

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Modernizing the E-rate Program for Schools) WC Docket No. 13-184
and Libraries)
)
Petition for Reconsideration of Cox)
Communications, Inc.)
)
)

To: The Commission

**REPLY OF
COX COMMUNICATIONS, INC.**

Cox Communications, Inc. (“Cox”), pursuant to section 1.429 of the Commission’s Rules,¹ hereby replies to the filings received in response to its petition for reconsideration² of certain decisions in the *Second E-rate Reform Order*.³

I. INTRODUCTION AND SUMMARY

The record in this proceeding supports granting Cox’s petition. Contrary to the suggestions of American Library Association (“ALA”)⁴ and the Schools, Health & Libraries Broadband (“SHLB”) Coalition,⁵ Cox has no interest in restricting the options of schools and

¹ *Petitions for Reconsideration of Action in Rulemaking Proceeding*, WC Docket No. 13-184, Public Notice, Report No. 3017, 80 Fed. Reg. 19941 (2015).

² Petition for Reconsideration of Cox Communications, Inc., WC Docket No. 13-184 (filed March 6, 2015) (“Petition”).

³ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15555 (2014) (“*Second E-rate Reform Order*”).

⁴ Opposition of the American Library Association, WC Docket No. 13-184 (filed April 29, 2015).

⁵ Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC Docket No. 13-184 (filed April 29, 2015).

libraries that truly need to use dark fiber or self-construction to meet their connectivity needs. Rather, Cox's proposals are designed to target finite E-rate funding to maximize its benefits for *all* schools and libraries not just those in high density urban and suburban areas. Cox's proposal will also help ensure E-rate funding flows to the rural schools that need it most, which will importantly help close the rural connectivity gap. As supporting commenters United States Telecom Association ("US Telecom")⁶ and CenturyLink⁷ recognize, the proposals in Cox's petition would help safeguard the fund against wasteful spending, ensuring that sufficient funds remain available for the educational community's pressing internal and external connectivity needs.

Specifically, consistent with Cox's Petition and Commission precedent in other USF proceedings, the Commission should provide more robust safeguards in instances where an applicant wishes to self-provision broadband or light dark fiber, including limiting this option to applicants that cannot meet their broadband needs with finished services or by imposing a \$200 million annual cap on such expenditures. In addition, the record clearly demonstrates a need for greater clarity for applicants and the Universal Service Administrative Company ("USAC") regarding when such projects are cost-effective.

II. THE OBJECTIVE OF BETTER SAFEGUARDS FOR SELF-PROVISIONING AND DARK FIBER PROJECTS IS TO PROTECT THE FUND, NOT TO RESTRICT APPLICANTS' OPTIONS

Contrary to ALA's and SHLB Coalition's assertions, Cox has no interest in "add[ing] unnecessary roadblocks in the way of our libraries and schools attaining the affordable

⁶ Comments of the United States Telecom Association, WC Docket No. 13-184 (filed April 29, 2015).

⁷ Comments of CenturyLink on Petition for Reconsideration of Cox Communications, WC Docket No. 13-184 (filed April 29, 2015).

broadband connectivity they need”⁸ or “restor[ing] the unacceptable status quo existing before the [*Second E-rate Reform Order*].”⁹ Rather, Cox simply urges the Commission to include “important measures to better protect the Universal Service Fund.”¹⁰

The SHLB Coalition argues that the experience with infrastructure funding in the Rural Health Care program “strongly suggests that [Cox’s] concerns are overstated.”¹¹ Cox’s proposals, however, are entirely consistent with the safeguards that the Commission adopted in the Rural Health Care context.¹² There, the Commission adopted an annual cap on funding for infrastructure investments and a significant minimum applicant contribution for infrastructure projects, among other safeguards.¹³ Cox’s Petition simply asks that these two safeguards be applied here. As USTelecom points out, “[i]t would be irresponsible public policy to adopt a self-construction proposal for a program as large as E-rate without applying robust safeguards.”¹⁴

Cox’s proposal to limit new infrastructure spending to schools and libraries that lack access to high-speed broadband today is intended to ensure that the program is able to meet the needs of all schools and libraries – preventing, for example, higher discount level urban schools

⁸ ALA opposition at 1.

⁹ SHLB Coalition opposition at 3.

¹⁰ CenturyLink comments at 1.

¹¹ SHLB Coalition opposition at 6.

¹² USTelecom comments at 4.

¹³ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16713 ¶¶ 73–75 (2012).

¹⁴ USTelecom comments at 6.

that have access to high-speed broadband services today from precluding lower discount level rural schools that lack any access from receiving support.¹⁵

Opponents argue that this restriction would limit the ability of schools that already have high-speed broadband access to choose self-construction or dark fiber projects to increase competition or lower prices.¹⁶ These arguments are, however, short-sighted. Even with the increase in the E-rate cap, there are many demands on E-rate spending, including substantial expected new investment in WiFi infrastructure by both schools and libraries. And the additional \$1 billion that the Commission has identified for funding years 2015 and 2016 is not expected to continue beyond the next funding year. The challenging history of little or no funding availability for category 2 expenses is barely behind us.¹⁷ The Commission announced just this past Friday that funding requests in 2015 have reached and exceeded the increased, \$3.9 billion cap, even though the new special construction support for dark and leased fiber will not begin until the next funding year.¹⁸ Even without special construction, the Commission dipped into reserve funds in order to fully fund demand.¹⁹ There is no guarantee, however, that reserve funds will be available in future years. The Commission must remain a careful steward of the fund and guard against unnecessary self-construction impinging on higher funding priorities.

¹⁵ CenturyLink comments at 4; USTelecom comments at 3-4.

¹⁶ ALA opposition at 1-2; SHLB Coalition opposition at 5.

¹⁷ *See Second E-rate Reform Order*,

¹⁸ *Wireline Competition Bureau Announces Carry-Forward of Unused Schools and Libraries Universal Service Funds for Funding Year 2015*, CC Docket No. 02-6, Public Notice, DA 15-559 (rel. May 8, 2015).

¹⁹ *Id.*

Yet, instead of putting prudent safeguards in place now, SHLB urges the FCC to wait until the rule changes have been in effect for a while to see if spending is excessive.²⁰ This approach could lead to a recurrence of past funding shortfalls, with a real impact on schools that are denied funding as a result of large construction projects for select schools. Moreover, the SHLB Coalition misconstrues Cox’s proposal in two significant ways. First, it suggests that a school with existing broadband service (e.g., a 50 Mbps connection) that needs higher-capacity service (e.g., a 1 Gbps connection) would not be allowed to consider self-construction even if commercial options were unavailable for the higher-capacity service.²¹ This simply is not Cox’s position. If a school or library cannot obtain a finished service to meet its broadband needs, under Cox’s proposal it could turn to self-construction. The SHLB Coalition also observes that some schools or libraries may be located in areas with little competition.²² Here, too, where the applicant does not receive bids meeting its needs, it could self-construct or pursue a dark fiber solution under Cox’s proposal.

Cox’s alternative proposal to limit funding for self-provisioning projects to \$200 million per year is a “critical safeguard for E-rate program spending”²³ drawn directly from the successful infrastructure funding rules in the Rural Health Care program, upon which this rule change ostensibly was modeled.²⁴ There is no basis for ALA’s assertion that the increase in the overall E-rate funding cap, combined with the identification of an additional \$1 billion in funding available in each of funding years 2015 and 2016, eliminates the need for Cox’s

²⁰ SHLB Coalition opposition at 5.

²¹ *Id.*

²² *Id.* at 4.

²³ CenturyLink comments at 7.

²⁴ USTelecom comments at 4.

proposed cap.²⁵ As noted above, there already are many demands on E-rate funding in light of the recent reforms, and the additional funding above the cap is not expected to extend beyond next year. It would be particularly troubling if unnecessary infrastructure projects impinged on the achievement of the Commission's WiFi goals.

In proposing \$200 million for the infrastructure cap, Cox observed that this annual amount is twice the total amount committed for infrastructure projects in the Rural Broadband Experiments. As CenturyLink points out, however, the Rural Broadband Experiments' \$100 million in funding is spread over 10 years (i.e., \$10 million per year for ten years); thus, Cox's proposed \$200 million annual cap is effectively twenty times more funding per year than the Commission's investment in the Rural Broadband Experiments.²⁶ If nothing else, this demonstrates that Cox's proposed cap should be more than sufficient for infrastructure investments in E-rate.

ALA and SHLB Coalition also fail to refute the need for the Commission to modify its new rules to ensure that schools and libraries make a meaningful contribution towards E-rate expenditures, especially self-construction and dark fiber projects. Cox supports state funding for educational connectivity, and also supports E-rate funding to incentivize such state funding. Cox is simply concerned that allowing these funds to eliminate the applicant's share entirely removes an important safeguard against inefficient spending. This is consistent with the Commission's own findings in the NPRM in this proceeding and in the *Rural Health Care Order*.²⁷

ALA and the SHLB Coalition argue that the need for an applicant contribution is negated by the value of the involvement of state procurement officers, which will bring expertise that will

²⁵ ALA opposition at 2;

²⁶ CenturyLink comments at 8. On this basis, CenturyLink argues that the cap should be half the amount proposed by Cox. *Id.*

²⁷ CenturyLink comments at 9.

drive down prices.²⁸ This would be equally true, however, even if the state and federal matching was not permitted to eliminate schools' share of the cost entirely. The problem is not the matching funding; the problem is allowing the matching funding to eliminate the school's share and the benefit that occurs when a school or library has a direct financial stake in the success of the E-rate project.

III. THE RECORD DEMONSTRATES THAT MORE CLARITY IS REQUIRED AROUND THE “APPLES-TO-APPLES” COST-EFFECTIVENESS REQUIREMENT

All four commenters – including the two that otherwise opposed Cox's petition – at least acknowledge that additional clarification is needed on how applicants and USAC are to perform “apples-to-apples” cost-effectiveness comparisons between dark fiber or self-construction projects and finished services. As CenturyLink observes, the Commission's stark assertion that USAC has ample experience making cost-effectiveness determinations, including from the Rural Health Care program, does not provide the guidance needed given the novelty and scope of the new provision allowing the funding of infrastructure.²⁹ In this regard, USTelecom agrees with Cox that the order “provides no guidance to USAC on how to determine cost-effectiveness.”³⁰

ALA agrees that Cox “does raise an important issue” with regard to how USAC and applicants are to make “apples-to-apples” comparisons between leased dark fiber or self-construction projects and finished services.³¹ Similarly, the SHLB Coalition expresses no opposition to Cox's request for clarification of the cost-comparison principles.³² The SHLB

²⁸ ALA opposition at 2; SHLB Coalition opposition at 5-6.

²⁹ CenturyLink comments at 10-11.

³⁰ USTelecom comments at 5.

³¹ ALA opposition at 3.

³² SHLB Coalition opposition at 6.

Coalition further notes that, “by barring recipients of added E-rate match funding from receiving further such funding for fifteen years, the Commission has implicitly recognized a fifteen-year facility useful life standard for the fiber.”³³ This issue is, of course, too important for applicants or USAC to have to discern “implicit” suggestions about crucial inputs such as the useful life for self-constructed fiber. Thus, the record strongly reflects a need for the Commission to place clearer parameters around how USAC is to evaluate whether a self-construction project is more cost-effective than finished services.

Greater clarity around the cost-effectiveness criteria also will help ensure that the Commission’s fundamental goals for the new rules are achieved. Supporters of the new rules pick up on the Order’s suggestion that greater competition from dark fiber and self-construction will lower broadband prices for schools and libraries.³⁴ But this purported benefit of self-construction and dark fiber only can be realized if their cost-effectiveness is evaluated objectively and accurately against the price of finished services.

To ensure self-constructed facilities actually are more cost-effective than finished services, the Commission should implement safeguards to ensure that actual costs do not exceed the bid price, such as where the winning provider subsequently determines it cannot meet its bid price and attempts to extract additional payments from the applicant. The Commission should inform schools that winning bidders are prohibited from increasing costs after the winning bid – and that E-Rate will not pay for such costs - and encourage schools to reports such incidents. USAC should be empowered and encouraged to assist schools in requiring self-construction providers to fulfill their contracts.

³³ *Id.* (internal citations omitted).

³⁴ SHLB Coalition comments at 5; ALA comments at 2.

