



July 29, 2016

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Modernizing the E-Rate Program for Schools and Libraries; WC Docket No. 13-184; Connect America Fund; WC Docket No. 10-90

Dear Ms. Dortch:

The United States Telecom Association (USTelecom) submits this ex parte notice in response to separate petitions submitted to the Federal Communications Commission (Commission) by Microsoft Corporation and several joint petitioners (Microsoft Petition),¹ and the Boulder Valley School District and the Samuelson-Glushko Technology Law & Policy Clinic (Boulder Valley Petition)² (collectively “the Petitions”). USTelecom maintains each of the Petitions raise issues of significant importance to the Commission’s administration and management of the E-Rate program. On issues as complex and potentially far-reaching as those raised in the Petitions, the Commission cannot proceed without the development of a factual record.

Without speaking to the individual merits of the Petitions, each presents issues that raise fundamental questions relating to the administration of the E-rate program. For instance, the Microsoft Petition proposes to extend an eligible school’s E-rate-covered internet access service to the homes of certain students.³ However, to determine whether its proposal is consistent with existing rules, the Commission needs to determine what constitutes educational purposes,⁴

¹ Joint Petition for Clarification or, in the Alternative, Waiver, of Microsoft Corporation, et. al., WC Docket No. 13-184 (submitted June 7, 2016) (*Microsoft Petition*).

² Petition for Waiver, on behalf of Boulder Valley School District, Samuelson-Glushko Technology Law & Policy Clinic, WC Docket No. 13-184, WC Docket No. 10-90 (submitted May 16, 2016) (*Boulder Valley Petition*).

³ *Microsoft Petition*, p. 3.

⁴ See e.g., *Microsoft Petition*, p. 4 (inquiring as to whether “E-rate-supported ‘educational purposes’ exclude off campus connectivity.”).

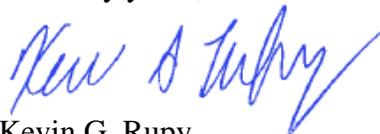
whether off-premises uses are permissible,⁵ and the scope of the eligible services list,⁶ to name just a few examples. Similarly, the Boulder Valley Petition seeks changes to the Commission’s cost allocation rules under the E-rate program that warrant thorough consideration through a public notice proceeding.⁷ Such decisions cannot be made in a conceptual vacuum; they require fact specific analysis, and only through a complete record can the Commission make a fully-informed decision.

Absent placement of the Petitions on public notice, the Commission will prevent interested parties from participating effectively in this proceeding and preclude the kind of open, transparent scrutiny and debate that is necessary to ensure that the objectives of the Administrative Procedure Act (APA) are met and that the public interest is served. The APA’s notice requirement “does not simply erect arbitrary hoops through which federal agencies must jump without reason.”⁸ The APA’s “notice requirement ‘improves the quality of agency rulemaking’ by exposing regulations ‘to diverse public comment,’ ensures ‘fairness to affected parties,’ and provides a well-developed record.”⁹ Moreover, where an agency reverses course or abandons established precedent upon which regulated entities have come to rely, it must account for significant reliance interests engendered by those previous policies and provide “a more substantial justification” for adopting that new course.¹⁰

For the foregoing reasons, the Commission should place the Petitions on public notice to ensure the establishment of a well-developed record, and compliance with the APA.

Please contact the undersigned with any questions.

Sincerely yours,



Kevin G. Rupy
Vice President Law & Policy

cc: Aaron Garza
Charles Eberle

⁵ See e.g., *Microsoft Petition*, p. 5 (noting that while the Commission’s rules presume that on-premises use of supported services satisfies the educational purpose requirement of the E-rate fund, they “lack clarity regarding which off-premises uses satisfy this requirement.”).

⁶ See e.g., *Microsoft Petition*, p. 4. (noting that the Commission’s current Eligible Services List “simply does not contemplate the scenario” set forth in the *Microsoft Petition*).

⁷ *Boulder Valley Petition*, pp. 1 – 8.

⁸ *Sprint v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003).

⁹ See *id.* (citing *Small Refiner Lead Phase-Down Task Force v. United States EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983)).

¹⁰ *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1209 (2015).