

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Modernizing the E-rate Program for Schools and
Libraries

WC Docket No. 13-184

**INITIAL COMMENTS OF THE NATIONAL EDUCATION
ASSOCIATION**

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The National Education Association (“NEA” or “Association”) is pleased to offer these initial comments in response to the Federal Communications Commission’s (Commission’s) Notice of Proposed Rulemaking to modernize the E-Rate Program (“E-Rate Program” or “Program”) for schools and libraries.¹ The NEA has supported the Program since it was established in 1997 and commends the Commission for now addressing how best to (a) ensure that schools and libraries have affordable access to 21st century broadband that supports digital learning, (b) maximize the cost effectiveness of E-Rate Program funding support, (c) streamline the administration of the Program, and (d) collect accurate, relevant and timely data to track progress towards these goals.

I. INTRODUCTION

The NEA, which is the nation’s largest professional association, is committed to advancing the cause of public education. The Association’s 3 million members work at every level of the educational structure – from pre-school to university graduate programs. The NEA

¹ See *In the Matter of Modernizing the E-rate Program for Schools and Libraries, Notice of Proposed Rulemaking*, WC Docket No. 130184, FCC 13-100 (July 23, 2013) (“NPRM”).

has affiliated organizations in every state and in 14,000 communities across the United States. Among the Association's members are countless K-12-related individuals and entities that participate in or are directly affected by the E-rate Program and the support it provides to its many beneficiaries.

II. DISCUSSION

The NEA wholeheartedly agrees that “[i]creasingly, schools and libraries require high capacity broadband connections to take advantage of digital learning technologies that hold the promise of substantially improving educational experiences and expanding opportunities for students, teachers, parents and whole communities.”² A modernized, realistically-funded E-Rate Program is essential to meeting that requirement and to ensuring equitable access to limited E-Rate funds. To that end, the Association will focus its initial comments on the following issues raised by the NPRM: (A) E-Rate Program funding, (B) connectivity speed/bandwidth goal (how many Mbps/Gbps?), (C) educational impact measurements; (D) Priority categories (i.e., P1 and P2), (E) services eligible for E-Rate Program support, (F) streamlining the E-Rate Program application process, (G) E-Rate Program eligibility determinations on a District-wide basis, (H) fixed budgets and per-pupil formulas, (I) the E-Rate Program definition of “educational purposes,” and (J) collection of appropriate data to assess how and whether the E-Rate Program continues to meet its objectives.

A. The FCC Must Permanently Double The E-Rate Program Cap

NEA has been a strong supporter and advocate of the E-Rate Program since its inception. The Program has been instrumental in providing the bridge across the digital divide for countless students by providing them access to the internet and the opportunity to develop the skills needed

² NPRM, at ¶1.

to compete in the digital age. In fact, the Program has been so successful that it has helped ensure that nearly all our nation's classrooms are connected to the Internet.³ However, students and educators not only depend on access to the Internet, they require high-capacity broadband connectivity, particularly to take advantage of new, cutting edge educational tools and content.⁴

The NEA firmly believes that additional, sustained investment in the E-rate Program is required to bolster the broadband infrastructure of our nation's schools.⁵ Without high-capacity broadband connectivity that can support multi-user school environments, educators and students will not be able to engage in enhanced learning, distance education and use existing learning applications, as well as support future applications.

It is important to note that the demand for E-Rate Program support continues to outpace the funds available for distribution from the Universal Service Fund. Indeed, the demand for funds has exceeded the original cap of \$2.25 billion per year set by the Commission in 1997 in every year since the inception of the Program.⁶ While the Commission took steps to permit the carry forward of unused funds from previous years and index the original cap to inflation, these measures have not by any means covered the demand-to-funding-support gap.

In FY2012, Program requests reached an all-time high of \$5.2 billion, roughly double the amount available.⁷ Such demand is not surprising as the E-Rate Program has been operating at or

³ As the NPRM notes, in 1996, when Congress authorized the creation of the Program, only 14 percent of the classrooms had access to the Internet and most schools with access (74 percent) used dial-up access. By 2006 nearly all schools had access to the Internet and 94 percent of all instructional classrooms had Internet access. NPRM, at ¶2.

⁴ NPRM, at ¶3.

⁵ There is without question a confluence of support for such investment, as reflected in the Obama Administration's ConnectED initiative and Senator John D. Rockefeller's call for E-Rate 2.0. *See also* "Learning First Alliance Calls for Increase to E-Rate Funding Cap", Learning First Alliance, August 12, 2013, *available at* http://learningfirst.org/sites/default/files/assets/E-RateFundingIncreaseStatement_FINAL.pdf

⁶ NPRM, at ¶9; *see generally* NPRM, Appendix C.

⁷ Moreover, the demand for Priority 1 services alone exceeded the funding cap. NPRM, at ¶63.

barely above the original FY1998 funding level of \$2.25 billion. Even with a modest, one percent inflationary adjustment to the E-Rate starting in FY2010, the Program’s current annual funding level is only at about \$2.4 billion. In essence, the E-Rate Program’s support to schools has hovered near the value reflected in 1998 dollars.⁸

When one considers developments in technology and increased bandwidth demands over the last fifteen years alone, the level at which the E-Rate is currently funded is quite simply outdated. And of course that trend continues.

One timely example of the integration of technology in our schools is the coming implementation of the Common Core Curriculum. Starting during the 2014-2015 academic year, schools will transition to conducting student testing online. This transition will exponentially increase demand for internet connectivity, especially with simultaneous users (e.g., students, faculty, and administration).⁹ This shift is not a stand-alone occurrence – schools and school districts are committing to using more digital resources which will drive demand for bandwidth – likely even beyond the Commission’s immediate connectivity target of 100 Mbps per 1000 students and ultimately reaching 1 Gbps per 1000 students.¹⁰ Given the global environment in which our country’s students must be prepared to compete, coupled with cuts to federal funding of education and the damaging effects of the sequester on education budgets, the need for the E-Rate Program and the support that it provides has never been higher.¹¹ Therefore, the NEA

⁸ The National Broadband Plan estimated that “the current program’s annual spending has fallen by about \$650 million in inflation adjusted dollars since the program began.” “Connecting America: The National Broadband Plan, “ Chapter 11, Recommendation 11.18, p. 238 (“National Broadband Plan”).

⁹ The NPRM notes this expected impact. NPRM, at ¶63.

¹⁰ See NPRM, at ¶¶22-28. The NEA addresses these connectivity metrics in Section II.B.

¹¹ Further, the Center on Budget and Policy Priorities reports that “[s]tates new budgets are providing less per-pupil funding for kindergarten through 12th grade than they did six years ago – often far less.” “Most States Funding Schools Less Than Before the Recession”, Michael Leachman and Chris Mai, Center on Budget and Policy Priorities, September 12, 2013, *available at* <http://www.cbpp.org/>

strongly recommends that the E-Rate Program cap be permanently doubled and funded, with continued annual inflationary adjustments.

In addition, the NEA cautions against the false notion that a one-time or short-term increase to E-Rate Program funding resources will provide sufficient broadband capacity to 99 percent of our nation’s schools. The fact is that this approach would not serve the goal of “modernizing E-rate to ensure that it can most efficiently and effectively help schools and libraries meet their connectivity needs over the course of the rest of this decade and the next.”¹²

The NEA further cautions that the additional investment to bolster high-capacity broadband infrastructure should not supplant the existing role of the E-Rate Program. Stated another way, the successful use of Program support to help build the infrastructure necessary to provide sufficient broadband capacity, when coupled with greater ease in participating in the Program (e.g., through simplified application processes), will likely increase the number of qualified applicants. A permanent doubling of the E-Rate cap would increase funding support for short-term broadband capacity access and then support long-term sustained connectivity to qualified applications. To do otherwise would be short-sighted and miss a prime opportunity to satisfy the very first goal of the NPRM – “ensuring schools and libraries have affordable access to 21st century broadband that supports digital learning.”

B. Connectivity Speed Targets Not “One For All” Mandate

The NPRM seeks comment on adopting “connectivity metrics” for “broadband that supports digital learning” based on the ConnectED proposals. Specifically, the NPRM seeks comment on the proposition that, “in order to have sufficient broadband access for enhanced teaching and learning, K-12 schools will need Internet connections of at least 100 Mbps per

¹² NPRM at ¶9.

1,000 students by the 2014-15 school year and at least 1 Gbps Internet access per 1000 users by the 2017-2018 school year.”¹³

There is no question about the need for expanded connectivity capacity.¹⁴ However, the NEA does not believe that the connectivity metrics proposed in the NPRM should be imposed on all schools.¹⁵ The NPRM itself concedes that these targets may not be “appropriate for all schools” and schools of different student body sizes may have different needs.¹⁶ The NEA agrees. These standards should be targets and not mandates.

There should be recognition that “one size” does not necessarily fit all and that imposition of such metrics as mandates could lead to inefficiencies and investment in unused capacity. The rules should provide the flexibility to assess the current and future needs of particular schools in particular locations (e.g., rural or low density population areas) and allow adjustment of targets, even if below the ConnectED standards.

Nor, however, should these standards become a ceiling on investment and connectivity. Advances in technology and the capacity demands of applications used by schools (e.g., high-definition video) will require growth in capacity over time. The standards adopted here should

¹³ NPRM, at ¶23.

¹⁴ As Connected Nation recently observed, “[t]he average school and library today has about the same connectivity as the average American home – but as digital learning technology expands both inside and outside the classroom, the need to have more robust broadband capacity...will increase.” “Examining School and Library Broadband Connectivity – A Connected nation Policy Brief”, July 19, 2013 submitted to the Commission by Ex Parte filing dated September 10, 2013, WC Docket No, 13-184 (“Connected Nation Ex Parte”).

¹⁵ As Cisco recently noted, “each school is different, and speeds are only one measure of how robust a network is.” “High-Speed Broadband in Every Classroom: The Promise of a Modernized E-Rate Program”, Cisco, September 2013, at p. 6 (“Cisco White Paper”).

¹⁶ NPRM, at ¶24.

not become a limitation on E-Rate support for greater connectivity metrics where justifiable and cost effective.¹⁷

C. FCC Should Not Set Standards For Educational Success

The NEA strongly believes the Commission should consider connectivity metrics (i.e. bandwidth upgrades), among others, as appropriate metrics for the E-Rate Program, and not attempt to set standards to measure educational impact (i.e., how success in the classroom is affected by access to E-Rate Program support).¹⁸ The Commission’s Report and Order on the E-rate Program in 2007 articulates the difficulty with attempting to isolate the impact of the E-Rate Program support to measure educational success. Therein, the Commission stated:

We agree with commentators that the Commission should further measure the level of connectivity. Commenters suggest, and we agree, that the Commission is not in a position to evaluate the impact of E-rate funds on connectivity as compared to other funding sources. We also agree with the commenters that it would be difficult to try to determine the impact of E-rate funds, as opposed to other funds, on learning. As the commenters observe, there are too many variables involved in educational achievement; Internet access is but one of many educational resources for students and teachers.¹⁹

The NEA believes the Commission’s observation and agreement is as relevant today as it was in 2007.²⁰

D. Erasing Priority Distinctions Potentially Harmful

The NEA strongly cautions against erasing the distinction between Priority 1 (P1) and (P2) services on the Eligible Services List (ESL). The existing prioritization of P1 and P2, and subsequent distribution of E-Rate Program support based on those priorities, provides an

¹⁷ In this regard, the Cisco White Paper recommends that in certain geographies schools should have goals as high as 2 Gbps per 2,000 students in 2014 and 4 times that by 2018.” Cisco White Paper, at p. 5.

¹⁸ See NPRM, at ¶40.

¹⁹ *In the Matter of Comprehensive review of the Universal Service Fund Management, Administration and Oversight, Report and Order*, 22 FCC Rcd 16372, 16392, ¶39 (2007)

²⁰ The NPRM also raises legitimate questions about the appropriateness of the Commission adopting educational-outcome measurements, “given that educational outcomes are outside the agency’s core competence.” NPRM, at ¶40.

established framework that compliments the goal to modernize the Program. The framework provides a more equitable, efficient and timely way to distribute increased funding for building broadband capacity with less change required of the existing Program itself and the application process. For example, additional funding to the E-Rate Program may be allocated to support P2 applications as a short-term way to disburse funds to support broadband capacity build-out. In addition, erasing the distinction between P1 and P2 – which are standards and clear lines that have evolved and Program participants understand – immediately introduces a host of challenges to managing the Program, including but not limited to: revising the existing Program procedures, training future applicants and existing funding recipients, complicating the existing Program application, and adding complexity to and required monitoring of accountability measures, among other challenges.

Moreover, there would still have to be prioritization to the extent that demand exceeded funding and the criteria for making those distinctions would have to be developed. The NEA believes there are other ways of ensuring that P2 projects do not get short shrift and should be considered rather than eliminating this long-standing distinction.

E. Eligible Service Elimination Must Be Done With Care

The NEA recommends further analysis to determine what, if any, eligible services should be eliminated from receiving E-Rate Program support. There may seem to be obvious candidates, but the Commission should not act precipitously, without an understanding of the import of such eliminations for current beneficiaries. Such determinations should be data driven and include a thorough understanding of the impact to Program recipients. It is not clear to the NEA that such data and understanding has been assembled at this point.

F. Streamlined Application Process Must Still Be Flexible

For several years the NEA has advocated for the E-Rate application process to be simplified and streamlined.²¹ The NEA believes that the complexity of the application process and the burdensome demands put upon potential applicants for E-Rate Program support deters many eligible applicants from applying – resulting in an underestimation of true Program demand and need of eligible entities.²² As the Commission observed, the burdens and complexities of the Program are of sufficient magnitude to require outside assistance that may reduce the net benefits that schools and libraries realize from participation.²³ The NEA urges the Commission to work toward the goal of simplifying and streamlining the application process so that applicants do not have hire consultants in order to apply to the E-Rate Program.

The NEA suggests that the Commission take steps to reduce the burden put upon applicants applying for E-rate funds by considering relatively straightforward data management practices including, but not limited to: (a) allowing and encouraging submissions of applications via an online portal; (b) increasing transparency throughout the application process, by allowing applicants the ability to track the status of application submissions and additional filing requirements via the online portal and obtain information about the cause of application delays; and, (c) providing applicants the ability import data or prepopulate forms with data from prior applications. Such changes would make the application process more accessible, user-friendly, and permits applicants to understand the status of applications in real-time.

²¹ Streamlining was a distinct recommendation of the National Broadband Plan as well. National Broadband Plan, Chapter 11, Recommendation 11.19, p. 238.

²² National Broadband Plan, Chapter 11, Recommendation 11.19, p. 238 (“Procedural complexities still exist, sometimes resulting in applicant mistakes and the imposition of unnecessary administrative costs. These complexities may deter eligible entities from even applying for funds in the first place”)

²³ NPRM, at ¶224.

However, the NEA cautions that applicants not be mandated to applying for the E-Rate Program support only through an online portal. As the Commission has recognized in oversight of the E-Rate Program through the appeals process, breadth of experience and technical expertise varies greatly among potential applicants. Therefore, the NEA strongly cautions implementing mandates that may deter qualified applicants from applying.

The NEA continues to advocate for a multi-year application process. The NEA strongly favors providing applicants a multi-year application process option because it would significantly reduce the burden of work on applicants in subsequent years. In the spirit of providing applicants a more manageable and straightforward application process, the NEA advocates for a streamlined and simplified application process that is also flexible enough to accommodate all potential applicants.

G. District-Wide Applications Should Not Be Mandatory

The NEA opposes mandatory district-wide applications, negating the ability of individual schools to apply for E-Rate Program support in their own right.²⁴ While district-wide eligibility and application submission may be more efficient, it does not provide flexibility for different types of educational institutions (e.g. charter schools), nor for districts where wealth/poverty may be disparate. NEA agrees that district-wide or consortium applications can be encouraged, but the rules must continue to allow individual schools to apply.

In particular, the NEA is concerned about potential inequities that would emerge when calculating one district-wide discount percentage rate. Averaging schools within a district with disparate poverty levels (i.e. individual schools that would not qualify for E-Rate discounts averaged with schools that would qualify based on student poverty), results in penalizing or shrinking need for schools with higher poverty levels and unfairly provides discounts to schools

²⁴ NPRM, at ¶¶126-129

that would otherwise not qualify. The NEA does not recommend assigning a single discount percentage rate per school district as it may result in an inequitable distribution of E-Rate discounts.

H. Fixed Budgets And Per-Pupil Formulas Are Not Equitable

The NPRM seeks comment on a number of different approaches for changing the structure for distribution of E-Rate support.²⁵ One proposal would replace the E-Rate Program’s existing discount matrix formula and move to a fixed budget system based on a per-student, per-building or similar limits formula for awarding E-Rate Program support.²⁶ The NEA does not believe that a per-pupil distribution model is as equitable as continuation of the discount matrix. The premise of the E-Rate Program, and wherein its success lies, is its ability to identify and target funds to schools with the neediest students.

A per-pupil distribution model also does not adequately account for the fact that rural schools and libraries likely face higher costs for E-Rate supported services.²⁷ In addition, fewer students typically result in higher technology-related costs. Per-pupil funding does not adequately account for increased costs for rural schools and libraries. NEA believes the discount mechanism has served that purpose and should not be abandoned for a per-student or similar approach. Moving to an arbitrary per-pupil formula does not adequately target the neediest schools.

I. The Definition Of “Educational Purpose” Should Not Change

The NEA believes that the scope of the existing definition of “educational purpose” (i.e., activities “integral, immediate and proximate to the education of students”) should remain

²⁵ NPRM, at ¶116.

²⁶ NPRM, at ¶¶135-142.

²⁷ NPRM at ¶133.

unchanged.²⁸ In a similar vein, attempting to parse among E-Rate Program supported services to non-instructional buildings or school facilities is near-sighted. With the growing number of wireless devices used by students and educators to access the Internet, learning is no longer limited (and should not be limited) to a traditional, physical classroom.²⁹ To attempt to determine – for purposes of E-Rate Program discount eligibility or ineligibility – further “qualifying” functions or roles of an educator or from where E-Rate Program resources should be accessed is impractical, burdensome and would only complicate the E-Rate Program application itself. More specifically, it could require complicated cost-allocations that only enhance the complexity of the application process at a time when the Commission is seeking to simplify it.

J. Use The Application Process To Collect Meaningful Data

The NEA recommends the Commission investigate additional methods for collecting meaningful data related to the E-Rate Program.³⁰ To date, the data available to inform policy decisions (e.g. impact of eliminating or adding eligible services) has not been sufficiently comprehensive. The NEA believes the E-Rate application itself may be a relatively simple, cost-effective way to request and collection data from applicants. Additional data will better inform potential changes to the E-Rate Program moving forward as technology continues to evolve and available services expand.

²⁸ This would include the clarification that schools were required to primarily use services funded under the E-Rate Program, in the first instance for educational purposes. NPRM, ¶100, n. 144.

²⁹ See generally National Survey on Mobile Technology for K-12 Education, Interactive Educational Systems Design, Inc. in collaboration with STEM Market Impact, LLC, Educator Edition, 2013.

³⁰ The National Broadband Plan recommended that the FCC collect and publish more specific, quantifiable and standardized data about applicants’ use of E-Rate Program Funds. National Broadband Plan, Chapter 11, Recommendation 11.20, p. 238.

III. CONCLUSION

There is no question that the E-rate Program has been an unqualified success, with over 95% of all classrooms in the country connected to the Internet.³¹ Yet, this is truly a “pivotal moment.”³² The Commission must carefully but promptly take action to ensure that the E-Rate Program can help support the growing need and demand for broadband services in our schools and libraries. For “[a]ccess to adequate broadband is not a luxury – it is a necessity for our next generation to be able to compete.”³³

There is a strong and broad consensus that the Program should be modernized and expanded. The Commission should take this unique opportunity to successfully address the goals that it has articulated in the NPRM, while recognizing the great variety of applicants that participate in and benefit from the E-Rate Program. Most importantly, in modernizing the Program the Commission must provide the basis for obtaining the resources necessary to implement the goals set by the NPRM.

Respectfully submitted,

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³¹ See NPRM, Statement of Commissioner Jessica Rosenworcel.

³² NPRM, Statement of Acting Chairwoman Mignon L. Clyburn.

³³ NPRM, Statement of Commissioner Jessica Rosenworcel.