



EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Kentucky Department for Libraries & Archives

Steven L. Beshear
Governor

PO Box 537
300 Coffee Tree Road
Frankfort, KY 40602-0537
(502) 564-8300
Fax: (502) 564-5773
<http://kdla.ky.gov>

Thomas O. Zawacki
Secretary

Wayne Onkst
State Librarian

9/25/2014

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Reply to Comments on the Further Notice of Proposed Rulemaking Set Forth in FCC Order 14-99

Dear Secretary Dortch:

The Kentucky Department for Libraries & Archives (KDLA) respectfully writes the Commission in support of the comments of the American Library Association (ALA) in response to the recent Further Notice of Proposed Rulemaking Set Forth in FCC Order 14-99. As our most important priorities, we ask the Federal Communications Commission (FCC) to move quickly to ensure the E-rate program is sufficiently funded, and to address the availability and affordability of broadband.

KDLA actively supports public library service in all 120 counties in the Commonwealth of Kentucky. These public libraries serve the state's population of 4.39 million residents. More than three-fourths of the state's libraries participate in the E-rate program. KDLA provides assistance and training to directors, staff and trustees of the 92 Kentucky library applicants to ensure they benefit from the E-rate program and comply with program rules. E-rate has provided crucial financial support for Kentucky's libraries and communities, enabling them to connect to a wealth of internet-enabled resources and services.

74.4% of Kentucky libraries offer the only no-fee computer and internet access in their communities, more than 12% above the national average.¹ Only 54% of rural Kentuckians have access to broadband at home, making Internet access a particularly valuable service at the Commonwealth's rural libraries.² A recent study

¹ See Public Funding & Library Technology Access Survey, State Summary Data p. 62, available at http://www.ala.org/research/sites/ala.org.research/files/content/initiatives/plftas/2011_2012/plftas12_statetables.pdf (last visited April 16, 2014).

² See Exploring the Digital Nation, Table B5: Home Broadband Use in Urban and Rural Areas by State, p. 57, available at <http://www.ntia.doc.gov/report/2013/exploring-digital-nation-americas-emerging-online-experience> (last visited September 25, 2014).



by the University of Kentucky found that only 18 of the state's 120 counties are nationally competitive in terms of broadband availability and adoption.³

KDLA commends the Commission on its efforts to modernize the E-rate program to fully support the connectivity needs of 21st Century libraries and schools. As acknowledged in ¶ 267, the size and complexity of the E-rate program precludes a cursory reform process. KDLA welcomes the opportunity to continue working toward the goals of ensuring robust connectivity for libraries, maximizing cost-effective use of the program, and streamlining the E-rate application process.

Sufficient Funding

The E-rate program as it is currently funded does not meet current or future needs. KDLA supports the comments of the State E-rate Coordinators' Alliance (SECA) and others as cited in ¶ 269.⁴ Additional permanent funding is needed to meet Kentucky libraries' need for broadband services.

As SECA notes in their analysis, the savings realized by the phase-out of telephone service will not offset the demand for equipment and connectivity. As detailed below, only 5 Kentucky libraries have achieved the broadband targets of 1 Gbps for libraries serving populations greater than 50,000, and 100 Mbps for libraries serving populations of less than 50,000. Also, a third of the state's buildings were constructed in 1999 or earlier.⁵ These older structures will require significant investments in equipment, cabling, and construction to meet the broadband targets.

A permanent increase in the funding cap is necessary to ensure the E-rate program meets the needs of Kentucky libraries and schools. KDLA strongly encourages the Commission to capture the inflation adjustment from the beginning of the program to FY2010, when the cap began to be indexed to inflation. SECA estimates this adjustment would provide an additional \$800 million per year. The E-rate program has been chronically underfunded, and KDLA urges swift action to ensure sufficient the funding necessary to achieve program goals.

Access and Affordability

In their recent comments, ALA noted that "[A]ccess to high-capacity, scalable broadband at *affordable* recurring rates *to the building* remains the number one telecommunications problem libraries confront in being able to provide 21st century services to the communities they serve."⁶ KDLA wholeheartedly supports this assessment.

Access

Access to high capacity broadband is simply not available in many areas of Kentucky. Only 5 of Kentucky's 120 public libraries meet the broadband targets adopted in the recent Order. Three of these serve populations over 50,000, while two serve smaller populations of less than 50,000.

Statewide, 16 of the Commonwealth's 120 libraries serve populations of more than 50,000. Three of those libraries are meeting the broadband targets with speeds of 1 Gbps. The remaining 13 libraries have an

³ See The Internet in Kentucky: Life in the Slow Lane, *available at* <http://cber.uky.edu/Downloads/CBER%20Issue%20Brief%209%20BB%20in%20KY.pdf> (last visited September 25, 2014).

⁴ See Comments of the State E-rate Coordinator's Alliance Regarding Further Notice of Proposed Rulemaking, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7522670212> (last visited September 29, 2014).

⁵ Email message from State Construction Consultant, KDLA, received September 12, 2013.

⁶ See Comments of the American Library Association in Response to Further Notice of Proposed Rulemaking, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7522678477> (last visited September 25, 2014).

average speed of 30 Mbps, or 3% of the desired speed. 104 of Kentucky's 120 libraries provide service to populations under 50,000. The average connection speed of these libraries is 29 Mbps, and 21% have a capacity of less than 10 Mbps, or less than 10% of the target speed of 100 Mbps.

As ALA notes, "the undeniable fact is that if a library only has a 3 Mbps connection, a fully updated Wi-Fi network will still not provide adequate service to the student trying to upload a homework assignment or her parent finishing an online certification course."⁷ A small but significant minority of the state's public libraries are operating at these crippling slow speeds. This broadband gap must be addressed in order for E-rate to reach its potential as a Universal Service program.

Affordability

Affordability is a significant barrier to broadband capacity, especially to the state's smallest libraries. Public libraries are managing increasing demand with declining budgets. KDLA has provided direct aid to public libraries since 1952. However, the amount of state aid has decreased by nearly one-third (32%) since 2008⁸. Local support for public libraries has also declined or plateaued in the past 5 years⁹.

E-rate participation among Kentucky libraries has increased 53% since 2008 as libraries struggle to make up for lost funding sources. KDLA echoes SECA's concern: while applicants understand the need to focus the E-rate program funding on broadband capacity, the phase-out of funding for telephone services will have an adverse impact on library budgets.¹⁰ Historically, nearly one quarter of Kentucky public libraries' E-rate commitments have supported POTS.

KDLA appreciates the actions of the Commission to ensure more libraries and schools have access to Internal Connections funding. Equitable access to Category 2 funding could make a significant difference for the state's public libraries, especially those in older facilities; the average Kentucky library was built in 2000. However, the lack of predictability in the current Category 2 funding scheme, especially considering that funds are only guaranteed for FY2015 and 2016, will almost certainly lead libraries to proceed with caution.

Another element central to both affordability and access is a lack of competition. KDLA is grateful to ALA for undertaking research to provide a granular analysis of the costs necessary to bring libraries within reach of the broadband targets. Of special interest is the possibility of analyzing the options of libraries located in less-competitive broadband markets. An informal survey of Kentucky E-rate applicants revealed that 79% received no responses to their posted Form 470s. According to the National Broadband Map, in 41 of Kentucky's 120 counties, less than 10% of the county has access to at least three service providers.¹¹ Though many of these 41 counties are rural, some are urban. For example, Bullitt County has a population of 76,854 and is part of the Louisville metropolitan area. Lack of competition is a statewide issue.

Consortium Purchasing

At this time, most Kentucky public libraries are not participating in consortia or cooperative purchasing agreements. The primary motivation is the ability to procure services at lower prices than those specified in State Master Agreements (SMA's).

⁷ *Ibid.*

⁸ Email message from Charlene Davis, Former Acting Director, Field Services Division of KDLA received on August 9, 2013.

⁹ Email message from Jay Bank, State Data Consultant, KDLA received on August 12, 2013.

¹⁰ See Comments of the State E-rate Coordinator's Alliance Regarding Further Notice of Proposed Rulemaking, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7522670212> (last visited September 29, 2014).

¹¹ See National Broadband Map: Number of Wireline Service Providers, *available at* <http://www.broadbandmap.gov/rank/all/county/kentucky/percent-population/number-of-wireline-service-providers-greater-than-3/descending/> (last visited September 29, 2014).

In the 1990s, a public-private partnership between state agencies and telecommunications carriers formed the Kentucky Information Highway consortium, or KIH. A SMA was established, and Kentucky public libraries, as political subdivisions of the state, were eligible to purchase Internet services off the SMA. KIH was instrumental in bringing Internet access to large areas of the Commonwealth, but as service provider competition increased, most public libraries found it more cost-effective to leave the consortium. Currently only two public libraries purchase off the most recent incarnation of the KIH SMA. These libraries are two of the largest in the state, with complex networking needs.

The majority of Kentucky public libraries participating in the E-rate program have only one location and no in-house IT staff. These libraries would be ill-equipped to handle the administrative burden of joining a consortium, and would be unlikely to do so even with an extra 5% discount. Any steps that add complexity to the program will lead to frustration and ultimately to the exclusion of the smallest libraries that desperately need the benefits consortium participation could provide. KDLA urges the Commission to focus on the goal of program simplification when considering options to increase consortium purchasing.

Action is urgently needed to ensure that Kentuckians have access to broadband speeds that support their needs. With targeted investments in key areas, the E-rate program can help libraries achieve adequate broadband capacity for the future. KDLA strongly supports SECA's recommendations to increase the funding cap and ALA's recommendations to ensure broadband affordability and access. These proposals will help create a relevant E-rate program that increases broadband capacity in libraries across Kentucky and the nation.

Conclusion

KDLA supports the initial comments filed by ALA. These proposals build on the strong foundation for E-rate modernization established in the July Report and Order. We want to focus particular attention to the following recommendations:

- Permanently increase in the funding cap to capture inflation adjustments from the beginning of the program through FY2010. SECA estimates this adjustment of an estimated additional \$800 million per year is badly needed to support broadband connectivity and Category 2 services.
- Extend contract limits beyond five years. KDLA concurs with ALA and SECA: a five-year contract maximum would place states into a near-perpetual procurement process. As SECA notes, "[t]hese contracts are used for many purposes and by many government entities and not just for E-rate. The use of such contracts for E-rate purchases may be simply an afterthought and is by no means the primary driver for the procurement."¹² KDLA respectfully suggests the Commission enforce the Lowest Corresponding Price Rule as a way to control pricing, rather than mandating a contract length.
- Equalize the treatment of lit and dark fiber. The Commission has noted that only 15% of libraries nationwide have fiber connections. KDLA urges the Commission to eliminate artificial barriers to ensure libraries have the widest range of options available to them in their efforts to build reliable, future-proof networks.
- Remove the requirement in ¶ 293 that applicants consider all master contracts that offer services sought by the library. This requirement would place a significant burden on all types of applicants (large and small) as well as PIA reviewers. A requirement to consider all master contracts would actively discourage consortium purchasing, which has been rare in Kentucky over the past decade.
- Allow a five year document retention period for requests under \$5,000. KDLA agrees that a ten year retention requirement for all applicants is extreme. For example, the Rockcastle County Public Library in Mt. Vernon KY serves a population of 17,049. In FY 2014, they were allocated \$573.31 for

¹² See Comments of the State E-rate Coordinator's Alliance Regarding Further Notice of Proposed Rulemaking, available at <http://apps.fcc.gov/ecfs/document/view?id=7522670212> (last visited September 29, 2014).

an 80% discount on their POTS line. Retaining documentation for a decade seems particularly extreme in this case.

- Improve communication between PIA reviewers and applicants, notifying state coordinators when preparing to deny FRNs to avoid unnecessary appeals. State coordinators act as advocates for the E-rate program while working with applicants to ensure compliance with program rules. State coordinators are an undervalued resource for PIA and the E-rate program.
- Allow a *de minimus* exception for procurement rules as proposed by ALA in September 2013. Many areas of Kentucky do not have access to the high capacity broadband that would allow libraries to achieve the program's broadband targets. Applicants should not bear additional burdens caused solely by a lack of competition. Currently, no Kentucky library is able to take advantage of the Commission's exemption of business class Internet mentioned in ¶ 199.

The Commonwealth's public libraries represent an investment in lifelong learning and Internet access for all, especially for the 54% of Kentuckians who lack home broadband access. KDLA and libraries across Kentucky stand ready to fulfill the nation's Universal Service goals through a modernized E-rate program. Thank you for the opportunity to comment and for your consideration of our recommendations.

Respectfully submitted,



Wayne Onkst
State Librarian and Commissioner
Kentucky Department for Libraries and Archives