

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

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

To: The Commission

**REPLY COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Sections 1.415 and 1.419 of the Commission’s Rules, hereby submits its Reply Comments addressing certain of the Comments filed in response to the Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding regarding modernization of the Commission’s E-rate program.¹ As in its initial Comments,² WISPA reiterates that fixed wireless technology provides a cost-effective means for delivering services provided under the E-rate program and that the Commission should not presume that any one technology is superior for all E-rate applicants.³ To that end, the Commission should allow service providers to offer all eligible services, regardless of their regulatory classification. In addition, before summarily raising the funding cap, the Commission should first carefully consider ways in which the E-rate program can operate more efficiently by eliminating certain services from the eligible services list to decrease funding for outdated services and by increasing competition among providers to lower costs.

¹ *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, WC Docket No. 13-184, FCC 13-100 (rel. Jul. 23, 2013) (“*NPRM*”). The *NPRM* specified a filing deadline of September 16, 2013 for initial Comments and October 16, 2013 for Reply Comments.

² Comments of WISPA, Docket No. 13-184 (Sept. 16, 2013) (“*WISPA Comments*”).

³ *See, e.g.*, Comments of Sprint Corporation, Docket No. 13-184 (Sept. 16, 2013) (“*Sprint Comments*”) at 4; Comments of Minority Media and Telecommunications Counsel, *et al.*, Docket No. 13-184 (corrected copy filed Sept. 17, 2013) (“*MMTC Comments*”) at 7; Comments of New America Foundation’s Open Technology Institute and Education Policy Program, Docket No. 13-184 (Sept. 16, 2013) (“*New America Comments*”) at 16; Comments of Competitive Carriers Association, Docket No. 13-184 (Sept. 16, 2013) (“*CCA Comments*”) at 3-6.

Discussion

As WISPA stated in its initial Comments, the goal of WISPA and its members in this proceeding is for the Commission to design E-rate rules that will enable schools and libraries to benefit from greater participation by fixed wireless internet service providers (“WISPs”) that use cost-effective technology to deliver voice and broadband services. By adopting rules that recognize the benefits attendant to fixed wireless technology and by expanding eligibility for service providers, the Commission can resist the efforts of those who seek an increase in funding levels that would further burden contributors to the Universal Service Fund (“USF”). First, a service provider’s regulatory classification should not prohibit its eligibility to provide certain E-rate services. Second, the Commission should promote technology-neutral and competitively neutral policies and practices as a means to achieve both cost-effectiveness and greater transparency in the administration of the E-rate program. Third, the Commission should take a comprehensive look at the E-rate program to determine whether certain services should continue to be subsidized or should be re-prioritized *before* it raises the funding cap. Simply doubling the fund, as some commenters suggest, is irresponsible and avoids the policy debate and efficiency discussion the Commission intends. Fourth, multi-year contracts should be encouraged and the administrative burdens associated with multi-year contracts should be eased. Finally, E-rate participants should be allowed to use facilities funded through the E-rate program to provide community wireless hotspots at their discretion as a way to further their educational goals.

I. THE COMMISSION SHOULD PERMIT SERVICE PROVIDERS TO OFFER ALL SERVICES ON THE ELIGIBLE SERVICE LIST, REGARDLESS OF REGULATORY CLASSIFICATION.

WISPA agrees with the comments submitted by the American Cable Association (“ACA”), which urge the Commission to “permit service providers to offer all services on the

Eligible Service List [(“ESL”)] regardless of their regulatory classification.”⁴ Disregarding regulatory classification and allowing service providers to offer all services on the ESL will have many positive effects on the E-rate program. First, allowing “information” service providers to participate on an equal footing with providers of “telecommunications services” will increase competitive bidding for services, an overarching goal of any Commission policy. By expanding service provider eligibility, WISPs and other providers will have the opportunity to offer E-rate services delivered by cost-effective fixed wireless technology.⁵ By increasing the number of eligible service providers, prices for services can be expected to decrease, thereby lowering subsidy levels and making the E-rate program more cost-effective overall.

Second, lifting restrictions that preclude certain regulatory classes from participating will reduce barriers to entry faced by small providers. As ACA notes, many smaller entities have not participated in the program because they cannot justify investing time and resources to understand and comply with the complex E-rate regulations.⁶ WISPA shares these concerns. Because of the complexities of E-rate regulations and because WISPs are not classified as “telecommunications service” providers, many WISPs have chosen not to participate. If the rules are relaxed to eliminate regulatory classification as a barrier to participation, WISPs and other providers that are not currently providers of telecommunications will become more involved in the E-rate program.

Third, WISPA agrees with ACA that removing regulatory classifications will encourage the use of existing infrastructure which, again, would make for a more cost-effective program.⁷ Service providers that are providing “information services” would not be required to build new infrastructure to be deemed to be providers of “telecommunications services.”

⁴ Comments of American Cable Association, Docket No. 13-184 (Sept. 16, 2013) (“ACA Comments”) at 14.

⁵ *See id.* at 14.

⁶ *Id.* at 13.

⁷ *Id.*

Opening eligibility to all service providers, regardless of regulatory classification, would be consistent with precedent. Section 254 of the Communications Act of 1934, as amended (the “Act”), generally recognizes that universal service, including the E-rate program, is “evolving.”⁸ Pursuant to the statute, the Commission must “take into account advances in telecommunications and information technologies and services”⁹ and also must consider what services are “essential to education.”¹⁰ Moreover, the Commission recently recognized that there is a “marketplace understanding that specific telecommunications services and Internet services may be used interchangeably to meet communications needs.”¹¹

More specifically, in the recent *Rural Healthcare Order*, the Commission concluded that “eligible service providers for the Healthcare Connect fund *shall include any provider of equipment, facilities, or services that are eligible for support under the program, provided that the [health care provider] selects the most cost-effective option to meet its health care needs.*”¹² In so stating, the Commission recognized that, under Section 254(h)(2)(A) of the Act, the Commission is required, for both the rural health care program and the E-rate program, to “establish competitively neutral rules to enhance . . . access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.”¹³ Notably, this statute does not limit eligibility to provide telecommunications or information services to telecommunications carriers. Given the Commission’s recent determination that supported services for the rural health care program

⁸ 47 U.S.C. § 254(c)(1).

⁹ *Id.*

¹⁰ § 254(c)(1)(A).

¹¹ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, Report and Order, 27 FCC Rcd 11348, 11350 (WCB 2012).

¹² *Rural Health Care Support Mechanism*, Report and Order, 27 FCC Rcd 16678, 16765 (2012) (“*Rural Healthcare Order*”) (emphasis added).

¹³ 47 U.S.C. § 254(h)(2)(A).

should be open to all providers, there is no reason to preserve the existing artificial barrier in the E-rate program.

Regulatory classifications that prohibit participation by certain providers are not legally required and are no longer necessary. Such barriers do not serve the public interest or the goals of this proceeding, which are intended to promote affordable access to 21st Century broadband that supports digital learning and to maximize the cost-effectiveness of E-rate funds.¹⁴ A technology-neutral competitive bidding process will ensure that the best and lowest-cost provider is selected. The Commission should eliminate eligibility restrictions for service providers.

II. THE COMMISSION SHOULD ENSURE THAT ITS RULES ARE TECHNOLOGICALLY NEUTRAL AND FAVOR THE MOST COST-EFFECTIVE TECHNOLOGY.

In modernizing the E-rate rules, the Commission should avoid presuming that any one particular technology is the most suitable for E-rate applicants. WISPA strongly agrees with Sprint that “[t]he Commission should abandon any presumption that fiber (or any other) technology is the best broadband arrangement for all E-rate applicants, and refrain from granting any sort of preferential treatment to fiber over other technologies.”¹⁵ In many cases, fiber is not the most economical option for broadband. E-rate participants should be permitted to “choose the best technologies that best fit their needs.”¹⁶ For example, in rural and remote areas, fixed wireless technology may be the only option for terrestrial fixed broadband service.¹⁷ Granting schools and libraries greater flexibility to select a technology that is most appropriate for them will lead to greater cost effectiveness in the long term.¹⁸

¹⁴ See *NPRM* at ¶ 12.

¹⁵ Sprint Comments at 4.

¹⁶ MMTC Comments at 7.

¹⁷ See WISPA Comments at 4.

¹⁸ See CCA Comments at 5.

III. THE COMMISSION SHOULD NOT RAISE THE FUNDING LEVEL WITHOUT FIRST CONSIDERING CHANGES TO ELIGIBLE SERVICES AND PRIORITY CATEGORIES.

Many commenters suggest that the Commission should increase the E-rate funding level to satisfy what they believe is a funding shortfall.¹⁹ However, these commenters present few suggestions on whether certain services should be eliminated from the ESL or how the program can be more efficiently administered as a substitute for or complement to increasing the funding level. Simply increasing the cap would be fiscally irresponsible at a time when the Commission, for the first time in 15 years, intends to make fundamental improvements to a system that needs to be adjusted to recognize technological advances. As ACA notes, there is no data on the amount of funding that would actually be required for the E-rate program once it is modernized.²⁰ The fact that twice the amount of funding was requested than distributed does not necessarily point to excessive demand, but rather suggests a need to undertake a comprehensive review of the program.

Simply raising the funding cap will not remedy these flaws, but instead puts the cart before the horse. Before the Commission allots more funding to the E-rate program, it should take a big-picture, analytical approach to determine whether and to what extent an increase may actually be necessary. WISPA agrees with commenters such as the Minority Media Telecommunications Counsel (“MMTC”) and the National Cable and Telecommunications Association (“NCTA”), which urge the Commission to first look towards overall reform of USF instead of simply increasing the amount of the program fund and the USF contribution rate.²¹

¹⁹ Comments of the State E-rate Coordinators’ Alliance, Docket No. 13-184 (Sept. 16, 2013) (“SECA Comments”) at 5; Comments of the State Consortia Group, Docket No. 13-184 (Sept. 16, 2013) (“SCG Comments”) at 3; Comments of the National Education Association, Docket No. 13-184 (Sept. 16, 2013) (“NEA Comments”) at 3; Comments of the E-rate Reform Coalition, Docket No. 13-184 (Sept. 16, 2013) (“E-Rate Coalition Comments”) at 7.

²⁰ ACA Comments at 9.

²¹ MMTC Comments at 11; NCTA Comments at 10 (“[T]he Commission . . . also must look for ways to offset any cost increases with savings from other places within the overall Universal Service Fund budget.”)

Between the *NPRM* and the initial comments, there is little to no discussion about how an E-rate cap increase would be funded. Presumably such funding, if truly required following a careful examination of other changes to the program, would come from increased USF contributions. WISPA agrees with NCTA that any increase in the contribution rate should not be the burden of American consumers, but instead should “come from a corresponding reduction in another area of the [USF].”²² This can be done by reallocating and reevaluating funding levels for all USF programs.²³ WISPA also agrees that any increase to the USF contribution rate could disproportionately impact minorities and low-income communities because of their rate of consumption of mobile services.²⁴

Many commenters suggest that the current E-rate program provides funding for services that should no longer be funded.²⁵ For example, many comments agree that paging services and directory assistance services should no longer be funded by the E-rate program. However, there is no consensus among commenters regarding the treatment of voice services – some schools continue to rely on funding for voice and others do not. Again, before the Commission acts on eliminating voice services or any other services from E-rate funding, there should be a comprehensive review of the program to determine what services are still useful and what should no longer be funded. If the Commission can take the money currently used to fund out-of-date services and reallocate it to new services, an increase in the E-rate cap may be unnecessary.

WISPA also concurs with commenters that seek to have the Commission eliminate the distinction between priority one and priority two services.²⁶ Instead, the Commission should allow schools and libraries “to select from a menu of technologies to concentrate on [schools’

²² NCTA Comments at 11.

²³ MMTC Comments at 9.

²⁴ *Id.* at 10.

²⁵ *E.g.*, SECA Comments at 20-25; MMTC Comments at 15; Sprint Comments at 16.

²⁶ *E.g.*, SECA Comments at 23; MMTC Comments at 5, 15; E-Rate Coalition Comments at 10.

and libraries’] greatest needs.”²⁷ As MMTC notes, if the Commission merges priority one and priority two services, there will be an additional cost savings.²⁸ With priority distinctions, applicants make purchasing decisions based on where they know they will get funding, including for areas where funding is not truly necessary or beneficial, instead of making decisions based on what makes “the most technological and economic sense.”²⁹

In the alternative, if the Commission does not completely eliminate the priority classes, then, at the very least, certain services should be reclassified so that funds are more appropriately allocated. Wireless access points, for example, should be elevated to be a priority one service.³⁰ As the program stands now, many schools and libraries cannot connect their students because wireless access is a priority two service that typically goes unfunded.³¹

Finally, before increasing the cap, the Commission should look internally at the program to eliminate any waste, fraud and abuse, which could lead to an increase in the amount of money available.³² As MMTC notes, the Commission is likely to discover some much needed sources of funds by simply continuing careful administration and oversight of the E-rate program.³³

IV. THE RECORD SHOWS BROAD SUPPORT FOR MULTI-YEAR CONTRACTS.

Many commenters, including WISPA, expressed support for allowing E-rate applicants with multi-year contracts to file a single FCC Form 471 the first year of the contract.³⁴ The comments supporting this proposal explain that allowing applicants with multi-year contracts to

²⁷ MMTC Comments at 5.

²⁸ *Id.* at 17.

²⁹ E-Rate Coalition Comments at 11.

³⁰ SECA Comments at 23.

³¹ *See* E-rate Coalition Comments at 10 & n.23, citing the Remarks of Commissioner Ajit Pai on Connecting the American Classroom: A Student-Centered E-rate Program at the American Enterprise Institute in Washington, DC on July 16, 2013 that discuss the illogicalities of spending millions of dollars on services that are not about connecting students to digital learning opportunities.

³² MMTC Comments at 9.

³³ *Id.* at 9 n.34.

³⁴ WISPA Comments at 6; SECA Comments at 45; SCG Comments at 4; Sprint Comments at 18-19; NCTA Comments at 14; Comments of the State Educational Technology Directors Association, Docket No. 13-184 (Sept. 16, 2013) (“SETDA Comments”) at 20.

file a single FCC Form 471 will have several benefits. As Sprint observes, allowing a one-time approval for multi-year funding will eliminate redundant reviews of the same information.³⁵

Additionally, it will ease administrative burdens on all program applicants. The resources and time spent filing repetitive information could be better spent elsewhere. Aside from easing administrative burdens, allowing multi-year funding commitments for multi-year contracts will provide E-rate applicants with more certainty that they can receive funding.³⁶

V. THERE IS BROAD SUPPORT AMONG COMMENTERS FOR COMMUNITY WIRELESS HOTSPOTS AT THE DISCRETION OF SCHOOLS AND LIBRARIES.

The comments overwhelmingly support the use of E-rate funded services to provide wireless hotspots to surrounding communities. Many commenters echo the views of WISPA, particularly that education is no longer limited to school buildings and, therefore, “the Commission should not impose barriers for public institutions seeking to support their communities.”³⁷ The Commission itself has recognized the value of off-premises broadband access to students and the broader community.³⁸ As SECA points out, it is completely inefficient to have bandwidth and services going unused when schools are not in session.³⁹ Instead, allowing schools and libraries to provide hotspot services during non-school hours will encourage resource sharing and more efficient use of services.⁴⁰

A handful of commenters, including ACA, the Independent Telephone & Telecommunications Alliance (“ITTA”) and the United States Telecom Association (“USTA”), disagree with this proposal. ACA, for example, does not want the federal government in the hotspot business, because it would put the government in competition with private sector hotspot

³⁵ Sprint Comments at 18.

³⁶ NCTA Comments at 14.

³⁷ New America Comments at 10.

³⁸ *NPRM* at ¶ 321.

³⁹ SECA Comments at 52.

⁴⁰ *Id.* at 52.

providers.⁴¹ Each of ACA, ITTA and USTA is also concerned with undermining the educational purpose of the E-rate program if the Commission allows E-rate funding to be used to provide community hotspots.⁴² These concerns, however, treat education and community as mutually exclusive and do not recognize the importance of the community to education.

Conclusion

WISPA respectfully requests that, in modernizing the E-rate program, the Commission adopt rules that recognize the value and cost-effectiveness of fixed wireless broadband solutions. The Commission also should consider changes to the E-rate program that will eliminate or decrease costs before it raises the funding level.

Respectfully submitted,

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**WIRELESS INTERNET SERVICE
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⁴¹ ACA Comments at 5 n.9.

⁴² *Id.* at 5 n.9; Comments of the Independent Telephone & Telecommunications Alliance, Docket No. 13-184 (Sept. 16, 2013) at 16; Comments of the United States Telecom Association, Docket No. 13-184 (Sept. 16, 2013) at 9-10.