

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Modernizing the E-rate Program for Schools and) WC Docket No. 13-184
Libraries)
)
Connect America Fund) WC Docket No. 10-90
)
)
)

To: The Commission

**PETITION FOR RECONSIDERATION AND
CLARIFICATION OF T-MOBILE USA, INC.**

Kathleen O'Brien Ham
Luisa L. Lancetti
Indra Sehdev Chalk
T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
Washington, DC 20004
(202) 654-5900

March 6, 2015

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE ON DEMONSTRATING WHEN MOBILE BROADBAND SERVICES ARE COST-EFFECTIVE.....	3
A.	The Commission Should Clarify and Reconsider Its Guidance on Amortization of Costs	3
B.	The Cost-Effectiveness Calculation Methodology Should Be Uniform and Public	7
C.	The Commission Should Clarify that Applicants’ Cost-Comparison Obligation Is Satisfied by Seeking Bids for a WLAN Solution, If No Such Bids Are Offered.....	7
III.	THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE ON WHEN MOBILE BROADBAND SERVICES ARE DUPLICATIVE.....	9
IV.	THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE REGARDING THE CONSIDERATION OF THE LIKELIHOOD OF RECEIVING CATEGORY TWO SUPPORT IN THE COST-EFFECTIVENESS CALCULATION	12
V.	THE COMMISSION SHOULD CLARIFY THAT THE COST-EFFECTIVENESS SHOWING REQUIREMENT FOR MOBILE BROADBAND APPLIES NO EARLIER THAN THE 2015 FUNDING YEAR.....	13
VI.	IF THE COMMISSION DECLINES TO ISSUE THE REQUESTED RECONSIDERATIONS AND CLARIFICATIONS, THE COMMISSION SHOULD THEN RECONSIDER THE E-RATE CAP INCREASE	15
VII.	CONCLUSION.....	16

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Modernizing the E-rate Program for Schools and) WC Docket No. 13-184
Libraries)
)
Connect America Fund) WC Docket No. 10-90
)
)
)
)
)
)
To: The Commission

**PETITION FOR RECONSIDERATION AND
CLARIFICATION OF T-MOBILE USA, INC.**

T-Mobile USA, Inc. (“T-Mobile”),¹ pursuant to Section 1.429 of the rules,² urges the Commission to reconsider or clarify certain aspects of its *Second E-rate Reform Order*³ to ensure that the E-rate program supports the most cost-effective services, thereby maximizing schools’ and libraries’ ability to purchase the services needed for today’s digital learning environment.

I. INTRODUCTION AND SUMMARY

In this petition, T-Mobile requests reconsideration and clarification of the *Second E-rate Reform Order*’s requirements regarding cost-effectiveness showings that E-rate applicants wishing to order mobile broadband services must make. In its E-rate reform effort, the Commission has recognized the transformative impact of individualized learning and one-to-one

¹ T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

² 47 C.F.R. § 1.429.

³ *Modernizing the E-rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014) (“*Second E-rate Reform Order*” or “*Order*”).

student-to-device initiatives in schools,⁴ and accordingly has sought to “provide sufficient and certain funding for high-speed connectivity to and within all eligible schools and libraries”⁵ by increasing the E-rate cap. Even with the increase in overall E-rate support, however, the sufficiency and certainty of funding—and the subsequent achievement of schools’ and libraries’ twenty-first century educational goals—depends upon the cost-effective use of support.

To ensure that these goals are met, we request that the Commission reconsider and clarify its guidance as follows:

- To ensure that cost-effectiveness comparisons between mobile broadband and wireless local area network (“WLAN”) solutions are accurate and fair, the Commission should reconsider and clarify its guidance on how WLAN upfront costs are to be amortized for comparison to the yearly cost of mobile broadband service contracts. The Commission should seek comment on reasonable time periods for amortizing Wi-Fi networking equipment, given such equipment’s short useful life span, and provide a uniform and public template for cost-effectiveness comparisons;
- The Commission should make clear that mobile broadband services are not necessarily duplicative in cases where there are certain buildings or areas within a school or library that do not receive sufficient Wi-Fi coverage, and where it is impossible or not cost-effective to construct a WLAN;
- The Commission should clarify that schools and libraries may consider the likelihood of receiving Category Two funding on the same terms as any other non-cost factor in cost-effectiveness comparisons; and
- The Commission should clarify that the schools and libraries need not make the new cost-effectiveness showing to order mobile broadband services before the 2015 funding year and direct USAC not to impose the new cost-effectiveness showing requirements on applicants in Funding Year 2014 and prior.

Making these clarifications will serve the public interest by maximizing the effectiveness of all E-rate dollars and promoting confidence in the E-rate program. This clear guidance will

⁴ See, e.g., *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8888 ¶ 41 (2014) (“*First E-rate Reform Order*”); *Second E-rate Reform*, Order, 29 FCC Rcd at 15579 ¶ 103.

⁵ *Id.* at 15539 ¶ 1.

help ensure that wireless providers—who collectively contribute the largest share of the universal service fund and shoulder the largest burden of the fund increase—can participate in E-rate on a competitively neutral basis, as required by Congress.⁶ Without these changes, the rationale for increasing the E-rate funding cap will be undermined, and the cap increase should then be reconsidered.

II. THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE ON DEMONSTRATING WHEN MOBILE BROADBAND SERVICES ARE COST-EFFECTIVE

A. The Commission Should Clarify and Reconsider Its Guidance on Amortization of Costs

Amortization is a new concept to E-rate cost-effectiveness analysis, injected for the first time in the *Second E-rate Reform Order*, and it is not clear precisely how it should be applied. While applicants choosing mobile broadband have the benefit of consistent monthly costs for broadband service and a device for every student, applicants seeking to install and maintain a Wi-Fi network to use in conjunction with a fixed broadband connection face significant upfront costs as well as ongoing costs and obligations. As a result, any amortization that is applied to Wi-Fi network costs can have a determinative effect on a cost-effectiveness analysis.

Accordingly, the Commission should first clarify whether schools without existing fixed broadband connections should amortize the costs of fixed networking equipment at all for purposes of conducting a price comparison between fixed and mobile broadband solutions. The Order appears to call for amortization only where an applicant already has existing fixed

⁶ 47 U.S.C. § 254(h)(1)(B)(2) (“The Commission shall establish *competitively neutral rules* ... to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries....”) (emphasis added).

broadband connections.⁷ As the Commission has acknowledged, however, amortization can significantly impact the total cost of a project,⁸ and affect any cost-effectiveness analysis. More specifically, whether schools without existing internal networks should consider the upfront costs of fixed networks entirely in the first-year cost comparison or spread those costs over time inevitably will affect the accuracy and validity of any comparisons between fixed and mobile solutions.

Second, in any instance where the Commission does require amortization, it should clarify the relevant time period over which costs should be amortized and provide guidance on the typical expected lifespan of major internal network components. The Order states that schools with existing fixed broadband connections should amortize capital investments “over their expected lifespan.”⁹ The expected economic lifespan of fixed networking equipment can vary considerably but it is generally quite short. For example, the record in this proceeding suggests that the useful economic life of electronic equipment is only about three years.¹⁰ To provide a realistic, valid, and reliable cost comparison, any amortization lifespan applied must

⁷ Order, 29 FCC Rcd at 15601 ¶ 158 (mentioning amortization only with respect to “[s]chools with existing fixed broadband connections”).

⁸ *Id.* at 15546 ¶ 19 (suspending USAC’s current amortization policy because it may “increase the total costs borne both by applicants and the program”).

⁹ *Id.* at 15601 ¶ 158.

¹⁰ *See, e.g.*, Hewlett-Packard Company Comments, WT Docket No. 13-184 at 6 (filed Apr. 7, 2014) (refreshing Wi-Fi equipment after three years “would allow applicants to design their environments for current and reasonably anticipated needs without having to build in undue excess capacity”). *See also, e.g.*, PCIA Comments, WT Docket No. 13-184 (filed April 7, 2014) at 3 (schools need flexibility to upgrade networks as frequently as necessary).

recognize the economic life and utility of equipment in light of rapid industry technological change.¹¹

A concrete example demonstrates the impact that amortization can have on a cost-effectiveness comparison. The Ganado Independent School District (“Ganado”) filed requests for Funding Year 2015 to build a robust Wi-Fi network for 778 students.¹² For the necessary wireline network, Ganado requested reimbursement of \$550,000 in upfront costs, plus \$50,000 annually for wireline Internet access service. Based on Ganado’s stated needs, T-Mobile estimates that a mobile wireless solution would be as low as \$100,000 annually for the school to provide Internet service to devices for each student, with no installation, maintenance, or security costs required. Unless it were appropriate to amortize the school’s upfront wireline costs over 10 years or more, mobile broadband is the more cost-effective option for this school district considering any reasonable amortization period. It also is clear that the length of the amortization period would be a determinative factor in the comparison.¹³

Because no sufficient record exists in the docket for the Commission, the Universal Service Administrative Company (“USAC”), or applicants to determine the appropriate useful lifespan for networking equipment, as the Order requires, the Commission, should develop such a record by seeking public comment on appropriate amortization periods for major elements of WLAN installations. Then, based on the information provided by commenters, the Commission

¹¹ For example, even if equipment is still functional, it may no longer meet users’ advancing needs, and therefore have become practically and economically obsolete.

¹² Ganado’s funding requests (Form 471 file numbers 1002122 and 1002086) are available through USAC’s Form 471 search tool at <https://sltools.universalservice.org/portal-external/form471/view/external/>.

¹³ Attached as Exhibit A is a chart illustrating the impact of various amortization periods in the Ganado example.

(or the Bureau) should provide direction to USAC and applicants regarding how such costs are to be amortized for cost-comparison purposes.

Third, the Commission also should make clear that the costs of maintenance and security of Wi-Fi networks must be included in the cost comparison.¹⁴ As the record demonstrates, these costs can be quite high, and without proper and expensive management and security measures, Wi-Fi networks are very vulnerable to attack and other system incidents.¹⁵ For example, Cisco estimates that internal networks for all of the nation's classrooms would cost approximately \$11.6 billion in equipment and \$460 million annually in maintenance.¹⁶ By contrast, mobile broadband providers typically include these security measures as part of their monthly recurring charges for service.

Accordingly, any true and accurate comparison of costs between fixed and mobile solutions must include the maintenance and security costs associated with fixed networks and consideration of amortization of the fixed network components over their economic useful life.

¹⁴ See Verizon Petition for Reconsideration and/or Clarification, WT Docket No. 13-184 at 4 (filed Sept. 18, 2014) (“To ensure that the right comparison is being made, the Commission should clarify that the term ‘wireless local area network solution’ includes ... services for the operation, management, and/or monitoring of eligible Wi-Fi components....”). The Commission did not address this in the Order.

¹⁵ See, e.g., Cisco White Paper, High-Speed Broadband in Every Classroom: The Promise of a Modernized E-rate Program at 5 (Sept. 2013) (“[A] modern network must also include network management and maintenance, safety and security solutions.... As complexity of networks increases, management and maintenance of the network become increasingly important.”), attached as Exhibit A to Cisco Systems, Inc. Comments, WT Docket No. 13-184 at 9-11 (filed Sept. 13, 2013); Cisco Systems, Inc. Reply Comments, WT Docket No. 13-184 at 3-5 (filed Apr. 21, 2014) (describing as essential a variety of network management and security equipment, appliances and solutions).

¹⁶ Letter from Jeffrey A. Campbell, Vice President, Government Affairs, Cisco, to Jon Wilkins, Managing Director, FCC, WT Docket No. 13-184 at 4 (filed May 30, 2014).

B. The Cost-Effectiveness Calculation Methodology Should Be Uniform and Public

To guide applicants and USAC in making cost-effectiveness calculations, the Commission should propose, seek comment on, and adopt a template for cost-comparison calculations. This template would include things such as approved evaluation criteria and a requirement to list all costs associated with a specific connection type, whether or not they are covered by the E-rate program, which would help provide applicants with some measure of assurance that their cost comparison approach is valid. (A suggested template is attached as Exhibit B to this Petition.) This also would promote a more efficient, objective, and transparent process for all applicants as they seek bids and funding for projects, and for USAC as it reviews funding requests and cost-comparison documentation.

The Ganado example illustrates why using a cost-comparison template could make a significant difference to the applicant and the success of the E-rate Program: With specific guidance, applicants could determine and compare with greater accuracy the costs associated with each broadband option and choose the lower-cost solution, thus advancing the Commission's goals. Adopting these recommendations would also promote confidence that the E-rate program is being operated in a fair, thoughtful, and efficient manner.

C. The Commission Should Clarify that Applicants' Cost-Comparison Obligation Is Satisfied by Seeking Bids for a WLAN Solution, If No Such Bids Are Offered

In the *First E-rate Reform Order*, the Commission established, as a condition precedent to allowing an applicant to seek funding for a mobile broadband solution, that the applicant "be able to demonstrate either that installing a WLAN is not physically possible, or must provide a comparison of the costs to implement an individual data plan solution versus a wireless local

area network solution.”¹⁷ It further provided that the “cost comparison *may be* established through the competitive bidding process by seeking and comparing bids on both internal wireless networks and individual data plans.”¹⁸

The Commission did not say that the competitive bidding process was the only way that applicants could provide the required cost comparison, and indeed seemed to indicate that there may be other ways to do so,¹⁹ but then did not describe any other ways to satisfy the cost-comparison requirement. This lack of clarity discourages applicants from accepting bids from mobile broadband service providers, regardless of cost-effectiveness, because the process is more ambiguous and burdensome than for a WLAN solution. In view of the Commission’s stated interest in maximizing the efficiency and utility of the E-rate fund, this cannot be a result that was intended.

The Commission should clarify that applicants that seek competitive bids for both WLAN solutions and mobile broadband solutions, but receive no WLAN bids, may proceed with mobile broadband. This approach is identical to the cost-effectiveness requirement that the Commission established in the *Second E-rate Reform Order* for self-construction of broadband facilities.²⁰ Just as the Commission found in the self-construction scenario, the lack of responsive bids is conclusive evidence that “installing a WLAN is not physically possible,” thus justifying the use of a mobile solution. There is no justification to require applicants that receive

¹⁷ *First E-rate Reform Order*, 29 FCC Rcd at 8933 ¶ 153.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* (that cost comparison “may be” established through competitive bidding suggests it also may be established other ways).

²⁰ *Second E-rate Reform Order*, 29 FCC Rcd at 15558 ¶ 48 (“we permit applicants who have received no bids on a services-only posting to pursue a self-construction option through a second posting for the same funding year”).

only mobile broadband bids to take additional steps in order to show that the bid is cost-effective.

III. THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE ON WHEN MOBILE BROADBAND SERVICES ARE DUPLICATIVE

The Commission should also reconsider or clarify its unqualified statement that “seeking support for data plans or air cards for mobile devices for use in a school or library with an existing fixed broadband connection and WLAN implicates our prohibition on requests for duplicative services.”²¹ In reality, some schools and libraries may be able to deploy a WLAN in parts of their buildings but not others. The construction materials used in buildings, the age of buildings, the overall layout of buildings, the number of buildings on a campus and countless other unknown criteria make whether mobile data plans or air cards are duplicative to fixed broadband based upon cost, practicability and other criteria a fact-specific inquiry.

This inquiry does not lend itself to a conclusory determination, and should be performed below the individual school level. Schools and libraries must have the opportunity to provide the relevant facts and circumstances about certain buildings or construction limitations on their property that support the use of fixed broadband connections along with mobile wireless devices without some presumption that the services are duplicative. Indeed, precluding applicants from making this determination results in expenditures that are inefficient and wasteful, a result the Commission surely does seek.

Real-world examples demonstrate the importance of this issue. Universal Education Companies, Inc., a Philadelphia-based organization working to turn around under-privileged schools, has eight schools and received a “follow-up” cost-effectiveness review from USAC with specific questions about duplicative service. Universal Education Companies already had

²¹ *Second E-rate Reform Order*, 29 FCC Rcd at 15601 ¶ 158.

received a funding commitment of approximately \$593,000 for Internet access, months prior to this review. In the response to USAC, Universal Education Companies stated it did not have a robust enough fixed broadband network to support all 1,000 students for a pilot one-to-one initiative with existing Wi-Fi and needed mobile wireless to fill the gaps.

Before reaching this conclusion, Universal Educations Companies sought to expand its existing fixed broadband network, but found it cost prohibitive. It received a quote for over \$1.5 million to upgrade its internal network for one school building, and estimated the cost of similar upgrades to its remaining schools totaling between \$6.1 and \$12.5 million, depending on the level of build-out or overhaul each school required. In stark contrast, the mobile wireless bid received by Universal Education Companies, was approximately \$660,000 annually and required no installation or maintenance costs. E-rate could fund the mobile wireless solution of approximately \$660,000 per year *for nine years* before equaling the low-end estimate of \$6.1 million for the fixed broadband network build-out and/or upgrade to the eight buildings. Moreover, throughout those eight years, the mobile broadband provider would be updating its network in response to consumer demands and consistently delivering a state-of-the-art, updated network, while the eight-year-old wireline internal network would be obsolete well before half the life of the proposal passed.

Another example is Our Lady's Catholic Academy in New York, a school housed in two older buildings, one of which was built in 1932. USAC subjected this school to a cost-effectiveness review with specific questions about duplicative services. The school's funding commitment remains pending. Our Lady's Catholic Academy currently has three DSL circuits with a speed of one Mbps per circuit, for a total of three Mbps in total bandwidth. This bandwidth falls severely short of adequate connectivity for 732 students. Moreover, the three

Mbps is far below even the Commission's short-term target of at least 100 Mbps per 1,000 students.²²

A September 29, 2014 letter from Our Lady's Catholic Academy to USAC states that the school used private funding from the Diocese of Brooklyn in 2012 to improve its internal connections. The densely constructed floors and hallways in the older school buildings presented significant challenges, so that contractors only could install an average of 1.5 Wireless Access Points per floor. The school plans to use mobile broadband to get around these architectural challenges to ensure every student is able to access the Internet, as the three DSL circuits do not provide sufficient bandwidth. As demonstrated above, having a blanket prohibition on adding wireless service where wireline broadband exists can be counter to the goal of cost effectiveness.

The Commission itself acknowledges a few fact-specific scenarios where installations of WLANs would be more costly than individual data plans.²³ But the situations presented by Universal Education Companies (high installation costs) and Our Lady's Catholic Academy (architectural challenges) differ from the Commission's examples. The varied nature of these factual situations alone indicates that a combination of fixed broadband connections and mobile

²² *Second E-rate Reform Order*, 29 FCC Rcd at 15539-40 ¶ 3.

²³ *First E-rate Reform Order*, 29 FCC Rcd at 8933 ¶ 153 (recognizing that there are "locales where WLANs are impracticable or difficult to install, such as library bookmobiles" or where installation of a WLAN "would be more costly than using individual data plans because the school or library serves a very small number of students or patrons"); *Second E-rate Reform Order*, 29 FCC Rcd at 15601 ¶ 158 ("In circumstances where an applicant successfully demonstrates that mobile data plans or air cards are the most cost-effective offering, such as a bookmobile, or very small school or library facility, the impracticality or unusually high cost of purchasing a fixed broadband connection to the location should be a factor in the applicant's cost-effectiveness analysis.").

wireless broadband services are not always duplicative but rather may be supplemental and a crucial part of the most cost-effective solution.

For these reasons, the Commission should direct USAC not to apply a blanket expectation that fixed broadband and mobile broadband services are necessarily duplicative. In particular, the Commission should clarify that schools and libraries must be able to present specific facts and circumstances that explain the need for mobile connections in certain buildings, in parts of buildings, or on the campus as a whole based upon individualized circumstances that demonstrate that a mobile wireless solution is more cost-effective and not duplicative to a fixed broadband connection.

IV. THE COMMISSION SHOULD RECONSIDER AND CLARIFY ITS GUIDANCE REGARDING THE CONSIDERATION OF THE LIKELIHOOD OF RECEIVING CATEGORY TWO SUPPORT IN THE COST-EFFECTIVENESS CALCULATION

The Commission should reconsider and clarify its holding that “an applicant may not consider whether it is likely to receive Category Two E-rate support (support for internal connections, managed internal broadband services, and basic maintenance of internal connections) when analyzing the cost-effectiveness of data plans or air cards for mobile devices.”²⁴ This holding contradicts the language in the *Second E-rate Reform Order* acknowledging that the “rules allow applicants to consider relevant factors other than cost as part of the cost-effectiveness determination.”²⁵

The Commission should clarify that the availability of Category Two funding may be considered on the same basis as any other non-price term. If Category Two funding is not available because demand is greater than supply or because the applicant’s discount level is

²⁴ *Second E-rate Reform Order*, 29 FCC Rcd at 15601 ¶ 159.

²⁵ *Id.* at 15601 ¶ 159.

below the cut-off point, a WLAN is not a realistic option. Despite the E-rate cap increase, the long-term availability of Category Two funding is unclear, and thus, this interpretation could be significant. Affected schools and libraries should therefore be allowed to incorporate availability of E-rate support in their cost-effectiveness analysis and to reflect this financial reality in their choice of eligible E-rate services.

This is consistent with the Commission's long-standing guidance that the "price of the eligible products and services must be the primary factor in the evaluation, but does not have to be the sole factor."²⁶ USAC's guidance to applicants states that "the most heavily weighted price factor cannot include ineligible costs, although those can be included in an evaluation as long as they are in a separate price factor that is weighted less heavily."²⁷ Consideration of the potential unavailability of Category Two funding is consistent with these long-standing principles.

V. THE COMMISSION SHOULD CLARIFY THAT THE COST-EFFECTIVENESS SHOWING REQUIREMENT FOR MOBILE BROADBAND APPLIES NO EARLIER THAN THE 2015 FUNDING YEAR

The Commission should clarify that the new guidance regarding the cost effectiveness of wireless data plans applies to the funding requests submitted after the effective date of the *Second E-rate Reform Order* (i.e., March 6, 2015).²⁸ At a minimum, the guidance cannot be applied to applications submitted before the release date of the *First E-rate Reform Order*, which was July 23, 2014. This clarification is important because applicants that chose T-Mobile service (and likely wireless service from other carriers) in Funding Year 2014 are receiving

²⁶ See, e.g., USAC, "Construct an Evaluation," available at <http://www.usac.org/sl/applicants/step03/evaluation.aspx>.

²⁷ *Id.*

²⁸ The March 6, 2015 effective date was established via the Federal Register publication of the rules on February 4, 2015. 80 Fed. Reg. 5961-5991 (to be codified at 47 C.F.R. pt. 54).

communications from USAC indicating that funding commitments have been denied or withdrawn based on the applicants' request for support for wireless data plans. This new substantive rule should not be applied retroactively, and the Commission should make this clear to USAC. Absent this clarification, applicants may lose Internet service, undermining the very intent of promoting broadband availability through E-rate.

The requirement that applicants make a special demonstration that mobile broadband is the most cost-effective solution prior to selecting such service is a new substantive rule.²⁹ Under the Administrative Procedure Act, substantive Commission rules apply prospectively, not retroactively, with limited exceptions not relevant here.³⁰ No exception or case law supports the Commission retroactively applying a new substantive rule that mandates a comparative competitive bidding process only for applicants seeking wireless broadband services in Funding Year 2014.³¹ Moreover, applicants reasonably relied upon the prior rules and guidance, which was limited to a requirement that the E-rate service be selected via a competitive bidding

²⁹ *American Hospital Assoc. v. Bowen*, 834 F.2d 1037, 1045 (D.C. Cir. 1987) (“Substantive rules are ones which ‘grant rights, impose obligations, or produce other significant effects on private interests,’ or which ‘effect a change in existing law or policy.’”) (internal citations omitted). The requirement that applicants seeking support for mobile data plans must make an additional cost-effectiveness showing meets all these criteria.

³⁰ *Bowen v. Georgetown*, 488 U.S. 204, 221-25 (1988) (Scalia, J., concurring) (“Adjudication deals with what the law was; rulemaking deals with what the law will be.”) (emphasis in original) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947)).

³¹ *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) (“Retroactive rules ‘alter[] the past legal consequences of past actions.’”) (emphasis in original) (citing *Bowen*, 488 U.S. at 219 (Scalia, J., concurring)). Applying the new requirement that applicants must have made a special demonstration that mobile broadband is the most cost-effective solution in the 2014 Funding Year applications already submitted to USAC would equate to the Commission “altering” the legal consequence of an applicant’s decision to choose mobile broadband service.

process, with price being the primary (but not the sole) factor considered.³² Given that Funding Year 2014 applications already have been submitted, requiring applicants to now conduct a comparative competitive bidding process for the installation of mobile broadband connections is both unreasonable and unfair.

VI. IF THE COMMISSION DECLINES TO ISSUE THE REQUESTED RECONSIDERATIONS AND CLARIFICATIONS, THE COMMISSION SHOULD THEN RECONSIDER THE E-RATE CAP INCREASE

If the Commission declines to issue the clarifications and reconsiderations requested herein, it should rescind the increase in the E-rate funding cap made in the *Second E-rate Reform Order*. Without the reconsiderations and clarifications requested above, schools and libraries will be prevented from selecting mobile broadband solutions even where they are the most cost-effective way of meeting their needs. This seems especially inequitable since wireless providers collectively contribute the largest share of the universal service fund and shoulder the additional burden of the E-rate funding increase.

The premise of imposing the cost-effectiveness showing requirement on schools wishing to order mobile broadband was to maximize the funding available for broadband connectivity to schools and libraries by eliminating support for legacy and duplicative services.³³ Similarly, the premise of increasing the E-rate cap was to ensure that sufficient funding is available to meet schools' and libraries' connectivity needs.³⁴ Both of these goals will be undermined, however, if schools and libraries are prevented from ordering mobile broadband services when those services

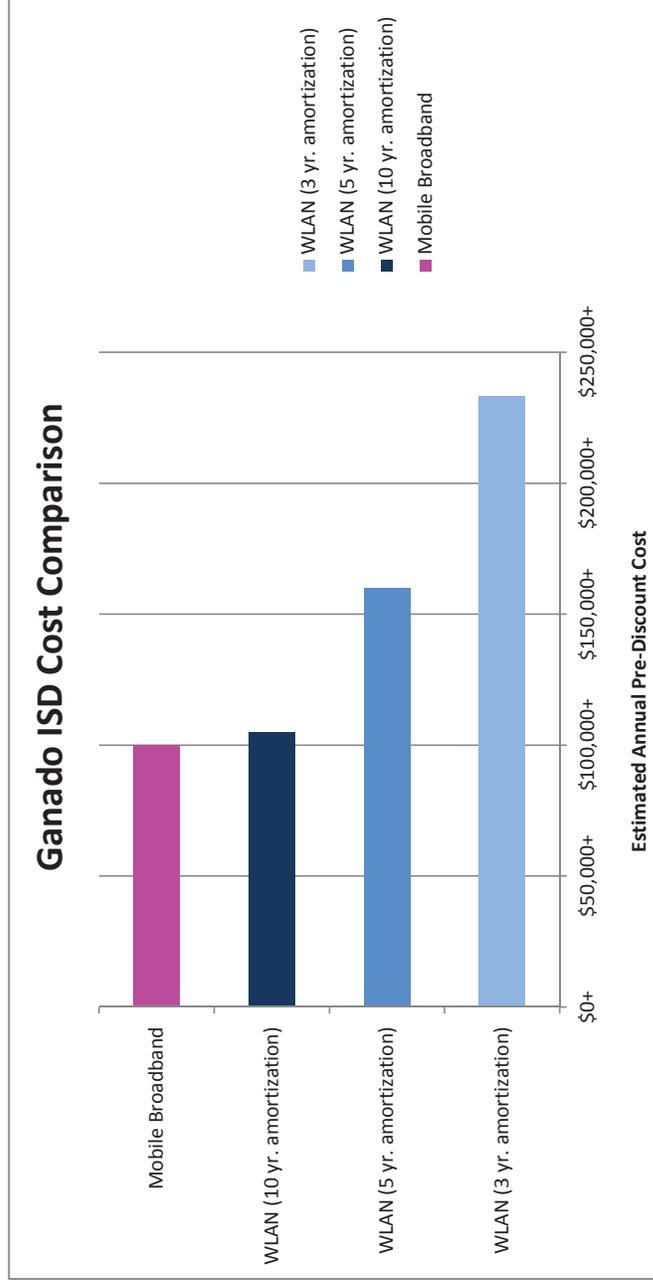
³² Comments of Sprint Corporation, WC Docket No. 13-184, at 4 (filed Oct. 22, 2014) (“Prior to the release of the *E-rate Modernization Order*, applicants would reasonably have relied upon the existing guidance, which as noted was limited to a requirement that the E-rate service be selected via competitive bid process, with price being the primary (but not the sole) factor considered.”).

³³ *Id.* at 8894 ¶ 63.

³⁴ Order at ¶ 77.

EXHIBIT A

Ganado Independent School District						
Connection Type	Annual Internal Connections Costs	Annual Maintenance, Security, Monitoring Costs*	Amortization of Internal Connections (Years)	Annual Cost after Amortization	Annual Recurring Cost	Total Annual Pre-Discount Cost
WLAN (3 yr. amortization)	\$550,000	Unknown	3	\$183,333	\$50,000	\$233,333+
WLAN (5 yr. amortization)	\$550,000	Unknown	5	\$110,000	\$50,000	\$160,000+
WLAN (10 yr. amortization)	\$550,000	Unknown	10	\$55,000	\$50,000	\$105,000+
Mobile Broadband	\$0	\$0	-	-	\$100,000	\$100,000



* Many additional costs that pertain to WLAN solutions are not included in Ganado's Form 471, however there are many unknown costs to consider with this type of solution that are included in the monthly recurring cost of mobile broadband.

EXHIBIT B

Attachment 1
Example Cost Effectiveness Determination and Bid Evaluation Matrix

<u>COST EFFECTIVENESS DETERMINATION</u>			
	<u>Vendor 1</u>	<u>Vendor 2</u>	<u>Vendor 3</u>
Connection Type	WLAN	Mobile Broadband	Self-Construction
Category 2 Costs	\$400,000	N/A	\$600,000
Maintenance, Security, and Monitoring Costs	\$50,000	N/A	\$100,000
Amortization	3	N/A	3
Annual Cost after Amortization	\$150,000	N/A	\$233,333
Annual Recurring Cost	\$40,000	\$100,000	\$50,000
Total Annual Pre-Discount Cost	\$190,000	\$100,000	\$283,333
Cost Comparison Rating	2	3	1

<u>BID EVALUATION MATRIX</u>							
Decision Factor	Weight (Cost must be greater)	Rating	Points	Rating	Points	Rating	Points
Cost Comparison	40%	2	0.80	3	1.20	1	0.40
Service quality	20%	1	0.20	2	0.40	3	0.60
Ability to use at home	15%	0	0.00	3	0.45	0	0.00
Availability	15%	2	0.30	3	0.45	1	0.15
Customer service	10%	3	0.30	1	0.10	2	0.20
TOTALS	100%	1.60		2.60		1.35	
Vendor Selected				X			

Examples of Decision Factors/Evaluation Criteria

Appropriate

Cost Effectiveness (ex: cost of ineligible products, monthly recurring charges, implementation costs)

Service Quality (ex: speed, coverage, reliability)

Obsolescence of networking components

Customer Service (ex: experience, project management, sales)

Availability (ex: geographical locations, in state preference)

Minority Business Status

Inappropriate

Personal Relationship with Vendor (ex: selecting a service provider due to a friend or family member)

Gifts Received

Prior Donations

Company Logo Color

Cost Effectiveness Determination Instructions

- Step 1** For each vendor, enter the **Connection Type, Category 2 Costs, and Maintenance, Security, and Monitoring Costs** into the Cost Effectiveness Determination Table.
- Step 2** If there are **Category 2 Costs** or **Maintenance, Security and Monitoring** costs associated with a specific vendor, amortize over 3 years (our recommended period), with the amortized amount being listed next to **Annual Cost after Amortization**.
- Step 3** Calculate the **Annual Cost After Amortization** based on the sum of **Category 2 Costs** and **Maintenance, Security, and Monitoring Costs** divided by 3 years for amortization.
- Step 4** Enter the **Annual Recurring Cost** for each vendor.
- Step 5** Sum the **Annual Cost after Amortization, Maintenance, Security, and Monitoring Costs, and Annual Recurring Cost**. Enter the rating (3 being the lowest cost) for each vendor next to **Cost Comparison Rating**.

Bid Evaluation Instructions

- Step 1** Identify the factors that are important to making a decision regarding the provider for the services that you have requested and insert those next to **Decision Factor**.
- Step 2** Identify and insert the weight that each decision factor will have on your selection of providers for the services included in the bids. The highest weight should go to the **Cost Comparison factor**. The ratings from the **Cost Effectiveness Determination** should be used as the point value.
- Step 3** When evaluating each bid, assign the provider a rating (based on number of bids, highest being the best) for each of the decision factors listed.
- Step 4** Point totals are calculated based on the rating and the weight assigned to each factor, and the vendor with the highest calculated and weighted rating is the winner.