

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:

Comments on Petitions Regarding)	CC Docket No. 02-06
Off-Campus Use of Existing E-rate)	WC Docket No. 10-90
Supported Connectivity)	WC Docket No. 13-184

**COMMENTS OF THE
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION,
THE NATIONAL DIGITAL INCLUSION ALLIANCE (NDIA),
THE GIGABIT LIBRARIES NETWORK (GLN)
KELLOGG & SOVEREIGN CONSULTING, LLC
AND
MOBILE BEACON**

November 3, 2016

EXECUTIVE SUMMARY

The SHLB Coalition, NDIA, GLN, K&S, and Mobile Beacon support the petitions filed by the Boulder Valley School District and the Virginia schools with certain conditions. The National Broadband Plan and prior SHLB Coalition comments have long supported network sharing as a way to reduce costs for all users, promote economic growth and eliminate silos. Current FCC rules do not prohibit sharing of E-rate funded facilities. At the same time, the integrity of the E-rate program must be preserved, and the FCC must be cautious not to open the door to additional purposes that stray from the core mission of the E-rate program.

A useful “rule of thumb” is that the E-rate program should permit but not pay for additional uses of E-rate funded facilities. Allowing the school and library networks to be shared with families of students who do not have access to broadband services is especially important because all students should have the opportunity to obtain digital skills. The FCC should clarify that schools and libraries may, if they so choose, share their network capacity and services with students at home under conditions similar to those adopted by the FCC in the Sixth Report and Order, which allowed community use of schools’ Internet after school hours. The FCC should clarify that such residential access is permitted and no cost allocation is necessary if 1) the schools and libraries do not seek to acquire more broadband capacity than they need, 2) the facilities are used primarily for educational purposes, and 3) they do not re-sell capacity in violation of the statutory prohibition. This approach will give schools and libraries the option to allow their networks to be used for community purposes without impacting the E-rate fund.

COMMENTS OF THE

SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION, THE NATIONAL DIGITAL INCLUSION ALLIANCE (NDIA), THE GIGABIT LIBRARIES NETWORK (GLN), KELLOGG & SOVEREIGN CONSULTING, LLC (K&S), AND MOBILE BEACON

I. Introduction

The Schools, Health & Libraries Broadband (SHLB) Coalition, the National Digital Inclusion Alliance (NDIA), the Gigabit Libraries Network (GLN), Kellogg & Sovereign Consulting, LLC (K&S), and Mobile Beacon respectfully submit these comments in response to the Public Notice issued on September 19, 2016 requesting comment on two petitions seeking clarification and/or waivers of the E-rate cost allocation rules. Both petitions seek to allow facilities that have already been deployed and funded by the E-rate program to carry broadband traffic from schools to students' homes to help close the "homework gap."¹

The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-capacity broadband for anchor institutions and their communities.² The Coalition believes that high-capacity broadband is the key infrastructure that libraries, K-12 schools, community colleges, colleges and universities, health clinics, public media and other anchor institutions need for the 21st century. Enhancing the broadband capabilities of these community anchor institutions is especially important to the most vulnerable segments of our population – those in rural areas, low-income consumers, disabled and elderly persons, students, minorities, and many other disadvantaged members of our society.

NDIA is a national nonprofit affiliate-based organization that seeks to provide a united voice for local technology training, home broadband access and public broadband

¹ "WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITIONS REGARDING OFF-CAMPUS USE OF EXISTING E-RATE SUPPORTED CONNECTIVITY," DA 16-1051 Released: September 19, 2016, https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1051A1.pdf.

² SHLB Coalition members include representatives of schools, libraries, telehealth networks, state broadband organizations, private sector companies, state and national research and education networks, foundations, and consumer organizations. See www.shlb.org for a complete list of SHLB Coalition members.

access programs.³ NDIA works collaboratively to craft, identify and disseminate financial and operational resources for digital inclusion programs while serving as a bridge to policymakers and the general public. NDIA recognizes community anchor institutions are essential to increased digital equity precisely because they are “community-based” and long-standing “anchors”.

The Gigabit Libraries Network operates as an open collaboration of tech savvy innovation libraries cooperating as a distributed global testbed/showcase environment for high performance applications and equipment in the service of educational, civic and cultural objectives. More information is available at <http://giglibraries.net/about>.

Kellogg & Sovereign® is an E-rate management firm that has managed thousands of E-rate applications over the previous 20 years. At present, the firm assists 355+ applicants in eleven states. These applicants range in size from a total of 14 students to applicants with thousands of students and includes many large urban districts as well as those in remote locations where access to the homes may be an ATV trail through the forest or huge multi-lane highways. Our diverse client base provides us with the ability to see a wide range of schools and libraries E-rate applications and gives us an understanding of their various needs from a broadband perspective.

Mobile Beacon was created in 2010 by a 501(c)(3) nonprofit organization and the second largest Educational Broadband Service (EBS) provider in the United States. Our mission is to help schools, libraries, and nonprofit organization the high-speed, high-capacity broadband access they need to maximize their philanthropic impact and better serve our communities. One of our largest programs is our i3 Internet Inclusion Initiative, which helps community anchor institutions extend broadband access to those in their communities who need it most. More information is available at www.mobilebeacon.org.

³ NDIA's 200+ affiliated organizations currently include 33 national nonprofits and 154 local public and nonprofit organizations in 34 states and the District of Columbia. Our local affiliates include 18 municipal government bodies, 25 local public libraries and regional library councils, and 88 local nonprofits, along with college and university programs, state broadband agencies, school districts and public housing authorities. A full, updated list of NDIA's affiliates is at <http://www.digitalinclusionalliance.org/members/>.

II. Both Sets of Petitioners Are Providing Extremely Important Services for Their Communities.

Both petitions propose to use facilities already deployed and funded by the E-rate program for schools and libraries to carry broadband services to students who do not have access to those critical services. Enhancing broadband connectivity to the students is an extremely important public policy goal. Residential broadband adoption has stalled at about 2/3rds of American homes,⁴ and about 5 million homes with students lack access to essential broadband services. The parties behind these petitions deserve to be commended for seeking innovative solutions that provide Internet access in cost-efficient ways using wireless technologies. Both sets of petitioners are also to be commended for offering to self-fund these wireless services without using any additional E-rate funding. The petitioners are examples of Community Anchor Institutions developing a local creative solution for affordable home broadband service, an activity the Commission should encourage.

III. The Petitioners' Requests Are Consistent with the National Broadband Plan and the SHLB Coalition's Mission.

The National Broadband Plan (NBP) found that sharing of broadband assets is economically efficient and allows lower costs for all users. The NBP found this to be true for spectrum generally,⁵ for public safety networks,⁶ and for fiber networks as well. For instance, the NBP stated the following:

⁴ See, Pew Research Center, "Home Broadband 2015," at <http://www.pewinternet.org/2015/12/21/home-broadband-2015/>.

⁵ "Creating ways to access spectrum under a variety of new models, including unlicensed uses, shared uses and opportunistic uses, increases opportunity for entrepreneurs and other new market entrants to develop wireless innovations that may not have otherwise been possible under licensed spectrum models." NBP, p. 79.

⁶ "When Akron was deploying facilities and conduit to support its public safety network, it shared those facilities with OneCommunity, a northeast Ohio public-private partnership that aggregates demand by public institutions and private broadband service providers. As a result of that coordination, those same facilities and conduits now support health care institutions, schools and

Because broadband networks—particularly fiber optic networks—demonstrate large economies of scale, . . . policy restrictions that impede the ability of school networks funded by E-rate to share capacity with hospitals funded by the Rural Health Care program, or the public safety system which may be funded by state and other federal sources, drive up the cost of connectivity for those institutions and for others in the community.

The SHLB Coalition mission is to promote “open, affordable, high-capacity broadband for anchor institutions **and their communities.**” In fact, the SHLB Coalition was founded on the principle that network sharing and aggregation of anchor institutions would promote economic growth and benefit the entire community. The SHLB Coalition Mission statement states:

Broadband networks deployed to serve these community anchor institutions should be open to interconnection by other broadband networks serving the community as a way to spur additional broadband investment. Ultimately, all homes and businesses should have access to affordable, high-capacity broadband. Allowing interconnection to networks serving community anchor institutions will provide jumping off points for distributing additional broadband services into surrounding neighborhoods, including residences and other community anchor institutions.⁷

The SHLB Coalition has a history of supporting shared use of facilities and for supporting service to the community.⁸ SHLB has often stated that its goal is not just to

Wi-Fi access in Akron.” NBP, pp. 114-115.

⁷ See, <http://www.shlb.org/uploads/Governance%20Docs/SHLB%20Mission%20Statement.pdf>.

⁸ In our comments in the E-rate Modernization proceeding in 2014, the SHLB Coalition wrote: The SHLB Coalition supports extending the principle established in the 2010 E-rate Order to allow schools and libraries to use their E-rate-supported broadband connections to serve as community hot spots. Encouraging such use will expand the benefits of the E-rate program. Providing free wireless Internet access to the community surrounding a school or library could be extremely valuable, and could help to meet the Commission’s overall goals for promoting the widespread availability of wireless broadband. While community hot spots are a value to the community, the SHLB Coalition does not suggest that E-rate funds should be used to pay directly for the equipment or services used to provide community hot spots. There is already more demand on the E-rate fund than funds available. At the same time, the E-rate rules should not impede a school or library that wants to serve as a community hot spot. Schools and libraries should have the option of supporting a community hot spot without losing E-rate support.

extend broadband service “to” the anchor institutions but “through” anchor institutions to the surrounding community. Furthermore, the SHLB Coalition has recently issued a special report called “Connecting Anchor Institutions: A Broadband Action Plan”, which calls for greater use of shared network facilities to lower costs and spread the benefits of broadband connectivity to all.⁹ The petitions are consistent with the SHLB Coalition’s mission and our call for greater use of shared network facilities for the public good.

IV. The Commission Should Clarify that Boulder Valley and the Virginia Schools May, Under Certain Conditions, Share Their E-rate Funded Networks by Providing Broadband Services to Students’ Homes to Address the Homework Gap.

By extending (or sharing) E-rate funded services from the schools to (with) surrounding families, the petitioners are serving extremely important social needs and are consistent with the National Broadband Plan’s policy objectives. It seems that the only real question is what is the best legal path to permit these service offerings without expanding the scope of the E-rate program beyond its statutory mission. The two petitions make two different requests:

- The Boulder Valley petition asks the Commission to waive the cost allocation rule in Section 54.504(e) to allow residential traffic to be carried over E-rate funded facilities without cost allocation. (The Boulder Valley petition does not ask for permission to provide the service.)
- The Virginia schools petition asks the Commission to issue a declaratory ruling that the proposed TV White spaces service to residential consumers using E-rate facilities is permitted under the E-rate program rules. In the alternative, this Petition asks for a waiver of the E-rate rules to permit such usage.

See, <http://www.shlb.org/uploads/Policy/E-rate/Modernization/SHLB%202013%20E-rate%20reform%20Initial%20comments%20-%20Final.pdf>. p. 10.

⁹ See, <http://www.shlb.org/action-plan/papers/Promoting-Competition-for-Community-Anchor-Institution-Broadband-Services/>. (“Federal policy-makers can . . . Eliminate barriers that prevent anchor institutions from sharing their networks with other anchors and with the surrounding residential community to improve the availability of broadband for everyone.”)

Commission Rules Allow Ineligible Entities to Use E-rate Funded Services. Before addressing the specifics of each petition, we call attention to the difference between whether a use is “permitted” by the E-rate program rules, and whether a use will be “paid for” by E-rate. Many observers tend incorrectly to equate the two, assuming that the only permitted uses of E-rate funded services and equipment are those that satisfy the “educational purposes” test that is a requirement for receiving E-rate funding. Indeed, the Commission has encouraged the shared use of services and equipment paid for by E-rate as long as the costs for the other services or entities are properly omitted from the E-rate funding request.¹⁰ For example, the FCC’s rules explicitly allow (and in fact, encourage) schools and libraries to participate in consortia with ineligible entities in order to share network facilities and reduce costs to the E-rate applicant.¹¹ While the E-rate program does not (and should not) pay for the costs of these ineligible services, the E-rate rules do not require schools and libraries to have their own separate, stand-alone, networks that are divorced from other users.

Further, the Commission has allowed the use of services funded by E-rate without cost-allocation, as long as certain conditions were met. In the E-rate Sixth Report and Order issued in 2010, the FCC changed the standard concerning the use of E-rate funded facilities. Formerly, the rules required that E-rate facilities be “solely” used for educational purposes. In 2010, however, the FCC changed the standard to allow E-rate funding for services that are “primarily” for educational purposes.¹² The FCC then explicitly permitted

¹⁰ Section 54.504(e) of the FCC’s rules explicitly require applicants to engage in cost allocation (with exceptions) when a service includes a mix of eligible and ineligible components. In other words, the rules recognize that some equipment and services that are ineligible for E-rate support can be provided in conjunction with eligible services. If the only permitted uses were those that E-rate pays for, there would be no need for cost allocation.

¹¹ See the July, 2014 E-rate Modernization Order, at para. 168 (“Consortium purchasing can drive down the prices paid by schools and libraries for E-rate supported services. In this section, we reduce or eliminate some of the existing barriers to applicants’ participation in consortia.”)

¹² “We conclude that we should revise our rules to permanently allow schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate. Specifically, we revise sections 54.503 and 54.504 of our rules to require applicants to certify that “[t]he services the applicant purchases at discounts will be used primarily for educational purposes.” In the Matter of Schools and Libraries Universal Service Support Mechanism, Sixth Report and Order, released Sept. 28, 2010, para. 22 (footnotes excluded)

community use of E-rate funded facilities after school hours. In other words, by authorizing such community use, the FCC recognized that some E-rate funded facilities could be shared with non-educational uses, as long as the educational use remained primary and certain conditions were met, without requiring cost-allocation.

To be clear, we do not suggest that the E-rate program should be used to fund ineligible uses. The E-rate program is statutorily bound to fund only services for schools and libraries. But to our knowledge, there is no rule that prohibits a school or library from sharing its network with other parties or permitting the use of services that by themselves are not eligible for E-rate funding.

The Commission's Current Rules Would Allow Petitioners' Uses, as Long as Certain Conditions Are Met. The FCC's existing rules and policies do not constrain the FCC from issuing a declaratory ruling to clarify that the uses proposed in the petitions are acceptable under certain conditions. In fact, the FCC has the flexibility to issue a clarification as requested by these petitions without either a further rulemaking or even a waiver of the Commission's rules, as the current rules do not prohibit these shared uses. If the Commission believes that a different framework is more appropriate for these situations, SHLB respectfully suggests the Commission use its rule allowing "ancillary" uses without requiring cost-allocation as a basis for analysis.

First, the Commission could issue a declaratory ruling, finding that the uses requested by the petitioners – and others like them – are allowed as long as certain conditions are met, consistent with the Sixth Report and Order. In that decision, the Commission found (unanimously) that allowing such community access was consistent with the overall universal service goals and that "no provision of the Communications Act prohibits this use of E-rate supported services."¹³ The Sixth Report and Order authorized community use of school broadband under three conditions:

This waiver is subject to the following conditions: (1) schools participating in the E-rate program are not permitted to request more services than are necessary for "educational purposes"; (2) any community use of E-rate funded services at a school facility is limited to non-operating hours, such as after school hours or during times when the students are out of school; and (3) consistent with the Communications Act, schools may not resell discounted services or

¹³ Sixth Report and Order, para. 23.

network capacity.

In adopting this Order, the FCC did not limit the use of the services by the public. FCC Chairman Genachowski stated

Today, we enable schools receiving E-Rate funding to open up their Internet facilities to their communities. Schools will now have the option to permit the general public to use their Internet connections whenever school is not in session. These connections will be available to adults asking evening digital literacy courses, to unemployed workers looking for jobs posted online, to citizens using e-government services, and for other uses that local schools believe will help their communities.¹⁴

In authorizing this community use, the FCC did not require schools to engage in any cost allocation to reduce the schools' E- support. The FCC could adopt a similar approach for these petitions. It could authorize the extension of wireless service to low-income households under the three similar conditions without requiring any cost allocation.¹⁵ To ensure that the FCC does not expand the scope of the E-rate program, it could continue to require that the facilities are "primarily" used for "educational purposes" and that the residential use is only "incidental" to the schools' use.

Alternatively, a second path is to find that the proposed residential use is ineligible for E-rate support, but that such use is permitted as "ancillary" to eligible services so that cost allocation is not necessary. The "ancillary" rule is already in Section 54.504(e) of the Commission's rules. When E-rate applicants include a mix of eligible and ineligible services, the FCC's current rules generally require cost allocation of the additional services and "components" unless the additional use is considered "ancillary" to the eligible E-rate uses. We respectfully suggest that this "ancillary" exception to the cost allocation rules could be used as a basis for granting the proposed petitions so that no cost allocation is required. Taking this approach requires neither a change in the FCC's current rules nor a waiver of the rules. Rather, the Commission could simply clarify that the proposed services

¹⁴ https://apps.fcc.gov/edocs_public/attachmatch/DOC-296371A2.pdf.

¹⁵ Regarding the second condition, as Boulder Valley points out, while most residential use will occur after school hours, some residential use may take place during school hours, such as when a student is at home during the day because of illness or some other reason. For this reason, Boulder Valley suggests that the majority of at-home use will take place during hours when classes are not in session

constitute “ancillary” use, which does not need to be cost-allocated out. This approach also has the benefit of not requiring any change to or interpretation of the FCC’s Eligible Services List (ESL).

Section 54.504(e)(2) states as follows:

Ancillary ineligible components. If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is “ancillary” if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.

The proposed home use can be considered “ancillary” because “the price for the ineligible use cannot be determined separately and independently from the price of the eligible” service. Both petitions propose to use capacity that is already being provided to the schools for the schools’ needs during school hours. The schools must build enough capacity for the “peak load” of the daily school traffic. This capacity is generally under-utilized during non-school hours. Both petitions thus propose to use the capacity of those networks that have already been built after school hours when there is much less demand on the school network. The price for this usage after school hours cannot be separately and independently determined because the after-school traffic itself does not impose any extra cost on the schools’ operations of the network, and the “price” of that variable capacity cannot be separately identified in the marketplace. As a result, this home usage should qualify as “ancillary” to the schools’ use.

Taking the approach that residential use is “ancillary” to a permitted E-rate use, as suggested in these comments, would make sure the program is allowing students to use at home only the excess broadband capacity and would not open up the program to pay for broadband services at home that would require additional E-rate funding. Such a decision would also allow petitioners – and our nation – the best value for E-rate dollars to use the excess capacity of the schools’ connections without reducing their current level of E-rate

support.¹⁶

The proposed relief suggested in these comments is also consistent with the Wireline Competition Bureau's Order of May 23, 2014 regarding the cost allocation of "mixed" services and facilities. While that Order was focused on the bundle of equipment (such as cell phones, iPads, computers or other devices) and services, the Order confirms that cost allocation must only be conducted on "non-ancillary" products or services. The Bureau found

We therefore determine that E-rate applicants must deduct the value of ineligible components bundled with eligible services unless those ineligible components qualify as "ancillary" to the eligible services under the Commission's rules. [footnote omitted]¹⁷

...

An ineligible component is 'ancillary' if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality." 47 C.F.R. § 54.504(e)(2).¹⁸

Once these petitions are granted and are allowed to go forward, the FCC should examine the results of these projects to gauge their success in addressing the homework gap. It will be useful for the petitioners to conduct an evaluation of whether or not the projects achieved their goals.

The Virginia Schools Petition suggests a third approach - that the home use of the Internet service should be considered as fitting within the definition of "educational purpose". Even though the schools are not requesting additional E-rate support for this service, there is a danger that recognizing home access as an "educational purpose" could set a precedent for future applications that might ask for E-rate support, which could impact the long-term viability of the E-rate program.

At the same time, the Commission must exercise caution and be cognizant of the potential impact of its statements on the future of the E-rate program. Even though the two petitions do not ask for E-rate funding support for their services, it is important for the

¹⁶ If the Commission does not choose to consider residential use to be a permitted but ineligible and ancillary to a permitted use as set forth in these comments, the SHLB Coalition would support a limited waiver of the cost allocation rules to achieve the goals sought by the two petitions.

¹⁷ Wireline Competition Bureau E-rate Cost Allocation Order, para. 1.

¹⁸Id., at footnote 3.

Commission to ensure that any clarification does not set a precedent or open a door that could lead to negative consequences for the E-rate program. A ruling by the Commission that contained the same limitations as the Sixth Report and Order did on Community Use should protect the program from abuse. A careful ruling could both encourage schools and libraries to expand their efforts to address the homework gap while simultaneously safeguarding the integrity of the E-rate program and ensure that it remains true to its core purpose.¹⁹

V. Conclusion

Allowing schools and libraries the opportunity to share their E-rate funded facilities with students' families to address the "homework gap" is an extremely important social policy goal. At the same time, the FCC must protect the integrity of the E-rate program and ensure that the program remains true to its core mission to support the broadband needs of schools and libraries. The FCC can balance these two objectives by issuing a clarifying ruling stating that the E-rate program permits but does not pay for the extension of service to low-income residential users without cost allocation and that such services will be allowed under three conditions similar to those set forth in the Sixth Report and Order in 2010. This will give schools and libraries the option to extend their service without reducing their own E-rate support, while ensuring that the E-rate program remains true to its core mission of serving the needs of schools and libraries.

¹⁹ To be clear, clarifying this policy would simply allow schools and libraries to pursue this opportunity if they choose to do so. There should not be any mandate or expectation to do so, as schools and libraries have limited staff and resources and may not be in a position to handle these additional services. The FCC should not set detailed rules about how this additional use should or should not be done, as that would involve in managing the school or library's operations. Rather permitting residential use of E-rate funded facilities should be an option for each school or library to pursue as it sees fit.

Respectfully Submitted,

A handwritten signature in black ink that reads "John Windhausen, Jr." The signature is written in a cursive style and is enclosed in a thin black rectangular border.

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