

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**REPLY OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION**

The National Cable & Telecommunications Association (NCTA) supports Cox Communications, Inc.'s (Cox's) petition for partial reconsideration of certain decisions in the Commission's *Second E-rate Reform Order* that undercut the Commission's goals of maximizing the cost effectiveness of the E-rate program and closing the rural broadband connectivity gap.<sup>1</sup> We agree with Cox that, to ensure that E-rate funding remains available for schools and libraries that lack broadband, the Commission should reconsider its decisions regarding funding availability for dark fiber and self-construction projects. Specifically, the Commission should limit the availability of this funding to areas where broadband is not available, or cap the amount of E-rate support that can be spent on such projects. The Commission also should reconsider its decision to provide additional E-rate support to match state funding for these projects.

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<sup>1</sup> Petition for Reconsideration of Cox Communications, Inc., WC Docket No. 13-184 (Mar. 6, 2015) (Cox Petition); *Modernizing the E-rate Program for Schools and Libraries*, 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*).

**I. THE COMMISSION SHOULD ESTABLISH ADDITIONAL SAFEGUARDS FOR E-RATE SUPPORT USED BY APPLICANTS TO SELF-PROVISION SERVICE**

In the *Second E-rate Reform Order* the Commission correctly recognized that E-rate support should be used by applicants to self-construct facilities only when this can be demonstrated to be the most cost-effective method of receiving service.<sup>2</sup> The Commission cited the successful model adopted in the rural health care universal service context regarding funding of self-constructed facilities, but veered from that model with respect to providing safeguards on the amount of funding that could be spent on such projects each year.<sup>3</sup>

To ensure that a large portion of the annual E-rate budget is not siphoned off by a limited number of applicants' self-provisioning projects, the Commission should revise its rules as Cox recommends to allow such funding only in areas where existing broadband services are unavailable.<sup>4</sup> CenturyLink agrees with Cox's proposal, arguing that "The Commission should limit funding for self-provisioning projects to schools and libraries that genuinely lack access to high speed broadband today."<sup>5</sup> This safeguard is necessary to ensure that the E-rate program does not "fund higher priority schools in areas with existing facilities while stranding lower priority schools that lack broadband access today and truly need the support."<sup>6</sup>

If the Commission does not implement this safeguard, the Commission should establish a budget on the amount of E-rate support that can be committed to applicants' self-construction projects each year. As Cox, CenturyLink and USTelecom note, the Commission adopted such a

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<sup>2</sup> *Second E-rate Reform Order*, 29 FCC Rcd at 15555-56, ¶¶43-44.

<sup>3</sup> *Id.* at 15556, 15558-59, ¶¶45, 52.

<sup>4</sup> Cox Petition at 4-6.

<sup>5</sup> Comments of CenturyLink on Petition for Reconsideration of Cox Communications, WC Docket Nos. 13-184 and 10-90, at 4 (Apr. 29, 2015) (CenturyLink Comments).

<sup>6</sup> Cox Petition at 4.

budget successfully in the rural health care context.<sup>7</sup> In that case, the Commission found that a cap would “ensure that the Fund does not devote an excessive amount of support to large up-front payments for [applicant] self-construction, which could potentially foreclose [applicants’] ability to use the Fund for monthly recurring charges for broadband services.”<sup>8</sup> For the same reasons, the Commission should reconsider its decision not to impose a cap on self-provisioning funds in the E-rate program.

## **II. THE COMMISSION SHOULD NOT EXEMPT PROVIDERS FROM CONTRIBUTING TO THE COST OF SPECIAL CONTRUCTION PROJECTS**

We also agree with Cox that the Commission should reconsider its decision to provide up to an additional 10 percent in E-rate support for special construction projects to match state contributions.<sup>9</sup> This decision would allow some schools to avoid any obligation to contribute toward their own special construction costs, thereby eliminating incentives to use E-rate funding as efficiently as possible.<sup>10</sup> The Commission previously has noted the importance of requiring that universal service applicants maintain a financial stake in their projects, stating “Requiring a significant contribution will provide incentives for [applicants] to choose the most cost-effective form of connectivity, design their networks efficiently, and refrain from purchasing unneeded capacity. Vendors will also have an incentive to offer services at competitive prices, knowing that [applicants] will be unwilling to increase unnecessarily their out-of-pocket expenses.”<sup>11</sup> This reasoning applies equally to special construction projects funded through the E-rate program; therefore the Commission should reconsider this portion of its decision.

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<sup>7</sup> *Id.*; CenturyLink Comments at 7; Comments of the United States Telecom Association, WC Docket No. 13-184, at 4 (Apr. 29, 2015) (USTelecom Comments).

<sup>8</sup> *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16713, ¶75 (2012) (*Rural Health Care Order*).

<sup>9</sup> Cox Petition at 6-8.

<sup>10</sup> *Id.* at 7-8; CenturyLink Comments at 10.

<sup>11</sup> *Rural Health Care Order*, 27 FCC Rcd at 16716, ¶82.

### **III. THE COMMISSION SHOULD PROVIDE CLEAR GUIDANCE TO APPLICANTS ON MEETING THE COST EFFECTIVE SHOWING FOR SELF-CONSTRUCTION**

Finally, as Cox recommends, the Commission should provide applicants with clear guidance as to the requirements necessary to demonstrate that a self-provisioned project is the most cost effective option.<sup>12</sup> In particular, the Commission should explain how applicants are to gauge the useful life of self-constructed facilities in making any cost-effectiveness showing.<sup>13</sup> As Cox states, “If the costs of these facilities are considered over an unrealistically long period of time, they will appear artificially inexpensive, resulting in a skewed cost-effectiveness analysis.”<sup>14</sup>

Similarly, the Commission should provide more information on the apples-to-apples comparison that applicants must conduct when determining whether a self-provisioned project or provider-offered services are the most cost effective option. As Cox and commenters note, “The Commission should clarify these comparison criteria which should take into account all of the costs associated with the project, including the costs associated with activating, lighting, maintaining and managing high-speed broadband connections.”<sup>15</sup> Providing such guidance will help to ensure that E-rate funding is used most effectively.

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<sup>12</sup> Cox Petition at 8-10.

<sup>13</sup> *Id.* at 9; CenturyLink Comments at 11.

<sup>14</sup> Cox Petition at 9.

<sup>15</sup> *Id.* at 10; CenturyLink Comments at 11-12; USTelecom Comments at 5.

## CONCLUSION

As explained above, the Commission should grant Cox's petition for reconsideration of portions of the *Second E-rate Reform Order*.

Respectfully submitted,

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