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	)	

Petition for Reconsideration and/or Clarification of WTA – Advocates for Rural Broadband, NTCA – The Rural Broadband Association, and the National Exchange Carriers Association, Inc.

Pursuant to Section 1.429 of the Commission's rules, WTA-Advocates for Rural Broadband ("WTA"),[1] NTCA-The Rural Broadband Association ("NTCA"),[2] and National Exchange Carriers Association, Inc. ("NECA")[3] (collectively, "Rural Associations") respectfully submit this Petition for Reconsideration and/or Clarification of certain aspects of the *Second Report and Order* ("*Order"*) in the captioned proceeding.[4]

The Rural Associations' members are committed to providing high-quality, affordable broadband services to anchor institutions in the communities they serve.

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[1] WTA – Advocates for Rural Broadband is a trade association representing more than 280 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] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's 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.

[3] NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 et seq.; MTS and WATS Market Structure, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983).

[4] In the Matter of Modernizing the E-rate Program for Schools and Libraries, FCC 14-189, Second Report and Order and Order on Reconsideration, WC Docket No. 13-184 (rel. Dec. 19, 2014) ("*Second Report and Order*").

However, in this instance the Rural Associations believe that the rule adopted in the *Order* imposing an obligation on high-cost support recipients to bid to provide fixed broadband at yet-to-be-determined national reasonable comparability benchmark(s)—and certify that they have done so as a condition of receiving support—should be reconsidered for several reasons. Because the proper notice and comment procedures required by administrative law were not followed in this proceeding, the Rural Associations respectfully request that the Commission reconsider and properly release the proposed requirement for public comment. If the Commission determines that reconsideration of the bidding requirement is not necessary at this time, the Rural Associations alternatively seek clarification with respect to the proceeding in which the new methodology for calculating the reasonable comparability benchmark(s) will be determined and when the new obligation to bid at benchmarked rates will take effect.

I. Background

In July 2013, the Commission began the process of modernizing its schools and libraries program ("the E-rate program") by issuing a Notice of Proposed Rulemaking ("*NPRM*") seeking to focus support on broadband services.[5] In its initial *NPRM*, the Commission sought comment "on whether greater coordination of E-rate funding with funding from other universal service programs could multiply the impact of these other programs to support the goals of E-rate."[6] The broadly worded questions posed in the *NPRM* focused primarily on the consideration of what portion of broadband deployment should be supported by the high-cost program and what portion should be supported by

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

[6] *NPRM* at ¶ 167.

E-rate.[7] There was no mention by the Commission of any intent to impose additional bidding obligations on universal service support recipients; rather, the Commission sought comment on the avoidance of duplicative funding.

Although the Rural Associations expressed general support for coordination between the E-rate and High Cost programs in comments filed in the Connect America Fund proceeding, those comments did not support—as the *Order* alludes—the adoption of a regime to require support recipients to offer broadband services at benchmarked rates; rather the Rural Associations supported the setting of specific speed targets with respect to anchor institutions and emphasized the importance of ensuring that both would-be eligible telecommunications carriers ("ETCs") and unsubsidized competitors be required to offer service at those speed targets before support is eliminated for the USF/CAF recipient in the supported areas.[8] Furthermore, the Rural Associations' comments filed in the E-rate Modernization proceeding focused primarily on a limited set of issues including consortia participation, E-rate data collection, avoidance of duplicative network construction, and streamlining the process for participating in the E-rate program.[9]

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[7] For example, the *NPRM* asks whether it would "be useful to specify that certain costs – such as construction charges to extend fiber to the school or library property line – are funded by high cost, and other costs – such as recurring charges for broadband service – are funded by E-rate?" *NPRM* at ¶ 168.

[8] Comments of NTCA, WTA, ERTA, NECA *et al.*, WC Docket No. 10-90, at 40-41 (filed Aug. 8, 2014). More specifically the comments provided that "the Rural Associations generally support setting a separate, higher speed threshold with respect to anchor institutions in rural areas for which high-cost USF support is provided, as well as a corresponding requirement that any USF/CAF recipient offer services of such speeds to most, if not all, anchor institutions in the supported areas. Moreover, . . . the Commission should ensure that any would-be competitor is likewise required to offer that same higher level of broadband service to anchor institutions throughout the affected service area before support is eliminated for the USF/CAF recipient operating in that area."

[9] *See* Reply Comments of WTA, WC Docket No. 13-184 (filed Sept. 30, 2014); Comments of NTCA, WC Docket 13-184 (filed April 7, 2014); Comments of NTCA and WTA, WC Docket 13-184 (filed Nov. 8, 2013); Comments of NTCA and WTA, WC Docket 13-184 (filed Sept. 16, 2013).

In July 2014, the Commission adopted the First E-rate Modernization Order and Further Notice of Proposed Rulemaking ("*First Order and FNPRM*") seeking additional comment on various reforms to the E-rate program while still making no mention of any proposals to require service providers that receive high-cost support to bid on E-Rate projects at benchmarked rates.[10] The Commission, however, adopted such an obligation in its December 2014 *Second Report and Order* relying primarily on a small number of comments and *ex parte* filings in the record of the separate Connect America Fund proceeding as support for this new E-rate program mandate for high-cost support recipients.[11] Additionally, the *Second Report and Order* directs the Wireline Competition Bureau ("the Bureau") "to develop national benchmarks for broadband services offered to schools and libraries" at or below which high-cost support recipients must bid in order to fulfill the new obligation.[12] The *Order* does not provide a date certain by which the benchmarks must be adopted or information regarding how many "national benchmarks" will be developed, nor does it provide any specificity or discussion with respect to how the benchmarks will operate or be calculated.

Because the *Order* imposes the mandatory bidding obligation while merely directing the Bureau to seek more focused comment on an unknown methodology to develop an unknown number of "national benchmarks" for fixed broadband services, the Rural Associations' members are unable to fully assess the impact of the obligation on

[10] A thorough review of the docket reveals one set of reply comments filed by Education Super Highway ("ESH") recommending a requirement similar to the obligation ultimately adopted by the Commission. See Reply Comments of Education Super Highway, WC Docket Nos. 10-90 *et al.* (filed Sept. 9, 2014).

[11] To wit, the *Second Report and Order* erroneously refers to several comments as being filed in the instant proceeding when they were filed solely in the Connect America Fund proceeding (i.e., WC Docket No. 10-90). The Order cites only one ex parte letter filed by AT&T in the E-rate Modernization docket raising "potential[] concern[s]" with a potential mandatory bidding requirement. *See Second Report and Order* at ¶ 64, n.146 (rejecting general concerns of AT&T about the requirement).

[12] *Second Report and Order* at ¶ 71.

their businesses. Numerous important questions remain unanswered about the new benchmark requirement, including how the "national reasonable comparability benchmarks" will operate, whether the Commission intends for the Bureau to develop a single national benchmark or multiple benchmarks, as well as when the requirement to bid at or below the benchmarks will take effect. Furthermore, because the *Order* thrusts entirely new substantive burdens and reporting requirements on high-cost support recipients without first providing adequate notice of the proposal and a meaningful chance for interested parties to consider and comment on the myriad complex issues raised by such a proposal, the Rural Associations believe that the rule must be reconsidered and released for comment before the Bureau proceeds further to develop the benchmark(s). Particularly because the national benchmark(s) appear to be based upon urban and suburban rates that have little or no connection to the local and middle mile costs of serving rural schools and libraries, further notice and comment is needed to permit thorough consideration and analysis of the operations and consequences of the subject benchmark(s), including whether they will cause harm by requiring rural entities to provide service to schools and libraries at a loss.[13]

II. Discussion

A. The E-rate Modernization Record Does Not Presently Support Imposing a New Mandatory Bidding Requirement on Universal Service Fund Recipients.

Pursuant to Section 553 of the Administrative Procedure Act ("APA"), the Commission must provide adequate notice of "either the terms or substance of [a]

[13] 5 U.S.C. §§ 553 (b), (c).

proposed rule or a description of the subjects and issues involved"[14] before providing interested persons with an opportunity to participate in the rulemaking through submission of comments.[15] While there is no question that federal agencies are free to adopt final rules that are not identical to those described in an NPRM where any differences are sufficiently minor and could have been anticipated by interested parties,[16] in order to comply with its notice obligations under the APA, an agency must alert interested parties "to the possibility of the agency's adopting a rule different than the one proposed."[17] The adequacy of the notice, then, depends on whether the final rule is a "logical outgrowth" of the proposed rule.[18]

Although it is well settled that an agency need not provide the particulars or each possible formulation of a proposed rule, "the logical outgrowth doctrine does not extend to a final rule that is a brand new rule, since something is not a logical outgrowth of nothing."[19] Moreover, courts have recognized on numerous occasions that "notice is inadequate where an issue was only addressed in the most general terms in the initial proposal."[20] Furthermore, "[an agency] must itself provide notice of a regulatory proposal . . . [and] . . . it cannot bootstrap notice from a comment. The APA does not

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[14] 5 U.S.C. § 553(b)(2).

[15] 5 U.S.C. § 553(c).

[16] *Nat'l Cable Television Assn., Inc. v. FCC*, 747 F. 2d 1503, 1507 (D.C. Cir. 1984).

[17] *Kooritzky v. Reich*, 17 F.3d 1509, 1513 (D.C. Cir. 1994). *See also Sprint v. FCC*, 315 F. 3d 369 (D.C. Cir. 2003) (vacating a rule where the Commission failed to give adequate notice that it was considering a change in reporting requirements that were more burdensome under the new rule).

[18] *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991).

[19] *See Int'l Union, United Mine Workers v. Mine Safety & Health Admin.*, 407 F.3d 1250, 1259-60 (D.C. Cir. 2005).

[20] *American Medical Association v. US*, 887 F.2d 760 (7th Cir. 1989). *See also AFL-CIO v. Donovan*, 757 F.2d 330, 339 (D.C.Cir.1985); *Chocolate Mfrs. Ass'n v. Block*, 755 F.2d 1098, 1106 (4th Cir.1985); *Kollett v. Harri*s, 619 F.2d 134, 144 & n. 13 (1st Cir.1980).

require comments to be entered on a public docket. Thus, notice necessarily must come—if at all—from the agency."[21] Therefore, "[i]t is both unreasonable and inconsistent with governing precedent to presume that . . . isolated comments would come to the notice of other parties."[22]

In supporting the Commission's chosen approach for developing reasonable rate comparability benchmarks, the *Order* states "no commenters suggest[ed] that recurring operating costs are significantly higher in high-cost areas than compared to urban areas."[23] Indeed, no commenters discussed the issue of cost with an eye toward the impacts of a mandatory requirement for high-cost support recipients—many of whom are RLECs that offer broadband services at cost-based, tariffed rates—to offer broadband service at benchmarked rate(s) to all schools and libraries located in the geographic area for which they receive support.[24] This is easily explained by the fact that neither the initial *NPRM* nor the *FNPRM* provided notice that the Commission was considering such a proposal, nor could stakeholders infer such intent from the record. Rather, the Commission in its *Order* takes comments from another proceeding and inserts them by reference into the E-rate Modernization proceeding. As a result of this lack of notice, many of the difficult questions that arise when comparing urban and suburban rates charged by price cap carriers with cost-based, tariffed rates charged by RLECs have not

[21] *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983). See also *Fertilizer Inst. v. EPA*, 935 F.2d at 1311 (stating that "[c]ommenting parties cannot be expected to monitor all other comments submitted to an agency").

[22] *AFL-CIO v. Donovan*, 757 F.2d 330 (D.C. Cir. 1985). *See also Ass'n of Private Sector Colleges & Universities v. Duncan*, 681 F.3d 427 (D.C. Cir. 2012) (rejecting the argument that other parties providing comment on a rule provides adequate notice to other commenters).

[23] *Second Report and Order* at ¶ 73.

[24] As mentioned supra, n. 10, Education Super Highway filed reply comments in WC Docket No. 10-90 proposing the requirement that CAF recipients offer broadband to anchor institutions in their service territories. No other commenters in the E-rate Modernization proceeding besides AT&T—presumably unaware of the proposal—addressed the proposal.

been considered or answered.

Nothing in the extensive record for the instant proceeding could fairly be said to apprise stakeholders of the Commission's intent to adopt a mandate that all high-cost support recipients bid at benchmarked rates on FCC Forms 470 posted by schools and libraries located in their geographic service areas.[25] On the contrary, at no point did the Commission propose or otherwise indicate that it was contemplating such a proposal. Rather, the Commission merely sought general comment on ways to coordinate funding in the E-rate program with other universal service programs.[26]

To support the proposition that "[t]here is record support from stakeholders . . . for obligating high-cost recipients to offer broadband services to schools and libraries," the *Second Report and Order* points to comments filed in an entirely separate proceeding.[27] Although the Commission has previously expressed an "expectation that eligible telecommunications carriers would offer broadband to community anchor institutions,"[28] such expression of expectation without more cannot suffice to provide adequate notice of the Commission's intent to adopt a substantive requirement of this scope—one that applies to hundreds of small service providers across the country already experiencing an economic squeeze at a time when the Commission has significantly increased service standards without providing any additional financial support to assist in meeting increased service expectations.

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[25] The E-rate Modernization Docket No. 13-184 contains approximately 3,675 comments from interested parties.

[26] *NPRM* at ¶¶ 167-169.

[27] *See* supra n. 11.

[28] *Second Report and Order* at ¶ 61 (citing *Connect America Fund et al*., WC Docket Nos. 10-90 *et al*., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17700-01 (2011) *pets. for review denied sub nom. In re FC*C 11-161, 753 F.3d 1015 (10th Cir. 2014) ("*USF/ICC Transformation Order*").

As a result of the inadequate notice of the proposed regulation, the record in the instant proceeding contains little—if any—support for or comment on the consequences of the obligation that high-cost support recipients bid to provide fixed broadband to rural schools and libraries at benchmarked rates based on urban and suburban rates that are generally set by price cap carriers without similar reliance upon the costs of providing service. As discussed above, the requirement appears to stem solely from vague statements in the initial *NPRM* and a single set of reply comments directed primarily towards the Commission's actions in a separate proceeding.[29] As the D.C. Circuit has recognized, a proposal contained in a single set of comments contained in a docket of substantial size cannot fairly be said to suffice to put interested parties on notice that their interests are at stake.[30]

The *Order* in all respects fails to mention or analyze important practical and policy questions raised by the proposal to develop one or more national rate benchmarks for broadband services offered to schools and libraries. Accordingly, although the Commission in this instance has properly acknowledged that analysis of the relevant data is required prior to adopting a methodology for calculating the benchmarks, further inquiry regarding the proper scope, operation, and impact of any proposed benchmark(s) by way of a full rulemaking on the proposal is necessary for the Commission and relevant stakeholders to ensure that the complexity inherent in achieving comparability in urban and rural rates is taken into account before any bidding requirement or the benchmark(s) is considered and adopted.

[29] It is worth noting that Education Super Highway did not include reference to the adopted proposal in comments it filed solely in the E-rate proceeding.

[30] *AFL-CIO v. Donovan*, 757 F.2d 330 (D.C. Cir. 1985).

At the most basic level, the *Order* is silent regarding how many "national" benchmarks are to be developed. Is there to be a single "one size fits all" national benchmark? Or does the Commission intend for the Bureau to develop multiple benchmarks – for example, for different regions of the country or for areas in different population density bands? How will the contemplated benchmark or benchmarks take into account the fact that distance, school and library sizes, network costs and middle mile expenses vary significantly among potential E-rate projects? Similarly, how will the benchmark(s) account for the differences in regional and state-wide consortia purchasing as compared to contracts between a service provider and a single school or school district?

Additionally, will the benchmark(s) be based on download speeds offered to schools and libraries (with a national benchmark for broadband offered at 25 Mbps, 100 Mbps, and 1 GB, for example) or should providers expect a national per-megabyte benchmark? Further, how will "national" benchmarks based on urban rates take into account the dichotomy between rates charged by price-cap carriers in urban and suburban areas that are generally set without regard for cost as compared to cost-based, tariffed rates charged by rural local exchange carriers ("RLECs")? These are important practical and policy considerations that should have been fully considered and analyzed by the Commission and stakeholders prior to adoption of the rule imposing the obligation on providers to bid at benchmarked rates.

Furthermore, it is highly unlikely that a single national benchmarked rate for broadband services provided to schools and libraries can properly take into account often vastly differing costs and challenges in providing broadband services in different states

and regions across the country. For example, middle-mile costs to access the Internet differ significantly among service providers and service areas and will place upward pressure on broadband rates in some communities more than in others. A provider in rural Wyoming, for example, likely has significantly greater transport costs to access the Internet backbone than a provider in suburban Cherry Hill, New Jersey, or even in rural western Maryland. This problem is exacerbated by the fact that RLECs and other small rural entities do not currently receive high cost support for their middle mile costs, and are consequently less able to price their school and library service offerings at benchmark levels dominated by urban and suburban providers that do not have comparable middle mile costs and by rural price cap carriers that will receive middle mile support. Ultimately, these higher and unsupported middle mile transport costs significantly distort the comparability of RLEC and other small carrier E-Rate pricing with that of the urban, suburban and price cap carriers whose E-rate prices are likely to dominate the contemplated benchmark calculations. The *Order* is entirely silent with respect to how the national rate benchmarks should take into consideration this important recurring component of the cost of providing service.

B. At a Minimum, the Commission Should Clarify That the Bureau's Implementation of the New Benchmark(s) Will Be Fully Subject to Notice and Comment, Based on Data Provided to the Public for Examination, and Fully Subject to Requests for Reconsideration and/or Review.

Whereas the Commission in the Connect America Fund proceeding adopted a methodology for calculation of the urban rate floor prior to having the data necessary to evaluate the chosen methodology, the Commission in the instant proceeding has chosen to direct the Bureau to seek further comment in order to calculate national "reasonable

comparability benchmarks" for E-rate supported broadband services offered to schools and libraries.[31] For the reasons discussed above, the Rural Associations believe this direction is premature. The Commission should reconsider its decision and instead issue a *Further Notice* seeking focused comment on the proposal and the various issues described above.

If, however, the Commission determines to implement the benchmark approach as adopted, it must at a minimum direct the Bureau to develop the new national reasonable comparability benchmark or benchmarks for fixed broadband services in an open and fair manner.

The *Order* requires the Bureau to "rely upon data obtained from FCC Forms 471 submitted by urban schools, libraries, and consortia . . ., as well as other publicly available data sources."[32] However, it is unclear as to whether the Bureau is instructed to conduct a full proceeding that would provide interested parties the proper notice and opportunity to review, analyze, and comment on the data it intends to use in developing the proposed benchmark(s). In order to ensure that the Bureau develop a benchmark methodology that is truly workable for rural providers,[33] it is imperative that the Commission clarify that the Bureau will indeed put out proposals for comment prior to the adoption of any benchmark(s), including all data on which such proposals will be based.

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[31] Petition for Reconsideration of National Exchange Carrier Association, Inc., NTCA – The Rural Broadband Association, The Eastern Rural Telecom Association, and WTA – Advocates for Rural Broadband, WC Docket 10-90 (filed Aug. 4, 2014).

[32] *Second Report and Order* at ¶ 72.

[33] Another factor to be considered is that, under the Commission's existing rules, rate-of-return carriers receive high support only when a customer takes voice service. Consequently, if a school or library determines that it wants only broadband service from its local RLEC, that RLEC will not be able to offer a broadband-only service at a rate that is reasonably comparable to the contemplated national benchmark or benchmarks.

Furthermore, the Commission in stating that "no commenters suggest[ed] that recurring operating costs are significantly higher in high-cost areas than compared to urban areas"[34] appears to absolve the Bureau of the duty to develop a record investigating differences in recurring operating costs in high-cost areas and urban areas. In order to avoid imposing national benchmarks that fail to account for the significantly varying costs associated with providing service in the country's geographically diverse and high-cost areas, it is imperative that the Commission make clear that the Bureau should not limit its inquiry when developing the benchmarks solely to FCC Forms 471 and public documents detailing the recurring costs of providing broadband services to urban schools and libraries. Rather, the Bureau should be instructed to consider as one aspect in the benchmark calculation methodology critical rural factors (such as distance, terrain, climate, population density, and middle mile transport alternatives) that affect the recurring costs of serving rural schools and libraries.

Although the *Order* notes that "the national benchmarks developed by the Bureau will be reasonably comparable, *but not identical*, to rates charged for similar offerings to schools and libraries in urban areas,"[35] it does not explicitly direct the Bureau to consider the very different costs of serving rural schools and libraries *as compared* to their urban and suburban counterparts. Because it is unclear from the *Order* whether the Bureau must consider recurring cost differences, including potentially much higher middle-mile transport costs, in addition to how many and how any such benchmarks should operate, the Rural Associations request assurance that differences in the recurring costs of serving rural and urban schools and libraries will be taken into consideration as the Bureau

[34] *Second Report and Order* at ¶ 73.

[35] *Id.* (emphasis added).

develops the reasonable comparability benchmarks. Furthermore, to the extent that the Commission intends for the Bureau to develop a single, nationwide benchmarked rate at or below which all high-cost support recipients must bid to provide a particular service, further focused comment is necessary to ensure that the major questions and potential impacts of such an approach are thoughtfully considered and analyzed by stakeholders and the Commission prior to the rule, which is currently set to be operative in fewer than six months, going into effect.

Moreover, the Commission should explicitly instruct the Bureau to consider all reasonable alternatives suggested by the data, including the appropriateness of adopting multiple benchmarks as opposed to a single national benchmark and the importance of accounting for potential cost differences. Finally, the Commission should clarify that any decision by the Bureau in developing and implementing the benchmark(s) will be subject to reconsideration and/or review by interested parties based on the record developed in the benchmark proceeding.

C. The Bidding Requirement Should Not Take Effect Until After the Bureau Adopts a Final Methodology for Calculating the Reasonable Comparability Benchmark(s).

Finally, the *Second Report and Order* currently requires high-cost support recipients to bid on FCC Forms 470 beginning "no sooner than E-rate funding year 2016."[36] Because the reasonable comparability benchmark(s) have not yet been adopted, and there is no deadline in the Order by which the Bureau must adopt such benchmark(s), affected service providers do not know whether they will be apprised of the benchmark adopted for funding year 2016 in time to allow them to take steps to comply with the new

[36] *Second Report and Order* at ¶ 69.

requirement to bid at benchmarked rates, including re-filing of interstate tariffs and obtaining other necessary regulatory approvals. Although the 2016 funding year will not commence until July 1, 2016, Forms 470 may be posted by schools, libraries, and consortia up to 12 months prior to the start of a given funding year and remain posted for a varying length of time. This means that Forms 470 requesting service for funding year 2016 could be posted as early as July 1, 2015, and remain active for as few as 28 days.[37] Therefore, high-cost support recipients could be obligated within as little time as the next four months to bid in response to Forms 470 before knowing at what rates they are permitted to offer E-rate supported services or knowing any detail regarding how such rates will be calculated, thereby risking receipt of critical universal service support if they fail to comply. As a result of this lack of clarity regarding how and when the benchmarks will operate and take effect, the Rural Associations' members are unable to fully determine the impact on their businesses, if any, the requirement to bid at or below the benchmark will have in the immediate and short-term future.

Further, the Commission recognized in its *Order* that many RLECs offer broadband Internet access transmission services at cost-based tariffs filed with NECA. As the *Order* recognizes, telephone companies offering tariffed broadband Internet access transmission services may need to revise or re-file new interstate tariffs in order to comply with the Commission's tariffing rules pursuant to the Communications Act but provides no further guidance. Accordingly, the Rural Associations seek additional clarification that high cost support recipients will not be required to bid at the benchmarked rates until after the Bureau has conducted a full proceeding to establish the

[37] *See* 47 C.F.R. § 54.503(c)(4) (requiring schools and libraries to wait at least four weeks after posting a Form 470 with the Administrator before selecting and making commitments with service providers).

benchmarks and has developed the necessary guidance and procedures for providers offering broadband Internet access transmission services pursuant to interstate tariffs.

III. Conclusion

The Rural Associations continue to support the Commission's efforts to improve and modernize the E-rate program to improve efficiency and tailor its focus to ensuring that schools and libraries have access to high-capacity broadband at affordable rates. However, the Rural Associations believe that several aspects of the *Second Report and Order* require reconsideration and/or clarification.

Specifically, because the Commission did not provide adequate notice of its intent to impose a mandatory bidding requirement, neither stakeholders nor the Commission had the opportunity to consider the myriad policy issues, costs and benefits of its proposal to establish national rate benchmark(s) at or below which providers must offer their services. Accordingly, the requirement adopted in its *Second Report and Order* should be reconsidered and released to the public for comment on how the Commission can best balance applicant and service provider benefits and obligations in a manner that avoids imposing requirements that harm rural providers and the schools and libraries they serve – a result counterproductive to the goals of the E-rate and other universal service programs.

At a minimum, the Rural Associations request clarification that the Bureau is instructed to put out proposals for comment prior to adoption of any benchmark(s) including data on which such proposals will be based and must consider all reasonable alternatives suggested by the data, including multiple benchmarks and potential cost differences in order to ensure that rural providers can offer to provide E-rate services at

rates that appreciate the actual costs (including middle mile transport costs) of serving their rural schools and libraries. Furthermore, the Commission should clarify that any decision by the Bureau will be subject to reconsideration and/or review by interested parties based on the developed record.

Finally, the Rural Associations request that the Commission clarify that the new obligation will not take effect until after the Bureau conducts a full proceeding and adopts the benchmark methodology and the necessary guidance for providers currently offering broadband Internet access transmission services at tariffed rates.

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Dated March 6, 2015