

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**COMMENTS
of
UNITED STATES CELLULAR CORPORATION**

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SUMMARY

United States Cellular Corporation commends the Commission for its initiation of this rulemaking proceeding to review and update the schools and libraries universal service support mechanism. The Commission's efforts will help to ensure that the E-rate program continues to play a vital and important role in enabling local schools and libraries to pursue their educational missions.

U.S. Cellular is concerned, however, regarding two proposals under consideration by the Commission. The first would phase out existing E-rate support for voice communications services, and the second would modify the E-rate program to limit E-rate funding to services that are directly available, at least in part, to students and library patrons. U.S. Cellular summarizes its objections to these proposals in the following paragraphs.

Importance of Cellular Service in Schools.—Cellular service has long played an important role in advancing the educational purposes of local schools. Access to cellular service provided to teachers and administrators advances the efficient operation of schools, and helps to ensure that students are able to pursue their education in a safe environment.

Hardships Faced by Local Schools.—Phasing out E-rate support for cellular service would impose hardships on schools and libraries. Budget problems faced by many state and local governments would force school districts to make difficult choices in struggling to find their own funding for voice communications services while also maintaining other important and beneficial school programs and activities.

State and Local Government Flexibility.—Preserving E-rate support for cellular service would be consistent with the Commission's long-standing policy of ensuring that state and local school authorities have the flexibility to make their own decisions regarding the telecommunica-

tions services and information services they need to advance their educational purposes. Eliminating E-rate support for voice communications services would deprive state and local school authorities of the flexibility that they need in selecting telecommunications services and information services to pursue their educational missions.

Universal Service Fund Budget Issues.—There are no grounds for concluding that federal universal service budgetary constraints compel abolishing E-rate support for cellular service as a prerequisite for enabling the Commission to pursue its proposed goal of ensuring that schools and libraries have affordable access to 21st Century broadband. The Commission should consider options that would enable it to maintain E-rate funding for cellular service while also effectively pursuing its broadband initiatives.

Narrowing the Definition of “Educational Purpose”.—The Commission should not adopt a proposal to limit E-rate funding to only those services that are directly available to students and library patrons. The Commission has consistently followed the policy that services such as cellular services advance the educational mission of local schools and therefore should be eligible for E-rate support. It should not abandon this policy because of misplaced concerns regarding universal service budget limitations.

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United States Cellular Corporation (“U.S. Cellular”), by counsel, hereby submits these Comments in response to the Notice of Proposed Rulemaking adopted by the Commission in the above-captioned proceeding.¹ U.S. Cellular provides cellular services and Personal Communications Service in 44 Metropolitan Statistical Areas, 100 Rural Service Areas, one Major Trading Area, and numerous Basic Trading Areas throughout the Nation.

I. INTRODUCTION.

The Commission’s schools and libraries universal service support mechanism (also referred to as the E-rate program)² has been instrumental in making it possible for many schools and libraries across the United States to gain access to modern communications networks. U.S. Cellular commends the Commission for initiating this rulemaking proceeding to review and update the E-rate program, with a view toward modernizing and leveraging the program to meet

¹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304 (2013) (“*E-Rate NPRM*”).

broadband deployment objectives recently announced by President Obama in the “ConnectED” initiative.³

U.S. Cellular will focus these Comments on two proposals discussed by the Commission in the *E-Rate NPRM*. First, the Commission seeks comment on whether it should phase out existing support for voice communications services.⁴ And, second, the Commission asks for comment regarding whether it should modify the E-rate program to limit E-rate funding to only those services that are directly available, at least in part, to students and library patrons.⁵ For the reasons discussed in the following sections, U.S. Cellular urges the Commission not to adopt either of these proposals.

II. THE COMMISSION SHOULD CONTINUE TO PROVIDE E-RATE SUPPORT FOR VOICE COMMUNICATIONS SERVICES.

The Commission seeks comment on a proposal made by the State E-Rate Coordinators Alliance (“SECA”)⁶ “that telecommunications services that are used only for voice communications should be phased out of E-rate support”⁷

U.S. Cellular opposes this proposal because its suggested phase-out of funding for cellular voice service would impose hardships on schools and libraries, it would deprive state and local government authorities of the flexibility they currently have to determine the communications

² The E-rate program is codified in Sections 54.500 through 54.523 of the Commission’s Rules, 47 C.F.R. §§ 54.500–54.523.

³ See *President Obama Unveils ConnectED Initiative to Bring America’s Students into Digital Age*, White House Press Release (June 6, 2013), accessed at <http://www.whitehouse.gov/the-press-office/2013/06/06/president-obama-unveils-connected-initiative-bring-america-s-students-di>.

⁴ *E-Rate NPRM*, 28 FCC Rcd at 11335 (para. 107).

⁵ *Id.* at 11333 (para. 100).

⁶ See Letter from Gary Rawson, Chair, State E-Rate Coordinators’ Alliance, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6, at 6 (filed Jun. 24, 2013) (attaching SECA’s “Recommendations for E-Rate Reform 2.0”) (“SECA June 2013 White Paper”), at 6-7.

services and technologies that best meet their needs, and the proposal's plan to shift E-rate funds from voice communications to broadband is not necessary and would not result in a better use of the E-rate funds.

A. Phasing Out E-Rate Support for Cellular Voice Service Would Impose Hardships on Schools and Libraries.

The Commission seeks comment regarding “the potential hardship schools and libraries would face if voice phone service were to be phased out under the E-rate program.”⁸ In U.S. Cellular's view, the loss of E-rate support for cellular voice service would be problematic because the efficient operation of school programs and the advancement of the schools' educational missions are enhanced by this support for cellular voice service.

Access to cellular service provided by U.S. Cellular and other wireless service providers enables teachers and school administrators to carry out their various duties and responsibilities effectively, enabling day-to-day communications and interactions that contribute to the efficient and effective performance of school operations. In addition, this access to cellular voice service can assume critical importance in emergency situations. Incidents may arise in which disastrous consequences can be avoided by teachers' and school administrators' ability to utilize cellular phones to communicate with law enforcement and other public safety officials.

The Commission also asks for comment regarding whether E-rate support is necessary to enable schools and libraries to subscribe to voice communications service, or whether E-rate support merely subsidizes voice telephone service that schools and libraries would purchase even without any E-rate support.⁹ In U.S. Cellular's view, budget constraints would make it difficult,

⁷ *E-Rate NPRM*, 28 FCC Rcd at 11335 (para. 107).

⁸ *Id.* at 11335 (para. 108).

⁹ *Id.* at 11335-36 (para. 108).

in the absence of continued E-rate support, for schools to maintain their cellular service subscriptions while also sustaining other important school resources, programs, and activities.

The plain fact is that local school budgets are under a frontal assault at the state and local government level because of the fiscal and budgetary pressures faced by these governments. E-rate support is going to some of the hardest hit school districts in the country, and removing this support for critical communications functions in and of itself would have serious consequences. Because of the importance of cellular voice services, local schools would likely give priority to retaining this communications tool even in the absence of E-rate support. But doing so would take funding away from other services and resources that provide critical support to the educational missions of local schools.

Local schools would face a dilemma if E-rate support were to be phased out pursuant to the SECA proposal. As the Commission acknowledged three years ago, “budgets are challenged for state and local authorities around the country”¹⁰ There is evidence suggesting that these budget difficulties have not significantly abated. For example, a report issued four days ago by the Center on Budget and Policy Priorities indicates that:

At least 34 states are providing less funding per student for the 2013-14 school year than they did before the recession hit [in late 2007]. Thirteen of these states have cut per-student funding by more than 10 percent. . . . At least 15 states are providing less funding per student to local school districts in the new school year than they provided a year ago. This is despite the fact that most states are experiencing modest increases in tax revenues.¹¹

¹⁰ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6897 (para. 59) (2010).

¹¹ Michael Leachman & Chris Mai, “Most States Funding Schools Less Than Before the Recession,” Center on Budget and Policy Priorities (“CBPP”) (Sept. 12, 2013), accessed at <http://www.cbpp.org/files/9-12-13sfp.pdf> (“CBPP Report”), at 1. The authors note that “[t]hese figures, like all the comparisons in

From fiscal year 2008 to fiscal year 2014, per-student spending has decreased by 22.8 percent in Oklahoma, 20.1 percent in Alabama, 17.2 percent in Arizona, 16.5 percent in Kansas, 15.9 percent in Idaho, 15.7 percent in South Carolina, and 15.3 percent in Wisconsin.¹²

The Philadelphia school system is a case in point. The Philadelphia school district—one of the “most troubled”¹³ in the Nation—finds itself “buckling under financial pressure[,]” and facing a \$304 million budget deficit.¹⁴ School programs are being pared down, teachers face a possible 10 percent salary cut, and 4,000 employees have been laid off.¹⁵ Although the crisis that is threatening Philadelphia’s schools has various origins,¹⁶ the fact remains that terminating E-rate support for cellular service would add to budget problems that are pushing the Philadelphia school district to the breaking point.

In considering the SECA proposal, the Commission should be cognizant of the fact that the budget imperatives being faced by many local school districts would present these schools with hard choices if the Commission were to cut off E-rate support for cellular voice service. This support currently makes it possible for schools to subscribe to and obtain the benefits of cel-

[the CBPP Report], are in inflation-adjusted dollars and focus on the primary form of state aid to local schools.” *Id.*

¹² *Id.* at 2 (Figure 1).

¹³ Stephanie Banchemo & Kris Maher, “Philadelphia Schools Reopen in Crisis,” WALL ST. J. (Sept. 11, 2013) (“Banchemo & Maher”), at A2.

¹⁴ *Id.*

¹⁵ *Id.* See Valerie Strauss, “‘Perfect Storm’ Threatens Philadelphia Schools,” WASH. POST (Aug. 23, 2013), accessed at <http://www.washingtonpost.com/blogs/answer-sheet/wp/2013/08/23/perfect-storm-threatens-philadelphia-schools/> (explaining that “[t]he financial problems [faced by the Philadelphia school district] are so deep that this summer, the appointed School Reform Commission, which has run the district since the state took it over a dozen years ago, passed a ‘doomsday’ budget that included cuts so drastic that there was no money for schools to open this fall with funding for things such as paper, new books, athletics, arts, music, guidance counselors and more shortly after announcing the closure of a few dozen [schools]”).

lular service. Elimination of E-rate support would risk an outcome in which many schools would struggle to maintain their level of cellular service while also avoiding cuts in other vital school programs and resources.

B. State and Local Authorities Should Continue To Have the Flexibility Necessary To Determine the Services and Technologies They Need.

One of the principles on which the Commission built the E-rate program is that the Commission should not substitute its judgment “for that of individual school administrators throughout the nation”¹⁷ Instead of imposing its own decisions on local government authorities, the Commission chose to avoid “preventing . . . schools and libraries from using the services they find to be the most efficient and effective means for providing the educational applications they seek to secure.”¹⁸

Significantly, the Commission, in adopting its universal service program 16 years ago, found no reason to limit the nature of telecommunications services covered by the E-rate program “or the role they play in the operations of the institution[,]”¹⁹ and also concluded that the Communications Act of 1934 (“Act”) preempts any state or local law that would preclude wireless carriers from providing service to schools and libraries.²⁰

¹⁶ For example, the school district has failed to reach agreement with the Philadelphia teachers union, and teachers started the current school year this month without a contract. *Banchero & Maher* at A2.

¹⁷ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9006 (para. 432) (1997) (“*Universal Service First Report and Order*”) (subsequent history omitted).

¹⁸ *Id.* (footnote omitted). *See id.* at 9002 (para. 425) (emphasis added) (observing that “schools and libraries should have *maximum flexibility* to purchase the package of services they believe will most effectively meet their communications needs”).

¹⁹ *Id.* at 9006 (para. 432 n.1117).

²⁰ *Id.* at 9008 (para. 435). The Commission later found that, “[u]nder section 254(h)(1)(B) [of the Act], eligible schools, libraries, and consortia that include eligible schools and libraries, are eligible for discounts on telecommunications services. Accordingly, basic telephone service, which *includes mobile and fixed wireless service*, is eligible for discounts pursuant to the schools and libraries universal service sup-

The Commission thus has made it clear that state and local school authorities should be able to select the telecommunications services and information services that best meet their needs, and that cellular services provided to schools and libraries are eligible for E-rate discounts.

There is no compelling policy basis for the Commission now to reverse course and abandon its principle of promoting and preserving state and local flexibility. Phasing out E-rate support for cellular voice service would deprive state and local school authorities of the flexibility that they have long exercised and that they continue to need in selecting telecommunications services and information services to pursue their educational missions.

U.S. Cellular supports the view that the Commission should “build on the success of the E-rate program by modernizing the program and adopting clear forward-looking goals aimed at efficiently and effectively ensuring high-capacity connections to schools and libraries nationwide.”²¹ But this modernization should not be pursued by retiring a policy that has served for 16 years to assist state and local school officials in carrying out their educational missions.

SECA does not address this issue of state and local flexibility in its proposal to phase out funding for telecommunications services used only for voice communications, but instead supports its proposal by pointing out that “[t]hese [telecommunications] services are *not* used to provide advanced telecommunications or information services to schools and libraries[.]”²² and

port mechanism.” *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9211 (para. 25) (2003) (“*Schools and Libraries Second Report and Order*”) (footnote omitted) (emphasis added).

²¹ *E-Rate NPRM*, 28 FCC Rcd at 11306 (para. 1).

²² SECA June 2013 White Paper at 6 (emphasis in original).

by suggesting that schools and libraries should be “incent[ed] . . . to migrate voice telecommunications services onto the data communications network platform wherever feasible”²³

Such incentives should not be created by depriving local school districts of the flexibility to select cellular voice services that receive E-rate support. In fact, the SECA proposal is not designed to give local school authorities an “incentive” to migrate to data communications networks, but rather is intended to force this migration by taking E-rate support away from voice communications services.

In defending its advocacy of the removal of E-rate support voice services, SECA argues that paying for voice phone service was a local financial responsibility before the E-rate program began, and this responsibility should now be returned to local schools and libraries,²⁴ and claims that its proposed five-year phase-out plan would allow “the smaller and more rural applicants who disproportionately use the basic phone service and legacy technologies ample opportunity to upgrade their infrastructure”²⁵

As U.S. Cellular has discussed in the previous section of these Comments, state and local budget realities intrude upon SECA’s assumptions. As a threshold matter, it is not persuasive to argue that, since local schools and libraries at one time bore the burden of paying for voice phone service, it now makes sense for the Commission to impose this burden on them again. The purpose of the E-rate program is to help *relieve* schools and libraries of the financial burdens associated with their obtaining telecommunications and information services, including cellular voice service. In fact, the Commission has emphasized that “Congress directed the Commission to es-

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ *Id.* at 6.

tablish explicit universal service support mechanisms to ensure the delivery of affordable telecommunications service to all Americans, including . . . eligible schools and libraries.”²⁶

SECA “understand[s] that each school and library needs voice phone service[,]”²⁷ but fails to acknowledge the fact that the E-rate program is designed to help meet this need. SECA is also candid in explaining that its motivation in recommending a phase-out of E-rate support for voice communications is that “[t]his will allow more E-rate funding to be available for high speed Internet and data circuits.”²⁸ While this is no doubt true,²⁹ SECA ignores the fact that, as U.S. Cellular has shown, cutting off E-rate support for cellular service has adverse consequences: It imposes hardships on local school districts and it erodes the Commission’s commitment to state and local government flexibility in determining telecommunications and information service needs.

In suggesting that a funding burden that local school districts faced before the E-rate program was created should now be imposed on them again, SECA ignores the fact that the Great Recession³⁰ continues to aggravate budget problems faced by state and local governments. The Center on Budget and Policy Priorities explains, for example, that:

States cut funding for K-12 education . . . as a result of the 2007- 09 recession, which caused state revenue to fall sharply. . . . The recession of 2007-09 and the slow recovery continue to affect state budgets and schools. Persistently high unemployment and continued low housing values have left people with both less income and purchasing power. So states continue to receive less income and sales

²⁶ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9203 (para. 1) (emphasis added).

²⁷ SECA June 2013 White Paper at 7.

²⁸ *Id.*

²⁹ U.S. Cellular demonstrates in the next section of these Comments, however, that it is not necessary to terminate E-rate support for voice communications as a prerequisite for providing affordable access to advanced broadband services.

³⁰ The recession that began in December 2007 has been described as the “Great Recession” because its duration and severity surpassed previous recessions.

tax revenue, which are the main sources of revenue states use to fund education and other services.³¹

The CBPP Report also observes that federal spending cuts have affected support available for high-poverty schools and educational programs for students with disabilities,³² and that, “[a]s of August 2013, local school districts had cut 324,000 jobs since 2008.”³³ These and other factors affecting state and local government budgets would make it difficult for local schools to take on the burden of paying for voice communications services without E-rate support.

C. Shifting E-Rate Funds from Voice Communications to Broadband Services Is Not Necessary and Would Not Put the Funds to Better Use.

The Commission asks whether “the savings resulting from the phase out of funding for basic voice [service would] be better spent on high-capacity broadband that supports digital learning[,]”³⁴ and whether funding for local, long distance, and cellular voice service “would have greater impact for students and library patrons if it were transitioned to support broadband for schools and libraries.”³⁵

While the first goal of the E-rate program proposed by the Commission in the *E-Rate NPRM* “is to ensure that schools and libraries have affordable access to 21st Century broadband

³¹ CBPP Report at 5-6.

³² *Id.* at 6-7 (emphasis in original) (footnotes omitted) (explaining that “federal policymakers have cut *ongoing* federal funding for states and localities, thereby worsening state fiscal conditions. For example, since 2010, . . . spending for . . . the major federal assistance program for high-poverty schools . . . is down 12 percent after adjusting for inflation, and federal spending on disabled education is down 11 percent. These cuts include the automatic, across-the-board cuts known as “sequestration,” and the cuts required by the Budget Control Act of 2011.”).

³³ *Id.* at 3. CBPP explains that “[t]hese job losses have reduced the purchasing power of workers’ families, in turn reducing overall economic consumption, and thus deepened the recession and slowed the pace of recovery.” *Id.*

³⁴ *E-Rate NPRM*, 28 FCC Rcd at 11335 (para. 107).

³⁵ *Id.* at 11335 (para. 106).

that supports digital learning[.]”³⁶ there is no reason to conclude that abolishing support for cellular voice service is necessary in order to advance this goal. Three considerations suggest that the Commission can be successful in using the E-rate program to promote affordable access to broadband while also preserving E-rate support for cellular voice service.

First, if the Commission is successful in pursuing its second proposed goal for the E-rate program—“to maximize the cost-effectiveness of E-rate funds”³⁷—this success will facilitate the use of E-rate support to advance the availability of affordable 21st Century broadband for schools and libraries while also maintaining support for voice communications.

As the Commission observes, “[e]nsuring that schools and libraries spend E-rate money in the most cost-effective ways possible maximizes the impact of limited E-rate funds and helps ensure that *all eligible schools and libraries* are able to receive *all the support they need*.”³⁸ Thus, if the Commission places a priority on taking steps to encourage reductions in prices for E-rate supported services, these efforts will have the collateral benefit of eliminating any need to cut off support for voice communications services.

Second, the Commission has an opportunity to expand the amount of funding available for the E-rate program by implementing universal service contribution reform. U.S. Cellular has argued in other Commission proceedings that the Commission should focus its energies on completing its efforts to reform its universal service contribution mechanisms, because doing so

³⁶ *Id.* at 11313 (para. 17).

³⁷ *Id.* at 11318 (para. 41).

³⁸ *Id.* (emphasis added). The Commission is considering several options to increase cost-effective purchasing by recipients of E-rate support, “including ways to encourage more consortium purchasing and other forms of bulk buying; provide more transparent pricing for E-rate services; reduce single or no bid contracts; and ensure that specific contracts for E-rate supported services are cost-effective.” *Id.* at 11351 (para. 178).

would enable the Commission to establish a budget that would advance statutory universal service mandates that are not currently being met.³⁹ Such a budget would remove the dilemma of attempting to determine whether transferring E-rate support from voice communications services to broadband would result in a better use of the funds.

And, *third*, while the Commission is correct that it must meet the challenge of modernizing the E-rate program in a manner that ensures “that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund[,]”⁴⁰ the Commission should not lose sight of the fact that a central initiative of the *CAF Order*⁴¹ was the reinvesting in of the USF budget in order to reduce upward pressures on contributions.

The Commission stated in the *CAF Order* that capping annual funding at \$4.5 billion “ensures that individual consumers will not pay more in contributions due to the reforms [adopted in the *CAF Order*]. Indeed, were the CAF to significantly raise the end-user cost of ser-

³⁹ U.S. Cellular Comments, WC Docket No. 10-90, *et al.*, filed Jan. 28, 2013, at 14. U.S. Cellular has argued that the Commission should exercise its permissive statutory authority to expand the contribution base, because doing so will distribute contribution obligations more equitably and will enhance the sustainability of the Universal Service Fund (“USF”), and that, “[i]n particular, the contribution base should be expanded to cover fixed and mobile broadband Internet access services.” U.S. Cellular Comments, WC Docket No. 06-122, *et al.*, filed July 9, 2012, at 4.

⁴⁰ *E-Rate NPRM*, 28 FCC Rcd at 11306 (para. 2). The Commission had previously concluded that it “must balance its desire to ensure that schools and libraries have access to valuable communications opportunities with the need to ensure that consumer rates for communications services remain affordable. End users ultimately bear the cost of supporting universal service, through carrier charges.” *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18781 (para. 36) (2010) (“*Schools and Libraries Sixth Report and Order*”).

⁴¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*CAF Order*”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 18, 2011) (and consolidated cases).

vices, it could undermine [the Commission's] broader policy objectives to promote broadband and mobile deployment and adoption."⁴² Thus, while "funding is always limited[,]"⁴³ the budgetary efforts undertaken by the Commission in the *CAF Order* to protect consumers create an opportunity in the E-rate program to preserve E-rate support for voice communications and to promote affordable access to 21st Century broadband, while still being fair to the consumers and businesses that pay into the USF.

Finally, a further point bears emphasis. SECA's proposal to eliminate E-rate support for voice communications services, so that funds can be shifted to broadband services, appears to be driven by the judgment that broadband services provide more beneficial services to schools and libraries and are therefore more worthy of E-rate support. U.S. Cellular disagrees with this judgment, since access to voice communications services continues to play a significant role in the furtherance of local schools' educational missions, particularly for smaller and more rural schools.⁴⁴ Moreover, as U.S. Cellular has explained, current Commission policies mandate that this judgment be made by state and local authorities, not by the Commission.

III. THE COMMISSION SHOULD NOT MODIFY THE E-RATE PROGRAM TO LIMIT FUNDING TO ONLY THOSE SERVICES THAT ARE DIRECTLY AVAILABLE TO STUDENTS AND LIBRARY PATRONS.

The Commission seeks comment on whether it should revise the E-rate program to ensure that supported services are, at a minimum, used for the core purpose of educating students

⁴² *Id.* at 17711 (para. 124).

⁴³ *E-Rate NPRM*, 28 FCC Rcd at 11333 (para. 100).

⁴⁴ *See* SECA June 2013 White Paper at 6.

and serving library patrons,⁴⁵ and specifically asks whether it should “limit E-rate funding to services directly available, at least in part, to students and [library] patrons”⁴⁶

In developing its definition of “educational purposes” in connection with its administration of the E-rate program, the Commission has found that, “in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program.”⁴⁷ In keeping with its decision to grant state and local school and library officials flexibility in deciding on the mix of telecommunications and information services that best meets their needs, the Commission has determined that its inclusive definition of “educational purposes” recognizes that “the technology needs of participants in the schools and libraries program are complex and unique to each participant.”⁴⁸

The Commission has also established “a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons[,]”⁴⁹ and cellular voice service is treated as eligible for E-rate funding to the extent that the service facilitates and supports activities that are “integral, immediate, and proximate to the education of students,” and thus promotes educational purposes. Moreover, the Commission has determined that “schools

⁴⁵ *E-Rate NPRM*, 28 FCC Rcd at 11333 (para. 100).

⁴⁶ *Id.*

⁴⁷ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208 (para. 17); *see* 47 C.F.R. § 54.500(b).

⁴⁸ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208 (para. 17) (footnote omitted).

⁴⁹ *Id.*; *see* 47 C.F.R. § 54.500(b).

must primarily use services funded under the E-rate program, in the first instance, for educational purposes.”⁵⁰

The Commission now proposes to cut back on the scope of the “educational purposes” definition by limiting E-rate support to services directly available, at least in part, to students or library patrons. Thus, under the Commission’s proposed modification, services such as cellular voice services that support activities that are integral, immediate, and proximate to the education of students, but that are not made directly available (at least in part) to students, would be treated as outside the scope of the “educational purposes” definition and therefore would not be eligible for E-rate support.

In considering whether to limit E-rate support to only those services that are directly available to students, the Commission asks whether, “even if there are services that further the educational mission of the school, . . . it [is] now no longer realistic to support all of these services within [the Commission’s] budget since funding is always limited”⁵¹

U.S. Cellular disagrees with the suggestion that the scope of activities and services eligible for E-rate support should be narrowed because of perceived funding constraints. Specifically, restricting E-rate support to services directly received by students would rescind a longstanding Commission policy that has favored a more inclusive definition of “educational purposes” as that term is used in Section 254(h)(1)(B) of the Act.⁵² That policy has played an important role in

⁵⁰ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774 (para. 22); see 47 C.F.R. §§ 54.503(c)(2)(v), 54.504(a)(1)(vii).

⁵¹ *E-Rate NPRM*, 28 FCC Rcd at 11333 (para. 100).

⁵² The statute provides that “[a]ll telecommunications carriers . . . shall, upon a bona fide request[,] provide . . . services [that are within the definition of universal service] to elementary schools, secondary schools, and libraries for *educational purposes*” 47 U.S.C. § 254(h)(1)(B) (emphasis added).

enabling the E-rate program to help schools across the country to carry out their educational missions.

The Commission does not suggest in the *E-Rate NPRM* that the policies reflected in its current definition of “educational purposes” have somehow become ill-suited to the Commission’s goals in providing support to schools and libraries. Instead, the Commission asks whether it is now “unrealistic” to continue providing support that schools and libraries need to further their educational missions because there are perceived to be perpetual limitations on the level of E-rate funding.

U.S. Cellular urges the Commission to take a more optimistic view. As U.S. Cellular has suggested, the Commission’s budget options can be improved by adopting universal service contribution reform and by maximizing the effectiveness of E-rate funds.⁵³ In addition, the Commission can focus its efforts on streamlining the administration of the E-rate program. For example, as a result of E-rate funding allocation problems, “an average of only \$1.8 billion [has] been spent in each of the last 10 years, leaving more than \$5 billion unused in the E-Rate account.”⁵⁴ U.S. Cellular agrees that, to address these problems, “it is essential that [the Commission] continue to improve the E-rate program procedures and continue to simplify and streamline the program’s application review and disbursement processes.”⁵⁵

⁵³ See Section II.C., *supra*.

⁵⁴ Edward Wyatt, “F.C.C. Backs Plan to Update a Fund That Helps Connect Schools to the Internet,” *N.Y. TIMES* (July 19, 2013), accessed at http://www.nytimes.com/2013/07/20/business/media/fcc-backs-plan-to-update-a-fund-that-helps-connect-schools-to-the-internet.html?_r=0 (reporting Commissioner Ajit Pai’s criticisms of the E-rate funding allocations). See *E-Rate NPRM*, 28 FCC Rcd at 11477, Statement of Commissioner Ajit Pai (indicating that, “[a]s a result of [a] ‘red-tape funding gap,’ . . . billions have been collected from the American people and have been sitting in the E-Rate account, for years in some cases”).

⁵⁵ *E-Rate NPRM*, 28 FCC Rcd at 11319 (para. 45).

While U.S. Cellular recognizes that the E-rate budget is by no means open-ended, and that it is prudent for the Commission to assess the scope and range of services and activities that should be eligible for E-rate support in light of the boundaries of the E-rate budget, the Commission should also be mindful of potential hardships that schools and libraries would face if the Commission were to start whittling down the list of eligible services and activities. The Commission's priority should be to preserve its current definition of "educational purposes," and to continue its pursuit of initiatives to ease E-rate budgetary constraints.

IV. CONCLUSION.

For the reasons discussed in these Comments, U.S. Cellular respectfully urges the Commission not to adopt the proposal to phase out existing E-rate support for voice communications

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services, or the proposal to modify the E-rate program to limit E-rate funding to only those services that are directly available, at least in part, to students and library patrons.

Respectfully submitted,

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