

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

In the Matter of)	
)	
E-Rate Program Amortization Requirement)	WC Docket No. 19-2
)	
Modernizing the E-Rate Program for Schools and Libraries)	WC Docket No. 13-184
)	

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

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association¹ hereby submits these comments in response to the Notice of Proposed Rulemaking (“*NPRM*”)² issued by the Federal Communications Commission (“Commission”) in January 2019 in the above-captioned proceedings. The *NPRM* seeks comment on the Schools and Libraries (“E-Rate”) Universal Service Fund (“USF”) program’s amortization rule.

NTCA supports elimination of the E-Rate program’s amortization rule for non-recurring category one funding requests over \$500,000. This rule, when in effect prior to its temporary suspension in 2014,³ undermined the efficiency and utility of the E-Rate program for schools and libraries and failed to accomplish its intended purpose.

¹ NTCA represents nearly 850 rural rate-of-return regulated telecommunications providers (“RLECs”). 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.

² *E-Rate Program Amortization Requirement*, WC Docket No. 19-2, *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 19-5 (rel. Jan. 31, 2019) (“*NPRM*”).

³ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, FCC 14-189 (rel. Dec. 19, 2014), ¶¶ 17-21 (“*2014 E-rate Second Report and Order*”) (suspending the amortization rule pending further consideration).

In connection with any such elimination of the amortization rule, however, the Commission should amend its E-Rate special construction rules to promote better coordination between its USF programs. Specifically, the Commission should ensure that existing investments made in rural areas as supported by the High-Cost USF program and that benefit residential and business consumers on a community-wide basis are not put at risk via duplicative overbuilding.

II. THE COMMISSION SHOULD ELIMINATE THE E-RATE AMORTIZATION REQUIREMENT, AS THE PROVISION LED TO UNCERTAINTY AND INCREASED COSTS FOR SCHOOLS AND LIBRARIES.

As described further below and subject to caveats as described herein, NTCA supports, as proposed by the *NPRM*,⁴ the elimination of the temporarily suspended E-Rate program amortization requirement. As the *NPRM* notes, in the five-year period during which this provision has been suspended, school and library beneficiaries have been spared the uncertainty that the rule once wrought: when in place, the rule required an applicant to seek out funding in three consecutive years and move forward with a project after being awarded support in year one while running the risk of not receiving funding in years two or three. Should the provision be reinstated, a school or library contemplating a large funding request for non-recurring category one funding subject to the amortization rule (funding requests over \$500,000) may therefore, understandably, be hesitant to commit matching funds and move forward in the face of not securing all of the E-Rate support necessary to bring the project to fruition. A school or library in need of a new or improved broadband service to fulfil its educational mission should not have to face the choice of “rolling the dice” in this manner or sticking with an inadequate or non-

⁴ *NPRM*, ¶ 5 (proposing to “eliminate the amortization requirement for non-recurring category one funding requests over \$500,000, including for special construction, from the E-Rate program.”).

existent connection. Moreover, as the *NPRM* notes, the resulting speculative nature of future funding availability that the amortization rule created, in the past, hampered E-Rate applicants' ability to find vendors willing to take on that risk, further undermining schools' and libraries' ability to utilize the program. The Commission should not return to this state of uncertainty that limits the reach of this vital USF support mechanism.

In addition, the amortization rule is inefficient. To the extent that a service provider could be forced to recover capital costs through higher recurring charges,⁵ the amortization policy, should it be reinstated, would waste limited USF resources and needlessly increase schools' and libraries' costs. The rule would also force schools and libraries to complete the E-Rate application process multiple times for the same project, again wasting their limited resources. Finally, as the *NPRM* notes, the Commission has found that the underlying rationale for the creation of the rule in 2000 – a concern that large funding requests would overwhelm the program budget – has not proven to be true.

In short, it seems that the amortization rule failed to accomplish its intended goals and undermined the efficiency and utility of the E-Rate program. The Commission should, at every turn, seek to improve the functioning of its universal service programs. Like NTCA members receiving High-Cost universal service support and investing in long-lived infrastructure in rural areas, schools and libraries seeking to pursue their educational missions with a high-quality broadband connection value predictability when making large technology investments. To the extent that this predictability is undermined, so are the Commission's universal service goals, and thus the amortization rule should be eliminated permanently.

⁵ *See Id.*, ¶ 7 (“Has permitting service providers to recoup costs up front allowed applicants and the USF to pay less over time because service providers have not otherwise recouped capital costs over time through higher recurring charges?”).

III. ELIMINATION OF THE AMORTIZATION REQUIREMENT MUST BE ACCOMPANIED BY “GUARDRAILS” TO ENSURE THAT THE E-RATE AND HIGH-COST PROGRAMS WORK HAND-IN-HAND TO ADDRESS THE NEEDS OF RURAL COMMUNITIES AS A WHOLE.

As noted above, NTCA supports Commission action to streamline the E-Rate application process to remove unnecessary hurdles that may prevent a school or library from utilizing this important program. Indeed, NTCA has consistently supported modernization of, and improvements to, not only the E-Rate⁶ but also the High-Cost,⁷ Lifeline⁸ and Rural Health Care⁹ mechanisms. These four USF programs collectively represent policymakers’ recognition of the value of communications services to each and every American, with a targeted focus on enabling improved access to sustainable communications by discrete segments of the U.S. population. Each program has had its own positive impact on rural Americans as well, bringing communications technology to rural students and library patrons who might have otherwise been left behind in an increasingly digital age, ensuring that low-income rural Americans can reach emergency services and stay connected to family, friends and potential employers, and bringing healthcare services to parts of this nation that might otherwise go without.

⁶ Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 16, 2013) (supporting modernization of the E-Rate Program); NTCA and the Utah Rural Telecom Association, Petition for Clarification and/or Reconsideration, WC Docket No. 13-184 (fil. Sep. 17, 2014) (seeking amendments to the definition of “rural” to ensure that such schools and libraries receive sufficient support).

⁷ See Comments of NTCA–The Rural Broadband Association, WC Docket No. 10-90, et al. (May 25, 2018) (arguing for longer-term sufficiency of USF support budgets for small RLECs); Comments of NTCA, et al., WC Docket No. 10-90, et al. (Aug. 8, 2014) (arguing for modernization of the High-Cost program to support standalone broadband).

⁸ Comments of NTCA, WC Docket Nos. 11-42, et al. (fil. Aug. 31 2015) (supporting modernization of the Lifeline Program); NTCA Petition for Temporary Waiver, WC Docket No. 11-42, et al. (fil. Jul. 23, 2018) (seeking a waiver of the program’s minimum service standards to improve consumer choice).

⁹ NTCA Comments, CG Docket No. 17-310 (fil. Feb. 2, 2018) (supporting the Commission's goal to facilitate greater provision of telehealth in rural America and discussing ways the agency can assess accurately the needs of rural areas, identify the resources necessary to meet those needs and to set into motion a holistic determination of how the various elements of the USF, particularly high-cost support, can be leveraged to support rural health care).

It is important, however, that these programs work in concert. Thus, if the Commission is going to eliminate the amortization rule and thereby potentially enable greater self-construction of networks through leveraging of E-Rate dollars, the Commission should ensure better coordination between its existing USF programs to avoid potential waste of limited universal service resources in the form of duplicative supported networks. To this end, the Commission should pair elimination of its amortization rule with a surgical reform of the special construction rules¹⁰ adopted in 2014 to implement a process by which applications for such projects will be reviewed to prevent the deployment of redundant E-Rate funded networks where a provider leveraging the High-Cost USF program is already delivering high-speed broadband services over existing networks.

To be unmistakably clear, NTCA and its member companies do ***not*** oppose the use of E-Rate funds for special construction. A school or library in need of a broadband connection should be able to consider “every tool in the toolkit” to bring the benefits of the Internet to their students/patrons; if E-Rate funds can help an unconnected school become connected through construction of a facility, by all means the Commission should enable that. Indeed, a number of schools and libraries across the nation have lagged in terms of access to higher-speed broadband, and the agency has taken several laudable steps to correct that problem.

At the same time, for many of the rural schools that already ***are*** fortunate enough to be connected to high-speed broadband, the High-Cost USF program is a significant component of that success story. Indeed, NTCA members have led the way in making fiber available to

¹⁰ “Special construction” or “self-construction” as discussed herein refers to (1) applicants (including consortia) seeking to use special construction E-Rate funds to self-provision broadband services and (2) applicants (including consortia) seeking to use special construction E-Rate funds to pay a third-party provider to construct a broadband network and from which the applicant will lease lit or dark fiber.

approximately 82 percent of the schools and 73 percent of the libraries in their rural service areas.¹¹ These small providers have done so by leveraging a mix of private capital, High-Cost universal service support, Rural Utilities Service (“RUS”) programs, and other state and federal initiatives. But NTCA members have of course gone beyond connecting *only* anchor institutions, and have in fact made great strides in making high-quality broadband connections available to consumers and businesses of all kinds throughout their entire rural service areas, often by leveraging High-Cost USF support. It goes without saying as well that the sustainability of such community-wide networks is critical to ensuring that our nation can overcome the “homework gap” – allowing children to have meaningful access to broadband both at school *and* at home.

With this all as background, NTCA believes the elimination of the amortization rule should be paired with simple, surgical amendments to the Commission’s E-Rate special construction rules to minimize, if not eliminate, the prospect of conflict between USF programs. This is necessary to avoid the potential for an E-Rate-funded network to overbuild a High-Cost-supported network to the same school or library, thereby undermining the integrity of both programs and putting at risk the sustainability of the existing community-wide network. For this reason, NTCA proposes that the Commission amend its Part 54 E-Rate competitive bidding rules to address the potential for E-Rate supported special construction to an individual school or library (or consortia) that already has access to a broadband connection that is: (a) supported by the High-Cost USF program or was built leveraging some other governmental program funds

¹¹ NTCA–The Rural Broadband Association, 2018 Broadband/Internet Availability Survey Report, p. 10; available at: https://www.ntca.org/sites/default/files/documents/2018-12/2018%20Broadband%20Survey%20Report_FINAL.pdf

(e.g., RUS or BTOP programs); and that is (b) capable¹² of delivering speeds meeting the E-Rate program's speed targets. Pursuant to this proposal, for those institutions seeking to use E-Rate support for the construction of physical broadband outside plant infrastructure (for individual school connections, Wide Area Networks, consortia, etc.), basic safeguards should be adopted.

These safeguards should include:

(1) a public challenge process that requires an E-Rate applicant (including consortia) 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 to meet E-Rate program speed targets;

(2) a 30-day period in which an existing provider can demonstrate that its network facilities are capable of connecting via fiber, within 60 days, the school or library in question with broadband services meeting the target speed.

As noted above in reference to a recent member survey (*see* fn. 10, *supra*), NTCA's members have made incredible strides in making high-capacity broadband connections available to the schools and libraries – and to businesses and consumers at home – in their service areas. More work needs to be done, however, and the Commission's E-Rate program plays an essential role in that process. All that NTCA asks is that the Commission ensure, where possible, its USF programs work in concert rather than in conflict and, where possible, the agency's rules leverage existing networks built and operated leveraging High-Cost USF program resources in rural areas in lieu of using another program's resources to overbuild those. The contrary result – redundant connections enabled by two federal programs to the same rural school or library – has the potential to undermine policymakers' and the public's faith in both of these critical programs.

¹² This should mean the entity is capable of using its owned assets to deliver service at the requested speed/capacity within 60 business days of request by an E-rate program applicant in receipt of an approved application for program funds.

Moreover, use of E-Rate funds to build a redundant fiber connection leaves less on the table for another rural school or library that either lacks access to any high-speed network connection at all or, as the case may be, could benefit from the program's support to make an existing connection affordable. Such overbuilding also puts at risk the sustainability of community-wide rural networks built using High-Cost USF resources – and thus threatens to exacerbate, rather than overcome, the “homework gap” – when larger “anchor tenants” are peeled off from the rest of the businesses and homes in an area to be served by a specialized, dedicated network.

In closing, NTCA believes E-Rate is an essential solution to help in connecting schools and libraries, and that special construction can play an important part in assisting these institutions. But the proposal contained herein is a necessary “guardrail,” because the failure to take stock of and leverage existing network assets would exhaust limited E-Rate funds that could be better spent on keeping services affordable, permitting installation of upgraded internal connections where needed, or addressing the circumstances of *true unavailability of robust connections*.

IV. CONCLUSION

For the reasons discussed herein, the Commission should:

- permanently eliminate the E-Rate program's amortization rule for non-recurring category one funding requests over \$500,000 and;
- adopt safeguards to prevent wasteful and unnecessary overbuilding of a high-speed connection already available that is supported in part by the High-Cost USF program or other federal funding source.

Respectfully submitted,



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