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

Petitions for Reconsideration and/or Clarification of WTA—Advocates for Rural Broadband; NTCA—the Rural Broadband Association; NECA—the National Exchange Carriers Association, Inc.; and Cox Communications, Inc.

COMMENTS OF THE MONTANA TELECOMMUNICATIONS ASSOCIATION

The Montana Telecommunications Association ("MTA") represents both member-owned cooperative and shareholder owned commercial rural local exchange companies ("RLECS") operating in Montana. MTA supports the Petitions cited above filed by WTA/NTCA/NECA ("Rural Associations") and Cox Communications Inc. ("Cox"), or collectively, "Petitioners."

I. NTCA: The Commission Must Allow Public Notice and Comment on E-Rate Benchmarks before They Become Effective.

The Rural Associations assert that the Commission needs to provide public notice and an opportunity to comment on the E-Rate Order's comparability benchmark rate(s), as well as the methodology used to establish the rate(s) and any related consequences of such rates and methodologies.

> The Order does not provide a date certain by which the benchmarks must be adopted or information regarding how many "national benchmarks" will be developed, nor does it provide any specificity or discussion with respect to how the benchmarks will operate or be calculated. Rural Associations at p.4.

The Rural Associations raise legitimate and significant concerns regarding the potential effects on the High Cost Fund, rural broadband investment, and rural broadband consumers—not just schools and libraries—if the benchmark is not thoroughly vetted and/or set below cost. A below-cost benchmark effectively constitutes an unfunded mandate, which will affect negatively investment in rural broadband infrastructure.

> Particularly because the national benchmark(s) appear to be based upon urban and suburban rates that have little or no connection to the local and middle mile costs of serving rural schools and libraries, further notice and comment is needed to permit thorough consideration and analysis of the operations and consequences of the subject benchmark(s), including whether they will cause harm by requiring rural entities to provide service to schools and libraries at a loss. Rural Associations at p.5.

This concern is particularly acute in a state like Montana, where rural telecom providers serve an *average* of fewer than 4 customers per mile (fewer than seven people per square mile reside in Montana. They are disbursed over 147,000 square miles in the nation's fourth largest state, by area).

Before establishing a rural benchmark rate, the Commission needs to seek comment on how a benchmark would be established?

> How will the contemplated benchmark or benchmarks take into account the fact that distance, school and library sizes, network costs and middle mile expenses vary significantly among potential E-rate projects? Similarly, how will the benchmark(s) account for the differences in regional and state-wide consortia purchasing as compared to contracts between a service provider and a single school or school district? Additionally, will the benchmark(s) be based on download speeds offered to schools and libraries (with a national benchmark for broadband offered at 25 Mbps, 100 Mbps, and 1 GB, for example) or should providers expect a national per-megabyte benchmark? Further, how will "national" benchmarks based on urban rates take into account the dichotomy between rates charged by price-cap carriers in urban and suburban areas that are generally set without regard for cost as compared to cost-based, tariffed rates charged by rural local exchange carriers ("RLECs")? Rural Associations at p.10.

The Rural Associations further raise concerns regarding the timing of a benchmark rate decision.

> further focused comment is necessary to ensure that the major questions and potential impacts of such an approach are thoughtfully considered and analyzed by stakeholders and the Commission prior to the rule, which is currently set to be operative in fewer than six months, going into effect. Rural Associations at p. 14.

Providers may need to respond to Form 470 requests as soon as July 1, 2015, the Rural Associations point out. This places providers in the precarious position of having to comply with rules that haven't been established (let alone vetted properly) but which potentially cause liability (diminished USF support) for non-compliance. (Rural Associations at p. 15.)

It is important to reiterate that failure to account for the issues raised in Petitioners' requests for reconsideration threatens negative consequences that extend beyond broadband providers and schools and libraries. Benchmark rates will affect broadband investment activity, especially if such rates are below cost. Broadband investment and deployment decisions affect consumers at all levels: anchor institutions and residential customers alike whose broadband service is at least in part dependent on a stable investment environment which is put at risk by a benchmark rate that may not be thoroughly vetted.

II. Cox Communications: The E-Rate Order Should Include Additional Safeguards on New Construction in Areas Already Served by High-Speed Broadband

Cox petitions the Commission to:

> (1) 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, and (2) not provide additional E-rate support to match state funding, as this may eliminate any applicant contribution for such projects. Cox also requests 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. The 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." Cox at pp. 2-3.

MTA concurs. As Cox asserts,

> it is important 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." Cox at p. 3

Cox acknowledges that the E-Rate Order includes a provision requiring self-construction projects to demonstrate that construction is the most cost-effective option, but this safeguard does not "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." (Cox, at p.4.)

MTA has a long track record of opposing the use of Universal Service funds intended to encourage *access* to telecommunications services (e.g., Rural Health Care Program and Schools and Libraries) to effectively compete against, or displace, funds intended to promote broadband infrastructure *deployment* (e.g., the High Cost Program). Cox's concerns in this regard are consistent with MTA's. In fact, MTA urges the Commission to adopt the same due diligence safeguards in its E-Rate Order that it adopted in its Healthcare Connect Order ("HCC Order")[1] to ensure that Rural Health Program funds are efficiently distributed to qualifying recipients. In the HCC Order, the Commission stated that it

> expect[s] that HCP-owned infrastructure will be most useful in providing last-mile broadband connectivity *where it is currently unavailable and where existing service providers lack sufficient incentives to construct it.* (HCC Order at ¶71. Emphasis added.)

Accordingly, the Commission "adopt[ed] safeguards to ensure that the self-construction option will be exercised only where it is absolutely necessary to enable the HCPs to obtain the needed broadband connectivity." (*Id*. ¶73) These safeguards include a demonstration that "self-construction is the most cost-effective option after competitive bidding."

Further, the HCC Order requires that "all HCPs provide a 35 percent contribution to the cost of supported networks and services, which will help ensure prudent investment decisions." (*Id*. ¶74.)

[1] *In the Matter of Rural Health Care Support Mechanism*. WC Docket No. 02-60. Report and Order. FCC 12-150. Rel. December 21, 2012.

> Requiring a significant contribution will provide incentives for HCPs 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 HCPs will be unwilling to increase unnecessarily their out-of-pocket expenses. *Id*. ¶82.

For the same reasons the Commission applied these safeguards to rural health care providers' build-*vs.*-buy decisions, it should apply them to schools and libraries under this Order. In supporting Cox's petition to ensure that "funds are not wasted inadvertently on special construction for dark fiber and self-construction projects," MTA urges the Commission to include a matching funds requirement in its reconsideration of the E-Rate Order.

Moreover, as Cox points out, the E-Rate Order offers an additional discount to match state funding for special construction projects. This additional discount can effectively eliminate any matching funds requirement.

> [i]f state funds and E-rate matching funds are used to pay the entire service costs, the Commission will eliminate an important safeguard that helps ensure schools and libraries make cost effective choices. Cox at p. 6

MTA supports Cox's request that the Commission reconsider its decision to provide additional E-Rate discount to match state funding for infrastructure construction.

III. Conclusion

Notwithstanding positive reforms contained in the 2nd E-Rate Modernization Order, petitioners share a common interest in protecting the Schools and Libraries Program and its beneficiaries from unintentional harm. The Rural Associations are concerned that a benchmark rate developed without proper public notice and comment could lead to diminished investment by rural telecom providers. Such a threat to broadband infrastructure investment will negatively affect not only schools and libraries, but all anchor institutions, business and residential consumers alike.

Cox articulates its concern that by supporting construction of new telecommunications infrastructure, particularly in areas already served with high speed connectivity, the Commission will divert E-Rate funds inefficiently from the majority of schools and libraries—and their students and patrons—to fund a limited number of costly projects. Not only does construction of infrastructure inefficiently spend E-Rate resources, it threatens to displace otherwise available E0-Rate funds, and risk private investment in broadband infrastructure.

Respectfully submitted,

__________/s/__________________________

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