

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

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

COMMENTS OF THE CITY OF BOSTON, MASSACHUSETTS

Mayor Thomas M. Menino, on behalf of the City of Boston, Massachusetts (“City” or “Boston”),¹ files these comments in strong support of President Obama’s,² Secretary Duncan’s,³

¹ The City, incorporated as a town in 1630 and as a city in 1822, exists under Chapter 486 of the Acts of 1909 and Chapter 452 of the Acts of 1948 of The Commonwealth of Massachusetts (the “Commonwealth”) which, as amended, constitute the City’s Charter. The Mayor is the chief executive officer of the City. Thomas M. Menino, the fifty-third Mayor of the City, was reelected for a record setting fifth four-year term that will expire in January 2014. Mayor Menino has general supervision of, and control over, the City’s boards, commissions, officers, and departments. Boston’s budget for all departments and operations of the City, except the School Department and the Boston Public Health Commission, is prepared under the direction of the Mayor. Prior to his selection as Mayor, Mayor Menino served on the City Council. He served as Chairman of the City Council’s Ways and Means Committee from 1988 to 1992, and was elected President of the City Council in 1993. Mayor Menino was also the President of the United States Conference of Mayors.

² President Obama opened this effort stating: “Preparing our nation’s students with the skills they need to get good jobs and compete with countries around the world will rely increasingly on interactive, individualized learning experiences driven by new technology. To get there, we have to build connected classrooms that support modern teaching – investments we know our international competitors are already making. Our ConnectED initiative – which has widespread support from Republicans, Democrats, educators, business and tech leaders and state and local officials – will ensure that the federal government can provide schools with the infrastructure and tools they need to deliver this competitive digital education for every student in the United States.” The White House, *Statement by the President on the FCC Vote to Modernize the E-Rate*, July 19, 2013, available at: <http://www.whitehouse.gov/the-press-office/2013/07/19/statement-president-fcc-vote-modernize-e-rate>. A fact sheet on ConnectED may be found at: http://www.whitehouse.gov/sites/default/files/docs/connected_fact_sheet.pdf

³ Secretary Duncan outlined the challenge in this way. “The U.S. once led the world in connecting our schools to the Internet, but our strongest international competitors are surging ahead of us because they know that giving students and teachers the right tools is vital to their economic strength. It will take a lot of work by everyone to restore U.S. leadership and make good on the ConnectED promise: to bring the fastest Internet to nearly every student in America,

and the Commission's effort to build upon the E-rate program's past achievements and to shape it for future success. Commissioner Rosenworcel is right: "It is time for E-Rate 2.0."⁴

An efficient and effective E-rate program will complement the City of Boston's and Mayor Menino's efforts to ensure that all Bostonians can fully participate in the information age because they can access affordable, high-speed broadband facilities. These efforts have included negotiating cable franchise agreements that required incumbent cable operators to connect all the City's public and private school with broadband capacity. They also included winning and successfully implementing a Broadband Technology Opportunity Program ("BTOP") grant to expand computer and Internet capacity at City libraries, community centers, and public housing sites.⁵ The City has help created and has since partnered with *Tech Goes Home*⁶ to equip Bostonians not only with hardware and broadband access, but also with the training skills they

and to put affordable devices in our students' hands. U.S. Dept. of Education, *Statement from U.S. Education Secretary Arne Duncan on FCC Action*, July 19, 2013, available at: <http://www.ed.gov/news/press-releases/statement-us-education-secretary-arne-duncan-fcc-action-connect-more-students-hi>

⁴ *Remarks of Commissioner Jessica Rosenworcel*, Washington Education Technology Policy Summit, Washington DC (April 11, 2013). While Commissioner Rosenworcel is a native of Hartford, Connecticut, we are honored that she views herself as a daughter of Boston, which she has been so kind to share with representatives of the City over the years. She is and will always be welcome in the city of Boston.

⁵ *Broadband USA, Connecting America's Communities, City of Boston Public Computing Centers*, available at: <http://www2.ntia.doc.gov/grantees/CityOfBoston>.

⁶ *Tech Goes Home* ("TGH") was founded in 2000 and has become a national award-winning initiative to successfully provide under-served Boston residents with the opportunity, tools, education, and access required for 21st century skills development. With the support and backing of the City of Boston, TGH focuses on serving the City's most vulnerable populations, including children/youth, adults, seniors, and people with disabilities who are predominantly low-income and/or from challenged neighborhoods. TGH is focused on tackling the entrenched barriers to technology adoption and Internet access in Boston and across the US. 90% of program graduates subscribe to and maintain Internet access in their homes long after program completion. In the last three years, 10,000 participants have completed TGH. Pilot programs have run or are planned in New York City, New Mexico, and Rhode Island. More information about the program may be found at <http://www.techgoeshome.org/home>

need to make the Internet a vehicle for self-improvement and advancement.⁷ A robust E-rate program would complement these efforts, and ensure that the City’s next generation— the City’s nearly 60,000 students—have access to the skills, tools, and bandwidth that they need to be successful.⁸

DISCUSSION

The Commission’s Notice of Proposed Rulemaking is ambitious and far-reaching.⁹ These opening comments are limited to certain specific issues that the Commission has raised in the Notice, but these comments do not purport to be comprehensive. The City plans to continue to work with the Commission on these and others issues throughout this proceeding.

1. *The Commission should not attempt to measure classroom performance.*

The Commission suggests that it might determine whether E-rate funds are being spent efficiently by evaluating whether funding has led to successful educational outcomes. It therefore asks if it should assess how E-rate funding equates to classroom achievement.¹⁰ It should not. Measuring how funding impacts student performance falls well “outside the agency’s core

⁷ See generally, Mayor’s Office, *On National Digital Literacy Day, Mayor Menino Announces “Tech Goes Home” Milestones*, available at: <http://www.cityofboston.gov/news/default.aspx?id=6043>

⁸ The City’s School Department provides both basic education and college preparatory curricula as well as specialized vocational educational programs. The school system enrolled 57,087 students for the 2012-2013 school year, an increase of 592 students from the preceding school year. Pursuant to Chapter 108 of the Acts of 1992, the City’s public schools are under the control of a School Committee, which consists of seven members appointed by the Mayor. Members of the School Committee have staggered four-year terms. There are 127 schools in the Boston Public School system. *Boston Public Schools At a Glance*, available at: http://www.bostonpublicschools.org/files/bps_at_a_glance_13-0425_0.pdf

⁹ *In re Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, FCC 13-100 (July 23, 2013).

¹⁰ NPRM at ¶ 40.

competence”; even experts in the field find the analysis difficult.¹¹ Classroom performance is the product of numerous competing factors, of which access to technology is but one. Just as importantly, funding technology for students is justified regardless of its direct impact on students’ test scores. The Commission should focus its attention elsewhere.

2. *Fund electronics and special construction charges for leased dark fiber.*

To its credit, the Commission recently expanded the eligibility of dark-fiber leasing under the E-rate program.¹² The Commission now proposes to go further by eliminating certain distinctions in its current rules between the funding of dark and lit fiber. Specifically, it proposes to provide priority-one support for the modulating electronics necessary to light leased dark fiber,¹³ and for “special construction charges” for leased dark fiber beyond an entity’s property line—all support that is now available for lit fiber.¹⁴ Boston agrees with this proposal. Distinguishing between lit and dark fiber serves no useful purpose in the context of E-rate funding. In many cases, dark fiber may be the preferred solution; dark fiber therefore should be funded just as lit fiber is.

3. *Phase out funding for certain outdated services.*

The Commission proposes to phase out funding for certain outdated services, which are drawing resources from the program for little benefit.¹⁵ The City concurs with the Commission that paging services and directory-assistance services no longer merit funding.¹⁶ These services are largely obsolete, do not serve a valuable educational purpose, and do not justify the use of

¹¹ *Id.* at n.64, citing Austan Goolsbee & Jonathan Guryan, *The Impact of Internet Subsidies in Public Schools*, 88 Review of Economics and Statistics 336 (May 2006).

¹² *In re Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, FCC 10-175 at ¶¶ 9-19 (Sept. 23, 2010).

¹³ NPRM at ¶ 71.

¹⁴ *Id.* at ¶ 72.

limited E-rate funds. The Commission should not, however, phase out or deprioritize support for Internet access service provided via cellular data plans.¹⁷ As the Commission has rightly recognized, “educational purposes” sometimes extend off campus.¹⁸ A cellular data plan can be an important tool that an on-site wired or wireless network cannot replace.

4. *Fund internal connections.*

One of the most important issues that E-rate 2.0 can address is the funding of internal connections. The Commission has it right: “[h]igh bandwidth connectivity to a school or library serves little purpose if students and patrons inside are not able to use it effectively because internal wired and wireless connections are missing or insufficient.”¹⁹ Because both external and internal connectivity are essential if students are to benefit from technology in the classroom, there is no sound reason to distinguish one from the other for funding purposes.²⁰ Under the current system, however, internal connectivity is rarely funded.²¹

The Commission should therefore eliminate the priority system, and allow eligible applicants to spend funds on any eligible services of their choosing. This “whole network” approach would “give schools the flexibility to focus E-rate funding on those portions of their

¹⁵ *Id.* at ¶¶ 92-98.

¹⁶ *Id.* at ¶¶ 93-94.

¹⁷ *Id.* at ¶ 102.

¹⁸ *In re Sch. & Libraries Universal Serv. Support Mechanism*, 18 FCC Rcd. 9202, 9208-09 ¶ 19 (2003) (“in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose”).

¹⁹ NPRM at ¶ 143.

²⁰ If the Commission does continue to split services into priority one and priority two, it should create separate filing windows for each. NPRM at ¶ 247. This would prevent applicants from incurring unnecessary costs, by seeking funding for priority two services when no such funding is available.

²¹ NPRM at ¶ 143.

network where upgrades are most needed – whether connection to the school or internal connections.”²²

5. *Increase the funding cap, but increase transparency regarding its use.*

Sixteen years ago, the Commission adopted a \$2.25 billion cap on E-rate funding. This level of funding represented the Commission’s “best efforts attempt to estimate what the demand would be” for services from schools and libraries.²³ The Commission asks now if it is time to increase the cap: the answer is “yes.” Inflation and increases in the number of students have greatly reduced the E-rate program’s actual purchasing power.²⁴ Compared to 1998, schools today face a greater need to incorporate technology into the classroom.²⁵

In exchange for an increase in the funding cap, and a limitation on the types of services (i.e. non broadband Service) that are eligible for support, the Commission should require an increase in transparency as to how funds are used. The City therefore agrees that USAC should create a website detailing how any recipient has used its funds, and it should require any entity that receives funding to document how it has used it.²⁶

6. *Require electronic filing.*

Given that USAC spent approximately \$70 million on E-rate program operating expenses in 2012,²⁷ funds that could have otherwise been used to purchase E-rate services, reducing operating costs should be a priority. Boston and many other local governments have found that

²² NPRM at ¶ 146.

²³ NPRM at ¶ 174.

²⁴ *Id.* See also the White House and Department of Education fact sheets referenced in notes 2 and 3 *supra*.

²⁵ *Id.*

²⁶ NPRM at ¶ 192.

²⁷ NPRM at ¶ 231.

shifting to online applications has resulted in cost savings and operating efficiencies. Mandating electronic filing for E-rate support is one measure that makes sense. The Commission should generally require E-rate applicants and service providers to file all forms electronically. Any party that is not capable of an online filing should have a hard copy option available to them, but for a fee, to offset the higher costs of such a filing.

7. *Eliminate the undue burden of addressing preschool classrooms.*

The Commission asks about cost-allocation challenges that impose undue burdens on applicants, including allocating funding between preschool and other classrooms.²⁸ In some states, including Massachusetts, preschool classrooms are not classified as “elementary schools” and therefore cannot receive funding under the existing rules.²⁹ The Commission asks whether this imposes an undue burden. It does. Removing preschool classrooms from E-rate requests imposes an undue burden, for little reason. While inside wiring and wireless deployment are often a long-term investment, classroom assignments can change year-to-year. This year’s preschool classroom could become next year’s fifth grade classroom—or it could be used for educational purposes even sooner. The Commission should make an exception to eliminate this burden.

8. *Allow Off-Premises Use of Wireless Community Hotspots.*

In 2010, the Commission revised its rules to allow schools to permit the general public to utilize E-rate-supported services on school premises when classes are not in session.³⁰ The

²⁸ NPRM at ¶ 238.

²⁹ USAC, Eligibility Table for Non-Traditional Education, <http://www.usac.org/sl/applicants/beforeyoubegin/non-traditional/eligibility-table.aspx>.

³⁰ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd. 18762, 18773-77 ¶¶ 20-27 (2010).

Commission now asks whether it should allow students and the general public to use wireless hot spots off campus, as well.³¹ It should.

Opening E-rate facilities to the broader community has many benefits, as the Commission recognizes:

Allowing after-hours, on-premises access to a school's broadband connections has given students the opportunity to work on homework, school projects and engage in extracurricular activities that require broadband access. At the same time, it has allowed other community members broadband access for adult education, job training, digital literacy programs, and online access to governmental services and resources.³²

Allowing access off-premises only enhances these benefits.

Boston is constantly exploring opportunities to expand connectivity beyond the physical footprint of our schools and libraries to project Wi-Fi into the community. As Boston delivers connectivity in its school and libraries, the City strives to bring the connectivity to the homes of its students as well. Utilizing our Technology Goes Home (TGH) school-based program, a parent and child learn as a team, at the child's school, taught by teachers from the school. Beginning in 2010, TGH added additional classes to provide training to individuals in community assets: libraries, community centers, housing associations, and public computing centers. More than 4,000 individuals now participate in the program each school year. Whether training families in the schools or individuals in the community, participants learn to "Live, Learn, Earn, Work, and Play" more efficiently and effectively through the use of online tools. By extending connectivity into the community, online learning continues beyond the end of the school day.

The Commission asks whether making this change would require it to revise its "educational purposes" standard or to make other changes. The Commission should recognize

³¹ NPRM at ¶ 320.

³² *Id.*

that distinctions based on a user's physical location serve little purpose. That a library patron uses a library's broadband capacity while sitting in his home instead of at a library desk has no impact on whether the use is educational. Other concerns could be addressed by requiring applicants to condition off-premises access on the user's acceptance of appropriate terms of service.

9. *Do not condition E-rate funding on changes in local permitting practices.*

There is a single sour note that the City of Boston must call to the Commission's attention. The Notice asks whether the Commission should condition E-rate funding on changes in local permitting practices or policies.³³ The City of Boston states "no" in the clearest of terms.

Imposing such conditions would not only strain the Commission's statutory authority, and likely constitute rulemaking without adequate notice and factual support, it would also jeopardize the partnership it has created with local governments and local educators. Such a proposal could also have the unintended consequence of straining local relations between public works and planning professionals, who are charged with maintaining a community's rights-of-way assets, and the local education community.

The question is one-sided and assumes a predicate for action that has not been established, not in Boston's opinion could be established. If the Commission had asked parties to focus on that issue here, the Commission would likely conclude that these local practices have a negligible impact on new-build costs, as Boston and other local governments have shown in other proceedings.³⁴ There is much work to be done in the E-rate program, and a strong partnership between federal, state, and local officials is needed. The types of threats outlined in

³³ NPRM at ¶ 164. The Notice refers to conditioning e-rate eligibility on "changes in local permitting practices or other state and local policy changes (e.g. state and local dig-once initiatives) to help reduce new build costs?"

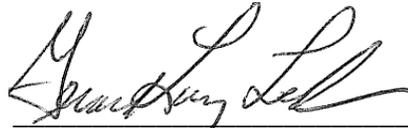
³⁴ See, e.g., Comments of the National League of Cities *et al.*, Docket No. 11-59 (July 18, 2011).

paragraph 164 jeopardize this partnership for no real reason. Boston respectfully suggests that the Commission should focus its attention elsewhere.

CONCLUSION

The City welcomes the Commission's effort to modernize the E-rate program to ensure its continued success. Boston looks forward to working closely with the Commission, on the issues addressed in these opening comments and others, throughout this proceeding.

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