may be the best

method by which to ensure that each and every student can feel the effect of the ConnectEd

initiative in the classroom itself. (Put another way, FTTS – fiber-to-the-school – provides little

educational value if all it does is connect the principal's office.) Again, reform geared towards

"building big" may not leave resources available to make that happen.

Thus, modernization of the E-Rate program as contemplated by the NPRM can and will

only succeed if: (1) it is coordinated carefully with and builds upon the many successes of other

USF components and other federal programs that serve complementary objectives of promoting

---

[13]   NPRM, fn. 320. "[T]he Commission recognize[s] that students' need for broadband access does
not end when their schools' doors close for the day."

network deployment and affordable broadband access, and if (2) the essential problem to be

solved – "Affordability" or "Availability" – is identified on a sufficiently granular basis to tailor

a meaningful solution.

III. THE COMMISSION SHOULD GATHER DATA ON THE NEEDS OF SCHOOLS AND LIBRARIES BEFORE PRESSING AHEAD WITH SIGNIFICANT REFORMS TO THE E-RATE PROGRAM

The record compiled thus far in this proceeding touches upon a number of separate,

discrete issues, the resolution of which are vital to the continued success of the E-rate program.

If there is one underlying theme among the comments filed by industry stakeholders, however, it

is that significant changes to the E-rate program are likely necessary to modernize the program to

ensure that it can make robust broadband connectivity available to schools and libraries all across

the nation. What is largely missing from both the record (though not entirely absent[14]) and the

NPRM, is a recognition that "solving the problem" in each instance requires isolating the

"problem" – that is, accounting for the unique need that each individual school or library has in

the first instance (whether that be a connection to their facility in the first place, a more robust

connection, an affordable connection, or internal connections). That cannot happen absent a

---

[14]   For example, The National Education Association ("NEA") states that it "recommends the Commission investigate additional methods for collecting meaningful data related to the E-Rate Program. To date, the data available to inform policy decisions (e.g. impact of eliminating or adding eligible services) has not been sufficiently comprehensive." Comments of NEA, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 12; CTIA argues that "[c]onsideration of potential changes to the overall size of the E-rate fund must be based on clear data regarding schools' and libraries' (1) broadband needs to meet their educational goals and (2) current ability to obtain services under the E-rate program." Comments of CTIA – The Wireless Association, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 12. Verizon and Verizon Wireless state that "[i]n addition to setting appropriate bandwidth targets, the Commission should establish a mechanism to collect comprehensive data about schools' connectivity; determine how schools and libraries are measuring up to the targets; and then assess whether additional policy changes may be necessary to achieve the bandwidth targets for 99 percent of students." Comments of Verizon and Verizon Wireless, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 10.

gathering of data that quantifies that need, which will help to ensure that the E-rate program can

cost-effectively deploy its resources to meet those needs. As Commissioner Rosenworcel

correctly stated, referring to the capacity goals discussed in the NPRM:

> To get to these goals, we need to take a hard look at the existing program. We
> need to collect better data from each of our applicants about what capacity they
> have and what capacity they need. Then I think we can make adjustments to how
> we prioritize funding to ensure that schools shorter on capacity get greater access
> to support.[15]

One example of the importance of engaging in a data-driven process in this proceeding

stands out in the record. One commenter states – without support or citation – that "the

commercial marketplace does not provide adequate broadband coverage"[16] for schools and

libraries in rural areas. However, as the Associations' initial comments demonstrated, this is

largely belied by the data collected via an NTCA survey conducted in preparation for this

proceeding. As that survey found, even if it may be true as a general proposition that the private

market ***alone*** cannot support deployment of robust broadband facilities in high-cost rural areas,

RLECs such as those within the Associations' membership have leveraged a mix of private

capital, High-Cost universal service support, RUS programs and/or BTOP programs to deliver

broadband services of the kind sought by the SHLB Coalition and as envisioned by the NPRM to

substantial numbers of schools and libraries. The findings of that study were in fact striking in

terms of the extent of deployment by RLEC respondents:

- Of the 1,208 K-12 schools in 38 states identified by NTCA members as located within
  their serving areas, 907 (75%) of those are already connected by Fiber-to-the-Premises
  ("FTTP"), and another 132 (11%) are connected by Fiber-to-the-Node ("FTTN"). Only

---

[15]   NPRM, Statement of Commissioner Jessica Rosenworcel.

[16]   Comments of Schools, Health & Libraries Broadband Coalition ("SHLB Coalition"), WC Docket
No. 13-184 (fil. Sept. 16, 2013), p. 6.

60 such schools (5%) are not connected at all to the telco network, although it is quite possible that they could be served by another provider (*e.g.*, a cable company).

- 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 the 484 libraries identified by NTCA members as located within their serving areas, 224 (46%) of those are connected by FTTP, and another 64 (13%) are connected by FTTN. Only 30 such libraries (6%) are not connected at all to the telco network, although it is quite possible that they could be served by another provider (*e.g.*, a cable company).

- 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).

In fact, this theme of already-existing robust connections to CAIs permeates the NTCA survey:

- Of the 49 community colleges identified by NTCA members as located within their serving areas, 37 (76%) are connected by FTTP, and 4 more (8%) are connected by FTTN. Only 3 such community colleges (6%) are not connected at all to the telco network, although once again it would seem likely that such anchor institutions are served by another provider (*e.g.*, a cable company).

- Of those connected community colleges, NTCA members reported offering maximum speeds of 799 Mbps (mean) and 125 Mbps (median), while the average speed purchased is 77 Mbps (mean) and 20 Mbps (median).

- Finally, even for those CAIs not connected by FTTP currently, NTCA members reported that the average distance to the closest fiber facility was only 1.4 miles (mean) and 0.6 miles (median).

These data show that even if the general statement of the problem may be right – that "the market" alone cannot justify in many cases investment in rural broadband networks – it is essential to peel back the layers to ascertain: (1) whether other efforts or programs are already solving (or have already solved) that problem, and (2) if a problem in fact remains, what problem is it? Indeed, as these data show, in nearly all RLEC service areas, existing broadband network facilities stand more than ready to meet the connectivity needs of a large number of schools and

libraries as they move towards a greater use of digital learning and other broadband-enabled resources to educate their students or serve their patrons – and even where facilities may be lacking, in many cases the cost-effective solution is not to deploy entirely new networks over great distances but instead to "finish off" fiber loops from nearby existing fiber facilities.

E-rate funds that might otherwise be used to overbuild this existing infrastructure can be put to a more cost-effective use, for example, by: (1) helping to solve affordability issues for schools and libraries that have access to sufficient capacity; (2) funding the procurement of upgraded internal connections that allow the school to make more effective use of the fiber already coming to the schoolhouse door; (3) training teachers on how to use cutting-edge applications that drive use of these high-capacity networks; and/or (4) deploying or upgrading network facilities to areas that may not at present be able to offer schools and libraries the high-capacity services they need. The point is that, absent such data in the hands of the Commission *prior to the consideration and implementation of significant reform*, such reform could inadvertently result in limited E-rate resources being used in a misplaced and inefficient manner that depletes resources needlessly, cannibalizes other important federal and state programs, and leaves a number of students and library patrons without access to what robust broadband connections can provide.

The record compiled thus far in this proceeding further underscores the need for a more meaningful data-driven review of the existing state of broadband connectivity to this nation's schools and libraries. For example, a number of commenters note that current demand for E-rate funds is nearly twice the program's budget for this funding year and that funding requests for

Priority 2 services (which include internal connections) are often unmet.[17] In addition, the
record is peppered with proposals for altering or eliminating the priority funding system,
removing "outdated services" from the eligible services list, and modifying the existing discount
matrix, among others.[18] One common thread running among each of the proposals for reforming
and modernizing the E-rate program is a need to more effectively deploy existing resources to
meet the connectivity needs of the thousands of schools and libraries all across the nation. But
what is missing from most, if not all, of these proposals and comments is granular data showing
what would in fact be a more efficient and effective use of E-rate resources. A detailed
assessment of the broadband connectivity needs of schools and libraries may, for example, reveal
that directing additional E-rate funds to internal connections will improve schools' ability to
leverage already existing, robust external connections, or that even if schools could all get a Gig,
the applications that teachers would run in the classroom today run little more than 50 Mbps at
best. Yet, absent the data necessary to identify those connectivity and utilization needs, on a
granular basis, sweeping, "one-size-fits-all" reforms are doomed to fail and to waste valuable
USF resources in the process.

In addition, as the Associations stated in initial comments, expansion of the current E-rate
budget while other critical mechanisms remain capped would ignore what is a very acute need

---

[17]   For example, Comments of the E-rate Reform Coalition, WC Docket No. 13-184 (fil. Sept. 16,
2013), pp. 3-4; Comments of the Wisconsin Department of Public Instruction ("WDPI"), WC Docket No.
13-184 (fil. Sept. 16, 2013), p.10; Comments of the California Department of Education, WC Docket No.
13-184 (fil. Sept. 16, 2013), p. 6.

[18]   For example, Comments of Funds for Learning, WC Docket No. 13-184 (fil. Sept. 16, 2013), pp.
17-21; Comments of the New York City Department of Education, WC Docket No. 13-184 (fil. Sept. 16,
2013), p.4; Comments of the Leading Education by Advancing Digital ("LEAD") Commission, WC
Docket No. 13-184 (fil. Sept. 16, 2013), p. 5.

for substantial, additional investment in high-cost areas. Absent a careful coordination of all

USF mechanisms, long-lasting damage to the concept of universal service looms as a very real

threat. This is particularly relevant to the instant proceeding, as the NPRM notes that digital

learning quite often takes place outside the school building and outside school hours.[19] A robust

broadband connection at home will thus be even more critical for students going forward. With

this in mind, the Commission would remiss in failing to gather the data necessary to understand

and then in turn address the specific needs of individual schools and libraries in cost-effective

manner that honors the concept of *universal service* in all respects. Such a data-driven approach

can get the most "bang-for-the-buck" in terms of the use E-rate funds.

IV.   THE COMMISSION SHOULD ADOPT MEASURES TO ENSURE THAT ANY INCREASE IN THE USE OF CONSORTIUM PURCHASING DOES NOT INADVERTENTLY LEAD TO AN INEFFICIENT USE OF E-RATE FUNDS

The NPRM seeks comment on whether the Commission should adopt measures to

increase the use of consortium purchasing.[20] To the extent that consortium purchasing can result

in a more cost-effective use of E-rate funds, the Commission should seek to increase its use.

However, it is critical that any measures adopted in this proceeding, in the name of "cost-

effectiveness," do not inadvertently lead to wasteful expenditures in other respects. In particular,

it is essential that the use of consortium purchasing does not lead to results such as those noted

earlier in these reply comments or in the initial comments of the Associations – that is, such

practices should not lead to overbuilding at certain schools and waste of E-rate resources at the

expense of prior private investments or other important federal programs. It is also essential that

---

[19]   NPRM, fn. 320.

[20]   *Id*., ¶¶ 179-185.

an attempt to gain scope and scale in procurement does not lead to a result where "big buyers" obtain products and services only from "big sellers." If a hometown carrier is already delivering a Gigabit-capable network to a local school or library, it is not clear how delivering yet another Gigabit-capable network to the same CAI from a provider that happens to serve six other schools in the same state could possibly be considered an effective use of E-rate resources or a good policy result.

Indeed, as the NPRM states, some service providers that may otherwise seek to compete to serve a consortium might decline to do so due to the inability to serve each of the individual schools or libraries.[21] For instance, a consortium of schools and libraries that spans a large county may cross the service areas of one or more providers, including those that may serve only a portion of that county. In this instance, the inability of a provider to serve the entire consortium could result in a larger provider appearing to be the sole qualified bidder, with little incentive to pass on any efficiencies to the consortium purchaser. Such a result would only defeat the purpose of a group of schools or libraries seeking to band together. Thus, the Commission should make clear that consortia are free to – and should be encouraged to – purchase the communications service(s) that best fit their needs from multiple providers. In other words, "bulk buying" must not necessarily equal "bulk selling." Allowing (and in fact encouraging) a consortium to purchase from multiple service providers would not only strengthen the buying power of consortia (likely resulting in lower prices), but it would also increase choice and once again minimize the risk of inefficient and politically questionable overbuilding. That is, multiple providers would increase the universe of services to which the

---

[21]   *Id*., ¶185.

school or library consortia in question could subscribe. A single service provider, on the other

hand, may only offer a limited suite of services that does not meet each of the needs of the

schools or libraries involved.

In addition, it is important that the Commission apply the "anti-cannibalization" rule

described above to consortium purchasing and review consortium purchasing for outside

network plant via the "challenge process" recommended by the Associations in their initial

comments.[22] As the Associations previously stated, for those individual schools and libraries

that face a problem of Total Unavailability – that is, complete lack of access to any option for a

high-capacity broadband connection – there may be a need to utilize E-Rate funds for capital

expenditures for the deployment of physical outside plant network infrastructure. Some of these

institutions may find that a consortium is the best option to obtain services on a cost-effective

basis. However, consortium purchasing in such a situation poses a unique risk that merits

additional Commission attention. More specifically, a consortium that is, for example, awarded

E-Rate funds to lease dark fiber to serve a large number of schools in a particular area, when

only a small number of those schools actually lack connectivity options and suffer from Total

Unavailability, would likely deny the benefits of E-Rate resources to other schools and libraries.

Such a situation, while possibly cost-effective from the standpoint of the consortium purchaser,

---

[22]   The Associations, p. 17. This challenge process should include: (1) 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; (2) 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 with
broadband services meeting the target speed; (3) a meaningful matching funds requirement that is the
same for the purchase of services from an existing provider and the deployment of broadband
infrastructure; and (4) a bright-line prohibition on using revenues from excess capacity as a source of
matching funds.

would in fact needlessly deploy resources where they may not be needed. Thus, even

consortium purchasing should be subject to the bright line rule that precludes use of E-rate

resources to procure outside plant in areas where other federal programs, such as BTOP, BIP,

other RUS programs, and High-Cost USF, already facilitate the deployment of high-capacity

networks. In those instances, the consortium should instead look to utilize E-rate resources to

"pay down" the costs of obtaining service on the pre-existing outside network plant, thereby

leaving more E-rate resources available for use by others (or for inside connections, for example,

at all of the connected locations).

V. THE RECORD IN THIS PROCEEDING SUPPORTS STEPS TO STREAMLINE AND MODERNIZE THE E-RATE PROGRAM, AS WELL AS STEPS TO FACILITATE SERVICE PROVIDER PARTICIPATION TO THE FULLEST EXTENT POSSIBLE

If there is one issue on which nearly every commenter in the record agrees, it is that the

E-rate program is needlessly complicated, and that the program is hindered in its mission as a

result. Fortunately, the record provides the Commission with a few promising reforms that

should improve the program and enable it to better serve this nation's schools and libraries.

First, there is strong support in the record for an increased use of online filing and an

overall improvement of data management practices in the E-rate program. For example, the

NEA proposes a number of changes that it suggests "will make the application process more

accessible, user-friendly, and permit[] applicants to understand the status of applications in real-

time."[23] These include not just the increased use of online filing, but enabling applicants to track

the status of their applications, receive information about the reason for an application's delay,

---

[23]   NEA, p. 9.

and allowing them to import data from previous years' applications. These and similar suggestions in the record[24] could improve and speed up the application process for both applicants and USAC, ultimately encouraging schools, libraries, and service providers that may have considered the program too complicated in the past to participate.

In addition, commenters agree that E-rate participants that enter into multi-year contracts of no more than three-years' duration should be able to file a single Form 471 at the agreement's inception if there is no material change in that agreement.[25] This will facilitate and encourage more schools and libraries to enter multiyear contracts that may come with discounted rates, improving the cost-effectiveness of the program.

Finally, commenters support the NPRM's proposal to enable schools and libraries to receive direct reimbursement from USAC when they have paid the provider the full cost of their service (under the so-called "Billed Entity Application for Reimbursement ("BEAR") method").[26] Placing the service provider in the middle as a pass-through for the reimbursement process only creates unnecessary accounting and paperwork burdens for providers without any corresponding benefit to the program. In addition, requiring USAC to directly reimburse schools

---

[24]   For example, the State E-rate Coordinator's Alliance ("SECA") proposes an "online portal" that will allow applicants to review their online submissions, view the status of pending applications, manage information submitted to USAC and update that information any time during the school year. It would also allow applicants to upload supporting documents and access the required applicant certifications at one time each year. Comments of SECA, WC Docket No. 13-184 (fil. Sept. 16, 2013), pp. 42-45.

[25]   Comments of CenturyLink, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 24; Comments of the Wireless Internet Service Providers Association, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 6.

[26]   Comments of Windstream, WC Docket No. 13-184 (fil. Sept. 16, 2013), p. 8; Comments of WDPI, WC Docket No. 13-184 (fil. Sept. 16, 2013), p.16.

and libraries in these instances would not create any additional burdens on schools and libraries, as they already complete and file FCC form 472 under the current process.

VI. CONCLUSION

Modernization of the E-Rate program as contemplated by the NPRM can and will only succeed if: (1) it is coordinated carefully with and builds upon the many successes of other USF components and other federal programs that promote network deployment and affordable broadband access, and if (2) the essential problem to be solved is identified on a sufficiently granular basis to tailor a meaningful solution. Before rushing ahead to initiate significant reforms to the E-rate program, however, the Commission should gather data on the needs of schools and libraries as to their broadband connectivity needs.

It is also essential that the use of consortium purchasing does not lead to overbuilding at certain schools and waste of E-rate resources at the expense of prior private investments or other important federal programs. The Commission should also take several steps to streamline the E-rate program, including: (1) an increased use of online filing and an overall improvement of data management practices in the E-rate program; (2) allowing E-rate participants that enter into multi-year contracts of no more than three-years duration to file a single Form 471 at the agreement's inception if there is no material change in that agreement; and (3) enabling schools and libraries to receive direct reimbursement from USAC when they have paid the provider the full cost of their service.

Respectfully Submitted,

NTCA – THE RURAL BROADBAND ASSOCIATION

By: */s/ Michael R. Romano*
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

Brian Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

**WESTERN TELECOMMUNICATIONS
ALLIANCE**

By: */s/ Derrick B. Owens*
Derrick B. Owens
Vice President of Government Affairs
derrick@w-t-a.org

Noah Cherry
Director of Government Affairs
noah@w-t-a.org

317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202

Dated: November 8, 2013