

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
)
Modernizing the E-rate Program for) **WC Docket No. 13-184**
Schools and Libraries)

**COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)¹ submits these comments in response to the Federal Register notice² seeking comment on various petitions for reconsideration filed in response to the Federal Communications Commission (Commission) order that updated rules for the schools and libraries universal service support program (E-Rate).³ The Commission's order made various reforms to the E-Rate program, including enhancements to funding for internal connections and streamlining of the application process.

However, USTelecom agrees with certain Petitioners that some of the Commission's decisions should be reconsidered. In particular, the Commission should reconsider those aspects of the order relating to self-provisioning by schools and libraries and the need for incorporation of additional safeguards to ensure efficient spending. The Commission should also initiate a

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceeding*, 80 Fed Reg. 19941 (April 14, 2015).

³ See, Second Report and Order and Order on Reconsideration, *Modernizing the E-rate Program for Schools and Libraries*, 29 FCC Rcd. 15538, FCC 14-189 (released December 19, 2014).

proceeding to determine the new methodology for calculating the reasonable comparability benchmark for high-cost recipients.

I. THE COMMISSION SHOULD INCORPORATE E-RATE SPENDING SAFEGUARDS WITH RESPECT TO SELF-PROVISIONING BY SCHOOLS AND LIBRARIES

USTelecom agrees with many of the issues raised in the Petition for Reconsideration filed by Cox Communications, Inc. (Cox).⁴ In particular, Cox notes that the Commission’s order “did not apply proven safeguards to ensure efficient spending, contrary to the Commission’s stated goal of maximizing cost-effectiveness and ‘closing the rural connectivity gap.’”⁵ The Cox Petition recommends that the Commission impose additional safeguards on special construction costs associated with dark fiber and self-construction projects, including limiting funding to cases where finished services are not available or capping such support at \$200 million per year.⁶ Cox notes the importance of ensuring that “funds are not wasted inadvertently on special construction for dark fiber and self-construction projects, and other costs associated with such projects, to fill broadband needs that could be met more efficiently by existing facilities.”⁷

In its comments filed in this proceeding, USTelecom recommended a similar approach, encouraging the Commission to “harness the existing broadband networks that are already

⁴ See, Petition for Reconsideration of Cox Communications, Inc., WC Docket No. 13-184 (filed March 6, 2015) (*Cox Petition*).

⁵ *Cox Petition*, p. 2 (citing Report and Order and Further Notice of Proposed Rulemaking, *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, 29 FCC Rcd 8870, 8918 ¶¶ 123 et seq. (2014) (*E-Rate Order*)).

⁶ *Cox Petition*, p. 2.

⁷ *Id.*, p. 3.

forming the foundation for high-speed broadband connections to schools and libraries.”⁸

Consistent with this view, USTelecom recommended that the Commission identify and target support to the limited number of schools and libraries that are unable to afford adequate (or any) high-speed broadband connections. To achieve this goal, USTelecom provided the Commission with a proposed framework that could be implemented very quickly and with no disruption to the E-Rate funding cycle.⁹ Equally important, USTelecom’s proposal represented an administratively efficient manner whereby schools lacking access to fiber broadband facilities could be quickly identified and highlighted so they could receive the necessary attention of all potential providers.

In particular, USTelecom recommended that the Commission take steps to specifically target and direct support to the schools and libraries that, for whatever reason, have been unsuccessful in obtaining support for broadband. USTelecom’s proposal consisted of a process that would allow schools and libraries (through use of the Form 470) to self-identify as to whether they believe: 1) they do or do not have fiber-based broadband; and, 2) they are in a rural area. These applicants would then be highlighted by the Commission to ensure that the business opportunity that these applicants represent is well known.¹⁰

Existing providers are best situated to provision last-mile broadband services to schools or libraries that are not currently E-Rate connected to a broadband network. USTelecom agrees

⁸ See, Comments of the United States Telecom Association, WC Docket No. 13-184, p. 13 (filed April 7, 2014) (*USTelecom Comments*).

⁹ Ex Parte Notice from Kevin Rupy, Vice President, United States Telecom Association, to Marlene H. Dortch, FCC, WC Docket No. 13-184 (filed November 17, 2014) (*USTelecom Ex Parte*); see also, Ex Parte Notice from Kevin Rupy, Vice President, United States Telecom Association, to Marlene H. Dortch, FCC, WC Docket No. 13-184 (filed December 3, 2014).

¹⁰ *USTelecom Ex Parte*, pp. 1 – 2.

with Cox that additional safeguards – such as the one proposed by USTelecom – would help ensure that “schools that already have access to high speed broadband do not receive support for construction and other associated costs that could drain the Universal Service Fund and limit the number of schools and libraries that receive funding.”¹¹ USTelecom shares the view of Cox that absent such safeguards, “the E-rate program could fund higher priority schools in areas with existing facilities while stranding lower priority schools that lack broadband access today and truly need the support.”¹²

USTelecom also agrees with Cox that the Commission should commit a set amount of funding per year to self-provisioning projects by schools or libraries. USTelecom previously recommended in this proceeding that total requests for applicants seeking to build their own networks should be limited, in order to manage the impact on the fund and to help ensure that USAC could manage the cost-effectiveness reviews.¹³ Such an approach is consistent with the one taken by the Commission in its *Healthcare Connect Fund Order*.¹⁴

II. THE COMMISSION SHOULD STRENGTHEN ITS RULES RELATING TO COST-EFFECTIVENESS.

Cox also recommended that the Commission clarify that, in evaluating the cost-effectiveness of dark fiber and self-construction projects, the Universal Service Administrative Company (USAC) is to ensure that applicants conduct an apples-to-apples comparison of their real costs versus purchasing provider-offered finished services. As noted by Cox, the

¹¹ *Cox Petition*, p. 4.

¹² *Id.*

¹³ Reply Comments of the United States Telecom Association, WC Docket No. 13-184, p. 6 (filed November 8, 2013) (*USTelecom Reply Comments*).

¹⁴ Report and Order, *Rural Healthcare Support Mechanism*, 27 FCC Rcd 16678, 16712-13 ¶¶ 367 – 368 (2012).

Commission’s order provides no guidance to USAC on how to determine cost effectiveness, noting only that “USAC already has experience in evaluating cost-effectiveness for large-scale projects from the Rural Health Care Program.”¹⁵ Cox states that any such comparison should take into account all of the costs associated with the project, including the costs associated with activating, maintaining and managing high-speed broadband connections. USTelecom agrees with Cox’s recommendation.

As USTelecom previously noted in this proceeding, schools and libraries generally lack the technical expertise and experience necessary to perform these functions in a cost-effective manner.¹⁶ USTelecom also pointed to comments in the record that it is more cost-effective for schools and libraries to lease network facilities rather than build or purchase them¹⁷ – especially in areas where high-capacity broadband already is available.¹⁸ As such, self-builds by schools and libraries are likely to be a cost-effective solution only in the rarest of cases. USTelecom agrees with Cox that the Commission should exercise prudence in any diversion of limited program dollars to support schools and libraries assuming these network responsibilities, when it likely would cost the fund more.

Cox correctly notes that the self-provisioning of broadband networks by schools and libraries raises concerns regarding the cost-effectiveness of such projects since the price of

¹⁵ *Cox Petition*, p. 8.

¹⁶ See, *USTelecom Reply Comments*, p. 2 (citing Clark County Comments, p. 8 (“Many school districts do not have the in-house capabilities to manage the construction of a school district owned WAN.”)).

¹⁷ See, *USTelecom Reply Comments*, p. 2 (citing CenturyLink Comments, p. 7).

¹⁸ See, See, *USTelecom Reply Comments*, p. 2 (citing AT&T Comments at 5-6 (“Grossly inefficient and wasteful; no policy reason to use government money to build additional, and especially private, networks in areas where high-speed broadband is already being provided commercially.”)).

broadband services in the competitive broadband marketplace, particularly for higher capacity services, is falling rapidly year over year, whereas the costs of leased and owned facilities will not.¹⁹ As a result, “even if leased or owned new construction facilities appear to be more cost-effective in the year that the applicant proposes to build them, they likely no longer will be cost-effective even a year or two down the road.”²⁰

It would be irresponsible public policy to adopt a self-construction proposal for a program as large as E-Rate without applying robust safeguards. As noted earlier by USTelecom in this proceeding, in order to provide USAC with adequate guidance to effectively implement a self-construction program, the Commission should seek further comment (or delegate to the Bureau) in order to develop a clear definition of “cost-effectiveness,” the necessary parameters for making such a showing, as well as the appropriate dollar limits to apply in the E-Rate context.

III. THE COMMISSION SHOULD INITIATE A PROCEEDING TO DETERMINE HOW THE E-RATE REQUIREMENT FOR HIGH-COST SUPPORT RECIPIENTS WILL BE IMPLEMENTED AND THE RATE BENCHMARK DETERMINED.

Finally, USTelecom agrees with certain aspects of the Petition filed by WTA-Advocates for Rural Broadband (WTA), NTCA-The Rural Broadband Association (NTCA), and the National Exchange Carriers Association, Inc. (NECA) (collectively, “Rural Associations”) concerning the new rule imposing an E-Rate obligation on high-cost support recipients.²¹ The

¹⁹ *Cox Petition*, pp. 4 – 5.

²⁰ *Id.*, p. 5.

²¹ *See*, Petition for Reconsideration of WTA-Advocates for Rural Broadband (WTA), NTCA-The Rural Broadband Association (NTCA), and the National Exchange Carriers Association, Inc. (NECA), WC Docket No. 13-184 (filed March 6, 2015) (*Association Petition*).

Rural Associations encourage the Commission to commence a rulemaking to seek focused comment on determining the new methodology for calculating the reasonable comparability benchmark(s) and when the new obligation to bid at benchmarked rates will take effect.²²

USTelecom agrees with the Rural Associations that while the Commission's order imposes mandatory bidding obligations on high-cost support recipients, it merely directs the Wireline Bureau to "seek more focused comment on an unknown methodology to develop an unknown number of 'national benchmarks' for fixed broadband services."²³

As noted by the Rural Associations, stakeholders are therefore "unable to fully assess the impact of the obligation on their businesses," since "[n]umerous important questions remain unanswered about the new benchmark requirement."²⁴ These questions include how the national reasonable comparability benchmarks will operate, whether the Commission intends for the Bureau to develop a single national benchmark or multiple benchmarks, as well as when the requirement to bid at or below the benchmarks will take effect. USTelecom agrees that before applying these obligations to recipients of high-cost support, the Commission should commence a proceeding to determine the new methodology for calculating the reasonable comparability benchmark and how the bidding and benchmark requirement will be implemented within existing E-Rate rules. USTelecom maintains that once the methodology is determined, it should be applied to all recipients of high-cost support.

²² *Association Petition*, pp. 11-14.

²³ *Id.*, p. 4.

²⁴ *Id.*, pp. 4 – 5.

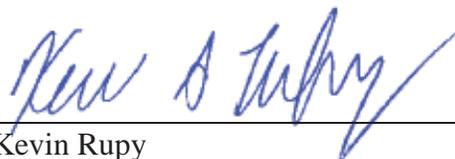
IV. CONCLUSION

For the foregoing reasons, the Commission should grant those aspects of the Cox Petition seeking reconsideration of the aspects of the E-Rate order relating to self-provisioning by schools and libraries and incorporation of additional safeguards to ensure efficient spending. In particular, the Commission should adopt additional safeguards – such as the one proposed by USTelecom – to ensure that schools that already have access to high speed broadband do not receive support for construction and other associated costs that could drain the USF and limit the number of schools and libraries that receive funding. The Commission should also strengthen its rules as they relate to the determination of cost-effectiveness for schools and libraries self-deploying broadband networks. USTelecom also agrees with those aspects of the Rural Association Petition calling for the Commission to initiate a proceeding to determine the new methodology for calculating the reasonable comparability benchmark for high-cost recipients.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By:



Kevin Rupy
B. Lynn Follansbee

607 14th Street, N.W.
Suite 400
Washington, D.C. 20005
(202) 326-7300

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