

**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)	

Reply Comments of WTA – Advocates for Rural Broadband

I. Introduction and Summary

WTA – Advocates for Rural Broadband (“WTA”)¹ hereby submits these reply comments in response to the Commission’s *E-rate Modernization Further Notice of Proposed Rulemaking* and comments in this proceeding.² WTA’s members are rate-of-return regulated local exchange telecommunications carriers (“RLECs”) that serve some of the most rural hard-to-serve communities in the country and are providers of last resort to those communities. RLECs remain deeply committed to their communities and strive to meet the broadband needs of the local rural schools and libraries that many of their friends, families, and neighbors rely on for educational and community development purposes.

WTA continues to support the FCC’s E-rate modernization efforts aimed at bringing affordable broadband to schools and libraries across America. WTA’s members

¹ WTA – Advocates for Rural Broadband is a trade association representing more than 250 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

² *In re Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (“*Report and Order*” or “*FNPRM*”).

have a long history of serving the communications needs of rural schools and libraries and have already deployed advanced, scalable broadband infrastructure to virtually all of the schools and libraries in their service areas.³ WTA commends the FCC for its efforts to find ways to increase efficiencies in the E-rate program, including its clarification that consortia may invite service providers to bid on services to only a subset of consortia members⁴—an acknowledgment that local service providers like WTA’s RLEC members often can offer high-quality services at a lower cost to the rural schools and libraries in their service areas. WTA recognizes the benefits in certain circumstances for eligible entities provided by consortia in the pursuit of E-rate funding, particularly in more densely populated areas. However, the Commission should resist encouraging consortium bidding in an arbitrary or over-generalized manner that may lead to unintended consequences such as exclusion of lower-cost local providers or other forms of reduced competition for E-rate services and increased costs to the Program, as well as unfairness to the schools, libraries, and local service providers that are unable or unwilling to participate in consortia.

The FCC has recognized that the prioritization of consortium-based applications may prevent rural service providers from having the opportunity to compete against a consortium even if they are able to more efficiently serve rural areas.⁵ Additionally, most rural schools and libraries may not have experienced Information Technology (“IT”) personnel on their staffs and consequently may be unfamiliar with their particular

³ Comments of NTCA and WTA, WC 13-184 (Sept. 9, 2013) at 3 (“NTCA and WTA Comments”).

⁴ *Report and Order* ¶¶ 178-79.

⁵ *In re Modernizing the E-rate Program for Schools and Libraries, Wireline Competition Bureau Seeks Focused Comment on E-rate Modernization*, WC Docket No. 13-184, Notice of Inquiry, DA 14-308, ¶ 35 (“E-rate NOI”).

telecommunications needs and options. While consortia may be a useful tool to drive down costs in densely populated or urban areas, the benefits for rural schools and libraries may be illusory if they are not able to entertain bids from efficient local service providers and are forced, through administrative preferences, incentives or otherwise, to subscribe to broadband capacities beyond their actual service requirements at much higher costs than necessary.

II. The Commission’s proposed five percent discount incentive for certain consortia will likely be counterproductive, ultimately leading to increased costs and decreased efficiencies for the E-rate Program.

The Commission has noted—and WTA recognizes—that “[b]y aggregating purchasing across many schools and libraries, consortia can drive down the prices of E-rate supported services.”⁶ In its *Report and Order*, the Commission proposes an additional five percent discount for consortia meeting minimum size standards to encourage consortium participation.⁷ Although a consortium’s greater scale should theoretically lead to a lower price, some commenters have raised concerns that consortium purchasing, in some circumstances, can greatly reduce competition while ultimately increasing costs for E-rate services.⁸ Accordingly, the FCC should be cautious

⁶ *FNPRM* ¶ 285.

⁷ *Report and Order* ¶ 294. To qualify for the additional discount, a consortium’s participating entities must serve at least 30 percent of the students in a state, include at least 30 percent of the local education agencies in the state or be designated as a consortium by the state.

⁸ See NTCA *FNPRM* Comments (Sept. 15, 2014) at 7 (“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.”); ITTA *FNPRM* Comments at 7 (Sept. 15, 2014) (“[I]n some circumstances consortia can greatly reduce competition and ultimately increase costs for E-rate services.”); CenturyLink *FNPRM* Comments (Sept. 15, 2014) at 14 (“Consortia are not always assured of being more efficient. . . . [T]oo often consortia secure fiber that overbuilds existing facilities, facilities operated by a service provider that could deliver connectivity and future upgrades more cost effectively.”); see also WTA *Ex Parte* (May 30, 2014) and WTA *Ex Parte* (July 7, 2014) (discussing the ability for local service providers to provide schools and libraries more cost-effective and appropriate broadband services than achieved through the K-20 Education Network).

in its efforts to encourage the use of consortia to avoid undermining the Commission’s E-rate reform goals of increased competition and efficiency.

The Commission has previously recognized that “[e]ven though a larger service provider may enjoy economies of scale and scope, it will not necessarily be able to provide competitively priced services in every area in which a consortium’s members are located.”⁹ As NTCA stated in its comments, the encouragement of formation of large consortia through an additional discount could lead to disregard of the availability of existing network assets and providers capable of providing a more efficient, locally tailored solution in favor of one large provider with little or no incentive to provide services at the lowest possible or most efficient rate for any given school or library.¹⁰ For example, one effect of the exclusion of RLECs and other local service providers from consortium participation has been the unnecessary overbuilding of transport facilities when existing RLEC facilities could have been utilized at a much lower cost.¹¹

Additionally, Education Coalition’s specific proposed requirement that entities “perform large-scale, centralized procurement that results in master contracts” to receive the additional discount cuts against the recognition that centralized procurement is not always appropriate, particularly when considering the unique challenges faced when serving rural schools and libraries.¹² Without a process by which small local service providers (i.e., the providers with the knowledge of how best to serve their local rural communities in a cost-effective manner) have a meaningful opportunity to compete against a consortium provider to serve rural schools and libraries, there is great potential

⁹ *Report and Order* ¶ 179.

¹⁰ NTCA FNPRM Comments (Sept. 15, 2014) at 7-8.

¹¹ See WTA, WC Docket No. 13-184, Ex Parte (May 30, 2014).

¹² *Report and Order* ¶ 294.

that these institutions will subscribe to services beyond their actual needs in order to take advantage of the proposed consortium incentives when local RLECs would have been able to provide more customized and suitable services at lower prices.¹³ WTA recognizes that the Commission might be limited in its authority to require state and local educational and library authorities to change their contracting practices. However, as steward of E-rate Program funds, the FCC does appear to have the right to ask such authorities to detail the steps they took to determine: (a) whether other service providers (particularly existing local service providers) were interested in providing E-rate services to some or all of their schools and/or libraries; (b) the existing networks and facilities, available services and broadband speeds, and proposed rates of any such interested alternative service providers; and (c) the reasons why such alternative service providers were not chosen, particularly if their selection would have reduced E-rate Program costs.¹⁴

¹³ See WTA, WC Docket No. 13-184, Ex Parte (May 30, 2014) (stating that “where they have become aware of pending local E-Rate Program projects, [Washington Independent Telecommunications Association]’s RLEC members have been able to show local school authorities how they could satisfy their broadband service needs at substantially lower costs without sacrificing service quality.”); *see also* WTA, WC Docket No. 13-184, Ex Parte (July 7, 2014) (stating that Washington State RLECs can provide 1 Megabit per student service over switched access lines at 20 percent of the cost of providing the same service over special access lines).

¹⁴ See WTA, WC Docket No. 13-184, Ex Parte (Mar. 20, 2014).

III. The Commission should refrain from encouraging and prioritizing consortium applications without ensuring consideration of the most cost-effective solutions.

In the *Report and Order*, the Commission directed the Office of the Managing Director (OMD) and the Wireline Competition Bureau to prioritize application review for state and regional consortia applicants.¹⁵ The FCC has indicated that it believes that prioritizing E-rate consortium applications for broadband service will drive down prices. As the FCC has also noted, however, prioritizing consortium applications could prevent RLECs from serving schools and libraries in their local communities even if they are able to offer more competitively priced or tailored services.¹⁶ WTA continues to believe that by prioritizing consortium applications, the FCC is likely to effectively compel rural schools and libraries to participate in large broadband service consortia that provide services designed for larger urban and suburban schools and libraries in order to ensure that their application is approved without regard to what is in the best interests of the specific rural schools and libraries. As a result of consortium prioritization, and without a process providing local and rural alternatives, local RLECs that may be able to offer more tailored service offerings at lower prices could be prevented from competing for contracts for the schools and libraries they already serve in their communities. By removing local schools and libraries, in whole or part, from RLEC networks, consortium prioritization can weaken the ability of RLECs to serve the remaining portions of their sparsely populated and high-cost rural service areas.

Moreover, statewide and regional programs tend to be focused upon the needs of larger urban and suburban schools and libraries and to over-state the broadband service

¹⁵ *Report and Order* ¶ 169.

¹⁶ *E-rate NOI* ¶ 35.

needs (and consequently, the E-Rate Program costs) of smaller rural schools and libraries. The proposed additional five percent incentive, in conjunction with the prioritization of consortium bidding, may operate to essentially force rural schools and libraries with relatively fewer students or users to subscribe to higher capacity broadband services than necessary and at higher costs than warranted solely in order to take advantage such preferences. WTA is concerned that unnecessary administrative preferences and incentives will cause unintended consequences of increased costs at the expense of depleting resources available to other non-consortium participants in the E-rate Program, particularly if the proposed incentives are adopted without measures to ensure that the most cost-effective options for particular schools and libraries were truly considered in the bidding process.¹⁷

Further, consortia can obtain decreased transaction and administrative costs, as compared to individual funding applicants whose circumstances might make joining a consortium impractical or not necessary. An additional five percent discount for consortia participants could therefore ultimately act as an unwarranted punishment for eligible entities not participating in consortia for a myriad of situation-specific reasons.¹⁸ It is imperative for the FCC to protect the sustainability of the E-rate Program by ensuring that rural schools and libraries not be forced through administrative preferences for consortium applications to purchase unnecessarily expensive or wasteful services when more appropriate and cost-solutions can be provided by small local service

¹⁷ See also CenturyLink FNPRM Comments (Sept. 15, 2014) at 18.

¹⁸ See USTelecom FNPRM Comments (Sept. 15, 2014) at 5.

providers that have been continuously excluded from consortia for E-rate supported services.¹⁹

IV. Conclusion

As the FCC moves forward with its ongoing E-rate reform efforts, it will find that RLECs are willing partners in creating a bright broadband future for rural schools and libraries. RLECs across the country have already invested substantial capital and effort to serve the local schools and libraries in their communities and plan to continue their investment to meet the future broadband demands thereof. Accordingly, the FCC’s E-rate reform effort should encourage the utilization of existing RLEC infrastructure investments to provide customized broadband services to local schools and libraries in the most efficient manner. The Commission should avoid creating excessive administrative preferences for consortia, such as additional discounts or application prioritization, which are likely to have unintended adverse consequences upon E-Rate program costs and other efficiencies—a result detrimental to rural schools and libraries across the country and contrary to the goals of the current proceeding.

Respectfully Submitted,

WTA – Advocates for Rural Broadband

By: /s/Derrick B. Owens

Derrick B. Owens

Vice President of Government Affairs

317 Massachusetts Avenue N.E., Ste. 300C

Washington, DC 20002

(202) 548-0202

derrick@w-t-a.org

¹⁹ See WTA, WC Docket 13-184, Ex Parte (Sept. 15, 2014) (detailing that a small local service provider in Kalama, Washington “was not even afforded an opportunity to bid on the E-rate service . . . and learned that it was not participating in the E-rate project only when it was notified that service was being terminated on its existing facilities that were serving the Kalama schools.”).

By: /s/Patricia Cave
Patricia Cave
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
patricia@w-t-a.org

By: /s/Gerard J. Duffy
Gerard J. Duffy, Regulatory Counsel, I
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830
gjd@bloostonlaw.com

Dated: September 30, 2014