

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

In the Matter of

Modernizing the E-rate  
Program for Schools and Libraries

WC Docket No. 13-184

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**REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION  
ON FURTHER NOTICE OF PROPOSED RULEMAKING**

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The American Cable Association (“ACA”) submits reply comments in response to the Federal Communications Commission’s (“the Commission’s”) Further Notice of Proposed Rulemaking (“FNPRM”), which follows on the recent Report and Order modernizing the E-rate program and seeks comment on select issues.<sup>1</sup> ACA’s comments address two issues in the FNPRM – future funding needs for the E-rate program and the use of buying consortia. In regard to funding, even though significant strides have been made to gather data about the needs of schools and libraries, the Commission continues to lack sufficient baseline data to determine

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<sup>1</sup> See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (“Report and Order/FNPRM”).

the “high-capacity connectivity” gap, upon which future funding needs should be based. Accordingly, ACA agrees with the Commission about the importance of collecting this information, and it commits to helping in this effort – particularly in regard to connectivity in small cities and rural areas, where most ACA members serve. ACA notes that its members in these areas have over 30,000 community anchor institutions in their footprint, including almost 15,000 schools and libraries.<sup>2</sup> Further, many ACA members already provide E-rate supported services in these areas. Once the Commission collects this baseline data, it can examine first whether there are sufficient existing funds to fill any gap. Thus, ACA submits it is premature for the Commission to increase aggregate E-rate funding. As for buying consortia, ACA cautions that in encouraging consortia, the Commission should proceed carefully so as not to undermine or effectively foreclose participation by smaller providers.

## **DETERMINING FUTURE FUNDING NEEDS**

Since the Commission initiated the E-rate Modernization proceeding, many in the E-rate community, particularly schools and libraries and their supporters, have urged the Commission to increase funding levels, often dramatically by doubling the size of the fund.<sup>3</sup> Proponents of such an increase argued that it was essential if virtually all schools and libraries were to have

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<sup>2</sup> See “Connecting Hometown America, How the Small Operators of ACA Are Having a Big Impact,” a paper by American Cable Association, at 11 (Mar. 2014), available at: [http://www.americancable.org/files/140328%20ACA\\_Whitepaper\\_PDF%20\(FINAL\).pdf](http://www.americancable.org/files/140328%20ACA_Whitepaper_PDF%20(FINAL).pdf)

<sup>3</sup> See, e.g., Comments of the Education and Libraries Networks Coalition, WC Docket No. 13-184, at 2 (Sept. 16, 2013).

very high-speed connectivity, both to and in buildings.<sup>4</sup> At the same time, many interested parties expressed the view that most of these connectivity goals were already being (or could easily be) met by existing service providers and that if more was required, it could be accomplished within the current funding amounts.<sup>5</sup> Supporters of other universal programs, for instance, opposed any effort to take funds from these programs and shift them to the E-rate program,<sup>6</sup> and few advocated for increasing the already very high contribution rate and further burdening consumers. In the end, in the Report and Order/FNPRM, the Commission achieved its objective of providing sufficient support for schools and libraries for high-speed connectivity, while being fiscally responsible, by shifting support from traditional telephony services to broadband service and by improving the efficiency of the E-rate program – not by increasing the size of the fund.<sup>7</sup> EducationSuperHighway lauded the Commission’s decision, stating that “it represents the most sweeping changes to the program since its inception and will significantly enhance the impact of the E-rate program on America’s schools and libraries.”<sup>8</sup> ACA too supports the balance struck by the Commission.

Yet, many in the E-rate community continue to argue for increased funding for the program, and in the FNPRM, the Commission looks forward and inquires about future funding levels in light of “longer-term program needs,” seeking data and analysis identifying gaps

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<sup>4</sup> See, e.g., Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 13-184, at 1 (Apr. 7, 2014).

<sup>5</sup> See, e.g., Comments of Verizon, WC Docket No. 13-184, at 6 (Apr. 7, 2014).

<sup>6</sup> See, e.g., Comments of NTCA-The Rural Broadband Association and the Western Telecommunications Alliance, WC Docket No. 13-184, at 4-5 (Sept. 16, 2013).

<sup>7</sup> See Report and Order/FNPRM, ¶ 6.

<sup>8</sup> See Comments of EducationSuperHighway, WC Docket No. 13-184, at 2 (Sept. 15, 2014).

between current high-speed connectivity and targets<sup>9</sup> ACA notes that Chairman Wheeler, in a speech yesterday, elaborated on this inquiry and emphasized one program need: closing the Rural Fiber Gap.<sup>10</sup> ACA agrees with the process set in motion in the FNPRM. It submits the Commission should answer the question about future funding requirements by undertaking a process driven first by facts about current levels of high-capacity connectivity and potential near-term additions to this connectivity that will result from support provided by the E-rate and other universal service and government programs.<sup>11</sup> Once this baseline inventory is obtained, the Commission can determine which schools and libraries fall short of the targets and the cost to upgrade them. Then, as a final step, the Commission can examine whether the program has sufficient support to cover these costs, either directly or by shifting funds from other E-rate services and support recipients.<sup>12</sup>

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<sup>9</sup> See Report and Order/FNPRM, ¶ 269.

<sup>10</sup> See Remarks of FCC Chairman Tom Wheeler, As Prepared for Delivery, Second Ed Tech Summit: Empowering Educators to Enhance Student Learning in the Digital Era (Sept. 29, 2014), available at: <http://www.fcc.gov/document/fcc-chairman-tom-wheeler-remarks-second-ed-tech-summit>.

<sup>11</sup> ACA also recommends further investigation into the prices charged for high-capacity connectivity in rural areas in response to Chairman Wheeler’s statement that schools and libraries in those areas that have access to fiber do not subscribe because of high-costs. *See id.* See also Reply Comments of the American Cable Association, WC Docket No. 13-184, at 7 (Apr. 21, 2014.) ACA members have met with Commission staff and have discussed the increasingly intense competition to provide service to schools and libraries receiving E-rate support: “Further, competition by service providers has already heated up. At the meeting with Commission staff, Mr. Funkhouser stated, ‘Competition to provide E-rate supported services has grown intense.’ Further, he ‘expects this trend to continue, and even accelerate, as more providers learn about the E-rate program.’ Thus, by adhering to the objective measure of “price” as the key selection criterion and by enhancing participation, the Commission should feel confident that prices are at competitive levels.”

<sup>12</sup> ACA continues to submit that providing new high-capacity connectivity can be achieved most efficiently by turning first to commercial providers, particularly those already providing service in the relevant area since they have infrastructure in place to reap key economies of scale. See ACA Reply Comments, at 6 (“In providing communications

In the initial comments filed in response to the Commission’s inquiry, numerous commenters addressed the long-term funding issue, including the connectivity baseline and the gap between that baseline and program targets. Most of these comments build on the recent “Staff Report” of the Wireline Competition Bureau and Office of Strategic Planning & Policy which estimated that 65 percent of public schools and 15 percent of libraries have fiber facilities to the building.<sup>13</sup> For instance, the Schools, Health & Libraries Broadband Coalition, concluded the Staff Report was further proof that “schools and libraries are suffering from a severe shortage of affordable broadband connectivity.”<sup>14</sup>

Other commenters, however, viewed the Staff Report as helpful but insufficient and saw the need for better information.<sup>15</sup> In its comments, NTCA submitted that the information in the report is “incomplete” and likely contains “significant errors and omissions,” and urged the Commission to undertake “a more accurate and comprehensive accounting.”<sup>16</sup> NTCA further

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solutions to schools and libraries under the program, there are many reasons to prefer using incumbent communications providers or other entities that are in the business of providing communication services as opposed to enabling schools and libraries to have their own networks and provide their own services. The reasons include – these providers have greater expertise in designing, constructing, and operating networks; they can integrate services from all customers over shared facilities and therefore provide them more efficiently; and they can upgrade services most readily with more advanced technology.”)

<sup>13</sup> See Wireline Competition Bureau & Office of Strategic Planning and Policy “Staff Report,” WC Docket No. 13-184, ¶¶ 19-21 (Aug. 12, 2014) (“Staff Report”). Of the schools with more than 100 students without fiber facilities, the report estimates that most are in non-rural areas (19 percent) and 11 percent are in rural areas.

<sup>14</sup> See Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 13-184, at 3 (Sept. 15, 2014).

<sup>15</sup> The Staff Report itself states that its analysis may “somewhat overstate the extent of connectivity to schools” and “provides a useful guidepost.” See Staff Report, 20.

<sup>16</sup> See Comments of NTCA-The Rural Broadband Association, WC Docket No. 13-184, at 2-3 (Sept. 15, 2014) (“NTCA Comments”).

noted that a survey of its members in fact found that in the rural areas they serve fiber connectivity was greater, with 75 percent of schools and 46 percent of libraries being connected.<sup>17</sup> The National Association of State Chief Information Officers explained in its comments that it “is reaching out to its members, and is encouraging them to provide data regarding the gap between schools’ and libraries’ current connectivity and the connectivity targets, as well as any data on what it may cost to bridge that gap.”<sup>18</sup> Additionally, while EducationSuperHighway used the Staff Report as its baseline measurement for its comments, in a submission earlier in the month, it called on the “Bureau and USAC [to] collect data” on current connectivity and broadband service speeds and prices from applicants with access to low-speed broadband service.<sup>19</sup>

Still other commenters explained that the Staff Report was not accurate because it underestimated the extent of high-speed connectivity to schools and libraries. Verizon, for instance, contended that the Staff Report “clearly undercounts the number of schools with fiber” because the data sets are outdated and conflicting data was excluded altogether.<sup>20</sup> It noted that

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<sup>17</sup> See *id.*, at n. 8

<sup>18</sup> See Comments by National Association of State Chief Information Officers, WC Docket No. 13-184, at 2 (Sept. 19, 2014).

<sup>19</sup> See Comments of EducationSuperHighway on the FY2015 Draft Eligible Services List, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket No. 12-184, at 1 (Sept. 3, 2014). See also EducationSuperHighway *Ex Parte* Presentation, WC Docket No. 13-184 (Apr. 10, 2014) and attachment, “Connecting America’s Students: Opportunities for Action,” EducationSuperHighway, April, 2014. In this *ex parte*, EducationSuperHighway examined a sample of Form 471 (Line 21) data and concluded that a much lower number of schools -- 63 percent of schools do not meet current ConnectED goals.

<sup>20</sup> See Comments of Verizon, WC Docket 13-184, at 4-5 (Sept. 15, 2014).

the Commission shows schools in Washington, DC, are either without fiber or uncounted despite the fact that virtually every school is connected with fiber.<sup>21</sup>

Equally as important, CenturyLink in its comments stated that the Commission, in building a baseline, also needs to monitor and then taken into account for the near-term effects of the Report and Order. As CenturyLink set forth in its comments, “the effect of the *Report and Order* will be to redirect perhaps another \$3.5 billion to broadband from other formerly E-rate eligible services...[and] the Commission’s utilization of previously allocated but unspent dollars will boost E-rate spending by over \$1 billion in the next two years and will provide additional efficiencies thereafter.”<sup>22</sup>

In sum, the Staff Report took a major step in providing baseline information about the state of connectivity to schools and libraries – and clearly, more needs to be done. ACA commits to assisting the Commission in this endeavor by working with its members, especially those in small cities and rural areas, to get them to supply relevant information. ACA further agrees with USTelecom that “the Commission should fund E-Rate Program needs within the current budget and defer funding size questions to a later date, until such time as it has a better grasp on the E-Rate Program’s actual needs.”<sup>23</sup>

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<sup>21</sup> See *id.*, at 5.

<sup>22</sup> See Comments of CenturyLink on Further Notice of Proposed Rulemaking, WC Docket 13-184, at 3-4 (Sept. 15, 2014). CenturyLink also explains that “there has been no net inflation in the overall cost of E-rate eligible services...[and] the E-rate budget delivers vastly more value per dollar than ever before. (See *id.*, at 7.) See also NTCA Comments, at 3-4 (“The effect of these [E-rate] reforms on funding requests for the current funding year will not be fully understood for some time.”).

<sup>23</sup> See Comments of the United States Telecom Association, WC Docket No. 13-184, at 3 (Sept. 15, 2014).

## CONSORTIA AND SMALL PROVIDER PARTICIPATION

In the FNPRM, the Commission continues to examine ways to ensure prices schools and libraries pay for eligible services are at competitive levels, and it is especially focused on encouraging the use of consortia.<sup>24</sup> ACA also believes there may be value in further enabling buying consortia, but it is concerned that consortia, especially larger groups of schools and libraries which aggregate purchasing power over (and mandate bids for) a substantial geographic area, will make it infeasible for smaller service providers to compete. It thus was heartened by the Report and Order's statement that consortia are not required to use a single vendor and "may find that a combination of different service providers offer the most cost-effective solution for consortium members."<sup>25</sup> ACA, however, is concerned that the proposals in the FNPRM encouraging the use of consortia will result in smaller providers being effectively cut out. NTCA expressed this concern in its comments, and it cautioned the Commission about "injecting itself into local or state-level decision-making about whether and to what degree consortium purchasing makes sense."<sup>26</sup> ACA thus urges the Commission to proceed cautiously in enabling larger consortia; the potential benefits may be outweighed by less participation by service providers in the competitive bidding process – an outcome that will not serve the public interest. At a minimum, ACA believes the Commission should require consortia to solicit bids from local service providers and demonstrate that they chose the most cost effective solution in their proposals.

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<sup>24</sup> See Report and Order/FNPRM, ¶¶ 285-297.

<sup>25</sup> See *id.*, ¶ 179.

<sup>26</sup> See Comments of NTCA, at 8.

Respectfully submitted,



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