



July 10, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Portals II, Room TW-A325  
Washington, DC 20554

RE: *Petition of United States Telecom Association and CTIA–The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” Obligation of the Schools and Libraries Universal Service Program, Docket, CC Docket No. 02-6*

Dear Ms. Dortch:

On July 9, 2012, the undersigned met with Carol Matthey, Trent Harkrader, Lisa Hone, and Rebekah Bina of the Telecommunications Access Policy Division of the Wireline Competition Bureau, along with Helgi Walker and Elbert Lin of Wiley Rein LLP.

We discussed our pending Petition for Declaratory Ruling seeking clarification of certain aspects of the “lowest corresponding price” (“LCP”) obligation of the Schools and Libraries Universal Service (“E-rate”) Program. As we explained in filing that document, the guidance sought will substantially reduce, if not eliminate, disputes and questions among program participants and those responsible for program oversight regarding the nature, scope, and timing of the requirements. This will bring more specificity and predictability to the program. Although the LCP rule was adopted now more than fourteen years ago, it has been the subject of little regulatory or administrative development. And since the close of the comment period in June 2010, which contained no objections to our petition from any school or library, there has been no further action in this proceeding

We also discussed our concern with service provider training materials regarding the LCP obligation employed by the Universal Service Administrative Company (“USAC”) at its May 10, 2012 and May 15, 2015 training sessions. In particular, we objected to the substance of those materials, insofar as they suggest that the LCP applies outside the context of competitive bids submitted by a provider in response to a Form 470 and that it imposes a continuing obligation that entitles a school or library to a constantly recalculated lowest corresponding price during the term of a contract.

More fundamentally, we raised procedural objections to USAC’s actions to the extent they are interpreted as providing binding guidance on the meaning of the LCP rule, *see* 47 C.F.R. § 54.702(c) (limitations on USAC Administrator’s ability to “make policy” or “interpret unclear provisions of the statute or rules”), or could be used as the basis of retroactive liability, *see, e.g., Trinity Broad. of Fla., Inc. v. FCC*, 211 F.3d 618, 628 (D.C. Cir. 2000); *see also Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156 (2012); *see generally* 5 U.S.C. § 553 (notice and comment requirements). We suggested that the appropriate course for resolving questions about

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the LCP obligation is for the Commission to refresh the record and act on the petition on a prospective basis.

Sincerely yours,

*/s/ David B. Cohen*

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David B. Cohen  
Vice President, Policy

United States Telecom Association  
607 14th Street, NW, Suite 400  
Washington, DC 20005  
(202) 326-7300

*/s/ Scott K. Bergmann*

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Scott K. Bergmann  
Assistant Vice President, Regulatory Affairs

CTIA–The Wireless Association®  
1400 16th Street, NW, Suite 600  
Washington, DC 20036  
(202) 785-0081  
[www.ctia.org](http://www.ctia.org)

cc: Carol Matthey  
Trent Harkrader  
Lisa Hone  
Rebekah Bina