

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 )  
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**REPLY COMMENTS OF COMPTTEL**

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COMPTTEL respectfully submits these reply comments pursuant to the Federal Communications Commission’s (“Commission”) Notice of Proposed Rulemaking released on July 23, 2013,<sup>1</sup> seeking comment on the modernization of the E-rate program.<sup>2</sup>

**I. Introduction and Summary.**

COMPTTEL supports the Commission’s efforts to reform the E-rate program to ensure that it can meet the broadband needs of schools and libraries for years to come. The Commission’s goals of (1) ensuring that schools and libraries have affordable access to 21<sup>st</sup> century broadband that supports digital learning; (2) maximizing the cost effectiveness of E-rate funds; and (3) streamlining the administration of the E-rate program<sup>3</sup> appropriately identify tasks of the highest priority that must be accomplished efficiently to modernize the program. High-speed broadband access is critical to the growth and enhancement of 21<sup>st</sup> century educational programs which will benefit the U.S. economy overall. The Common Core Standards initiative<sup>4</sup>

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<sup>1</sup> These Comments reflect the position of a majority of COMPTTEL members. Individual members may file company-specific reply comments advocating positions on issues that differ in some particular respects from those stated herein.

<sup>2</sup> *Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, FCC 13-184 (rel. July 23, 2013) (“*E-rate NPRM*”).

<sup>3</sup> *Id.*

<sup>4</sup> National Governors Association for Best Practices, Council of Chief State School Officers, Common Core State Standards, available at <http://www.corestandards.org/the-standards>.

and online testing have heightened the need for high-speed broadband in the classroom. Students and teachers alike now rely on digital resources in their educational curricula; and as digital demand in the classroom increases, the public interest will be served by ensuring that schools and libraries, that otherwise would not be able to afford these services, have access to sufficient broadband capacity to meet the demand. Moreover, citizens across the nation, including low-income consumers, routinely rely on the computer and broadband resources available at public libraries to access the Internet. It is critical that the nation's E-rate policies keep pace with the capacity demands at these anchor institutions.

The Commission's focus in reforming and modernizing the E-rate program should reflect the primary goal of creating a more efficient and cost effective program. In order to achieve this goal, one crucial requirement of the program—competitive bidding—must remain in place. Competitive bidding cannot help but drive down costs to the program, and it encourages schools and libraries to seek out multiple cost effective networks and service options before choosing the one that best meet their needs.

It is critical that the Commission maximize the cost effectiveness of the E-rate program. The costs of the E-rate program are funded by the consumers and businesses that pay into the Universal Service Fund ("USF"). The Commission is well aware of the need to ensure that the USF contribution factor does not become too burdensome for end users. The Commission has recognized this danger and has taken steps to increase the cost effectiveness of the other USF programs, including High-Cost, Lifeline, and Rural Health Care programs. It should do the same for E-rate and adopt the goal of minimizing the contribution burden on end users.

COMPTTEL encourages the Commission to fully utilize the data at its disposal as it considers reform of the program, including the data to be gathered in the special access

proceeding.<sup>5</sup> As a result of that comprehensive data collection, the Commission will have access to fiber and other broadband deployment information, as well as pricing information for dedicated broadband services throughout the nation. Not only will this information be helpful in determining the extent of broadband construction to schools and libraries, it will also be useful in estimating the size of any construction fund the Commission deems necessary to reach schools and libraries with broadband facilities.

Finally, the Commission should take steps to simplify the administration of the E-rate program and remove barriers to participation.

## **II. The Commission Should Improve Opportunities for Competition in Order to Maximize The Efficiency of the E-Rate Program.**

The competitive bidding process is key to an efficient E-rate program. The Commission must retain competitive bidding in an effort to drive down the costs of the program and to free up funds for additional schools and libraries. In the NPRM, the Commission seeks comment on whether eliminating some or all of the competitive bidding rules would further its goal of streamlining administration of the E-rate program.<sup>6</sup> In response, several commenters asserted that competitive bidding has been an effective tool for driving down the costs to the fund, and the competitive bidding requirement should be maintained. For example, Sunesys asserts that multiple parties compete to win E-rate bids in every market that it serves,<sup>7</sup> and that “this competition has encouraged broadband service providers to develop more innovative solutions at lower costs[.]”<sup>8</sup>

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<sup>5</sup> *In the Matter of Special Access For Price Cap Local Exchange Carriers*, WC Docket No. 05-25, Report and Order, DA 13-1909 (rel. Sept. 18, 2013).

<sup>6</sup> *E-rate NPRM* ¶ 159.

<sup>7</sup> Sunesys Comments at 2.

<sup>8</sup> *Id.*

Moving away from competitive bidding may deprive schools and libraries of the opportunity to explore cost effective alternatives offered by different providers. LTS Buyer, Unite Private Networks, and Fibertech Networks have correctly argued that the removal of competitive bidding would hinder schools' ability to obtain the most cost effective solution and be "incongruent with the foundation of the E-rate program."<sup>9</sup> They also point out that elimination of competitive bidding may provide an unfair advantage to incumbent carriers at the expense of competitive carriers. Competitive bidding creates the opportunity to drive down pricing for recipients and the Fund. That opportunity should not be lost as the Commission reforms its procedures.

***Improving the competitive bidding process.*** In the NPRM, the Commission seeks comment on how it can "reduce the number of E-rate recipients that do not receive multiple bids[.]"<sup>10</sup> One possible way to reduce the number of E-rate recipients that do not receive multiple bids would be for the Commission and/or USAC to provide schools and libraries instruction on the value proposition of E-rate services and further guidance on the technologies and services that can meet their network and service criteria.

Comcast proposes a "digital template" software that would assist schools and libraries in determining the parameters of the networks and services that best meet their needs.<sup>11</sup> Any such template must be technologically and competitively neutral and be able to assist applicants in developing proposals that are more likely to receive multiple bids. The template should allow users to assess the requirements for building a network versus purchasing service. For example,

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<sup>9</sup> Comments of LTS Buyer LLC, Unite Private Networks, LLC, and Fibertech Networks, LLC ("Joint Commenters") at 12-13.

<sup>10</sup> *E-rate NPRM* ¶ 202.

<sup>11</sup> Comcast Corporation Comments at 28-31.

schools and libraries should be able to enter information, such as the number of classrooms and the number of students and teachers using digital devices to estimate capacity required. To the extent that the software could direct schools and libraries to the services available and service providers in their areas, they could then solicit bids from the providers that offer what they are looking for.

For build projects, the Commission must emphasize to applicants the importance of providing potential bidders adequate lead time. Service providers may decline to participate in the process because they cannot meet the time deadlines. In order to attract as many bidders as possible, applicants must build in sufficient time to complete the bidding process and to complete any necessary construction.<sup>12</sup> Moreover, COMPTTEL supports Comcast's proposal for the creation of a Request for Information (RFI) process to be used by schools and libraries to solicit input from providers on their network design proposals and the services the providers offer to address their needs.<sup>13</sup> Applicants could use the RFI process to obtain expert advice to assist them in planning their networks and services, and schools and libraries could use the information developed through the RFIs to draft more effective Requests for Proposals which would lead to more competitive bids.

The Commission should ensure that competitive bidding processes used by schools and libraries clearly inform potential bidders of all requirements and criteria for the networks and services to be provided. A simple and transparent process that provides adequate lead time is important for attracting numerous providers. If the bidding process occurs well in advance of the

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<sup>12</sup> See, e.g., Fatbeam, LLC Reply Comments at 1-2 (describing one district that provided only three months for dark fiber delivery for over 50 locations which resulted in only one company bidding for the contract).

<sup>13</sup> Comcast Corporation Comments at 31-32.

required delivery date, then multiple bidders are more likely to participate in the process, offer alternative solutions at competitive prices, and drive down costs for the Fund as a whole.

***Providing support for collaborative purchasing.*** COMPTTEL supports bidding methods that would allow schools and libraries to submit bids as part of larger entities, such as at the school district or consortium level, to enhance their buying power. Modifying the rules to allow collaborative purchasing could help reduce costs and increase efficiencies for the Fund. As the New York City Department of Education noted, collaborative purchasing “would alleviate the duplication of effort in the administrative process as well as inform service providers as to what schools will need.”<sup>14</sup>

Indeed, the Commission outlined the benefits of consortia purchasing in the 2012 *Rural Health Care Order*.<sup>15</sup> The Commission found that the “consortium-based approach of the Pilot Program fostered a wide variety of health care broadband networks that enabled better care and lower costs” and drew on that experience to develop flexible consortia rules. The Rural Health Care program permits a single application for all consortium participants and multi-year funding commitments.<sup>16</sup> The same approach should be adopted for E-rate.

While collaborative purchasing can be a powerful tool, the Commission should *not* mandate either school district or consortia bidding. Applicants should retain the flexibility to determine whether joining a consortium is the most efficient and cost effective choice based on their location and needs. Whether or not to seek bids on a stand-alone basis or as part of a school district or consortium should be left to the discretion of the applicants.

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<sup>14</sup> New York City Department of Education (“NYCDOE”) Comments at 5.

<sup>15</sup> *In the Matter of Rural Health Care Support Mechanism*, Report and Order, WC Docket No 02-60, 27 FCC Rcd 16678 at ¶ 56 (2012) (“*Rural Health Care Order*”).

<sup>16</sup> *Id.* ¶¶ 50 & 56.

In order to maintain such flexibility, the Commission should not adopt rules that make E-rate support for certain costs available only to consortia, as it did in the Rural Health Care proceeding.<sup>17</sup> Such an approach potentially punishes schools and libraries that are not in a position to benefit from consortia bidding. Separate applications and bids may best serve rural schools, while combined applications may best serve urban and suburban districts. The Commission should allow schools to decide what bidding option works best for them. In keeping with that spirit, the Commission should permit consortia and school district applicants to choose different service providers for different locations. Carriers have different footprints and applicants should be able to select the provider that provides the best value at the least cost. Such an approach will best serve the goal of an efficient E-rate program.

The Commission must be careful not to use consortia rules to disrupt the competitive bidding process that leads to lower costs for recipients and the Fund. The Commission asks if it should approve a proposal that would require consortia to purchase from state master or regional contracts.<sup>18</sup> In the *Rural Health Care Order*, the Commission adopted rules permitting consortia to “‘opt into’ competitively bid master service agreements previously approved by USAC or other federal, state, Tribal, or local government agencies without undergoing additional competitive bidding[.]”<sup>19</sup> COMPTTEL submits that a competitive bidding process within the E-rate program is the most effective way to minimize the program’s costs. Rules which circumvent this process do not serve the best interests of the E-rate program, and the objective of establishing an efficient program to provide high-speed broadband to as many qualifying schools and libraries as possible.

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<sup>17</sup> *Id.*

<sup>18</sup> *E-rate NPRM* ¶ 186.

<sup>19</sup> *Rural Health Care Order* ¶ 56.

***Allowing bridge funding when recipients switch to more cost effective providers.*** The current E-rate funding system makes switching providers difficult because there is no mechanism to fund a service overlap which may occur when enterprises change from one service provider to another. This is especially the case where an upgrade to greater capacity requires a fiber network to be built. The current program rules do not provide an overlap in funding where recipients plan to replace their current service with a new fiber network.<sup>20</sup> The E-rate program should offer an opportunity for bridge funding during a cutover when the value of the new service is greater than what the school or library was receiving under their old service. Without bridge funding, recipients are not incented to choose an alternative (new) provider if they must fund the new construction or services during the switch. When recipients choose not to switch to more cost effective providers, they (and the Fund) lose out on savings or the opportunity for better service at a similar price. This behavior makes the Fund less efficient, and can be avoided with limited bridge funding for recipients that would like to move to a new provider.

***Clarifying the Lowest Corresponding Price Requirement.*** The Commission seeks comment “on the extent to which the Lowest Corresponding Price (“LCP”) rule helps ensure that service providers charge cost-effective prices.”<sup>21</sup> The rule requires that a provider must offer schools and libraries the lowest price for E-rate services that it charges to “non-residential customers who are similarly situated” for similar services.<sup>22</sup> This rule can help lower costs by ensuring that E-rate applicants that do not receive multiple bids get the best possible price.

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<sup>20</sup> See, e.g., Fatbeam, LLC Reply Comments at 2 (explaining that the current program discourages “robust and higher bandwidth solutions” due to the lack of overlap funding).

<sup>21</sup> E-rate NPRM ¶ 209.

<sup>22</sup> 47 C.F.R. § 54.511(b) & § 54.500(f).

Verizon asserted in its comments that many E-rate applicants do not receive multiple bids.<sup>23</sup> Given that so many recipients do not receive multiple bids for service, this underscores the need to retain the LCP requirement as an important tool to control costs and stretch the limited dollars available in the program. The Commission should, however, clarify how and when the rule is to be applied.<sup>24</sup> It has been more than three years since US Telecom and CTIA petitioned the Commission to clarify the scope and meaning of the LCP rule. The time is ripe for the Commission to do so as it reforms and modernizes the E-rate program.

The Commission asked commenters to renew the record on the need for clarification of the five LCP issues raised by USTelecom and CTIA. Nothing has transpired in the intervening three years since the Petition was filed that eliminates the need for clarification. COMPTEL submits that service providers are entitled to know how the Commission believes the LCP obligations should be interpreted in order to ensure compliance with the rule. For this reason, the Commission should grant the Petition and clarify exactly how the rule is to be applied. At the very least, the Commission must allow providers to rely upon the prices in tariffs, state master contracts and/or other retail prices as safe harbors when and if compliance challenges are raised.

### **III. The Commission Should Be Guided by Fiscal Responsibility and Accountability and Should Adopt the Goal of Minimizing the Contribution Burden on Consumers and Businesses who Pay Into USF.**

Fiscal responsibility and accountability have been important guideposts for the Commission in its reforms of the USF programs. In the NPRM, the Commission recognized that

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<sup>23</sup> Verizon and Verizon Wireless Comments at 27.

<sup>24</sup> Indeed, one investigative report claims that some providers frequently charge schools and libraries higher rates than similar customers, and the Commission has not enforced the LCP requirement. *See AT&T, Feds Neglect Low-Price Mandate Designed to Help Schools*. Gerth, Jeff, Propublica, May 1, 2012, available at <http://www.propublica.org/article/att-feds-ignore-low-price-mandate-designed-to-help-schools> (last viewed October 29, 2013).

it faces the challenge of providing students and communities with access to high-capacity broadband connections while ensuring that “the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund[.]”<sup>25</sup> The Commission has acknowledged that the USF is paid for by consumers and businesses in every major reform of the USF program over the last three years.<sup>26</sup> In the Commission’s High-Cost reform in 2011, it adopted four guiding principles, including fiscal responsibility and accountability, in its overhaul of the program.<sup>27</sup> Similarly, in the *Lifeline Order* released in 2012 the Commission adopted as one of its three goals “minimizing the contribution burden on consumers and businesses,” stating that “if the universal service burden is too high, the affordability of service will be placed in jeopardy, undermining the very purpose of the universal service program.”<sup>28</sup> And in its Rural Health Care reform, the Commission set a goal of maximizing the cost-effectiveness of the program, recognizing the impact on those who pay into USF.

The Commission asked for comment on its proposed goal of maximizing cost-effectiveness of the E-rate funds, acknowledging the burden on consumers and businesses that

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<sup>25</sup> *E-rate NPRM* ¶ 2.

<sup>26</sup> See *Rural Health Care Order* ¶ 41 (“We adopt as our third goal maximizing the cost-effectiveness of the RHC universal service health care support mechanism, thereby minimizing the Fund contribution burden on consumers and businesses. This goal includes increasing the administrative efficiency of the program (thereby conserving Fund dollars) while accelerating the support for the delivery of broadband.”); *Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 at ¶37 (2012) (“*Lifeline Report and Order*”) (“We adopt as our third program performance goal minimizing the contribution burden on consumers and businesses. This goal is consistent with our longstanding recognition that our efforts to advance universal service must be balanced against the universal service contribution burden on all consumers[.]”); *USF-ICC Reform*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶11 (2011) (“We recognize that American consumers and businesses ultimately pay for USF, and that if it grows too large this contribution burden may undermine benefits of the program by discouraging adoption of communication services.”) (“*USF/ICC Transformation Order*”)

<sup>27</sup> *USF/ICC Transformation Order* ¶ 11.

<sup>28</sup> *Lifeline Report and Order* ¶ 37.

pay into USF, as well as the proposed goal of streamlining the administration of the program.<sup>29</sup> COMPTEL supports both of these proposals, and also encourages the Commission to adopt the guiding principles of fiscal responsibility and accountability in its reform effort. The proposed goal of maximizing the E-rate program's efficiency will help achieve the objective to conserve the Fund's limited dollars. Furthermore, COMPTEL believes that the Commission should also adopt a goal of minimizing "the contribution burden on consumers and businesses," consistent with its previous USF reforms.

The USF contribution reform Further Notice of Proposed Rulemaking docket remains open.<sup>30</sup> As such, it is appropriate for the Commission to consider the inequities caused by the fact that USF is still funded by telecom and voice consumers, not broadband subscribers, even though the Fund is largely being used to support broadband networks and services. The Commission seeks to address the inequities in the Fund in its pending FNPRM on USF contributions. In fact, the Commission specifically sought comment on the goals for that reform, including fairness for those contributing to the Fund and sustainability of the Fund when not all those who benefit from it are contributing to it.<sup>31</sup> The Commission has had contribution reform pending for a number of years, and as each of the programs become more focused on broadband networks and services, it is inequitable that the USF burden falls entirely on telecom and voice subscribers.<sup>32</sup> The Commission must keep this burden in mind as it considers the sustainability

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<sup>29</sup> *E-rate NPRM* ¶¶ 41-51.

<sup>30</sup> *See Universal Service Contribution Methodology, A National Broadband Plan For Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122 and GN Docket No. 09-51, FCC 12-46 (rel. April 30, 2012).

<sup>31</sup> *Id.* ¶¶ 24-27.

<sup>32</sup> *See, e.g.*, COMPTEL Comments at 4, WC Docket No. 06-122 (filed July 9, 2012).

of the Fund when not all those who benefit from it are contributing to it, increasing the size of the E-rate program, and in turn, the USF.

***Incenting recipients to use E-rate funds in the most cost-effective manner.*** As the Commission observed, under the current E-rate rules, schools have no incentive to limit their priority one spending once they have solved their network and service deficiencies.<sup>33</sup> This in turn leads to overspending on behalf of some recipients while other applicants cannot solve their network deficiencies, significantly limiting the funding available for priority two services. COMPTEL is encouraged that the Commission is considering how to provide incentives to schools so that they use only the E-rate funds needed, so that more funding is available for priority two services, including internal connections.<sup>34</sup> Additionally, the Commission should ensure that E-rate funds are targeted to disadvantaged schools and libraries that rely on this program to receive broadband access. The program should not be funding networks for schools or libraries that have the ability to pay for their own networks through their own community resources.

***Learning from the Rural Health Care Program.*** In the Rural Health Care program the Commission was sensitive to using the limited funds to build new networks. It implemented several protections, including limiting the total annual amount available for fiber builds and requiring applicants to obtain bids and compare construction versus service costs, and requiring them to choose the lowest cost alternative, in order to ensure that the limited funds were used most efficiently.<sup>35</sup> These rules were implemented well and successfully maintain the balance

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<sup>33</sup> *E-rate NPRM ¶¶ 56-64*

<sup>34</sup> *E-rate NPRM ¶ 116.* COMPTEL is not specifically endorsing those options. Rather, it is important for the Commission to incent recipients and providers to be as efficient as possible so that the limited USF dollars can meet as many of the goals as possible.

<sup>35</sup> *Rural Health Care Order ¶ 236.*

between funding the construction of new networks and conserving funds. To the extent the Commission determines that a set-aside for new construction is appropriate for the E-Rate program, the Commission should adopt similar rules for the E-rate program.<sup>36</sup>

#### **IV. Creating Greater Flexibility for Eligible Services.**

The record indicates that voice, email, and web hosting services are an important component of communications for schools and libraries. Miami-Dade County Public Schools (M-DCPS) noted that such services “have become ubiquitous to the daily process of educating [...] students[.]”<sup>37</sup> M-DCPS believes that this use of e-mail and web hosting services makes them eligible for funding based on the clarification expressed in the *Second Report and Order* which states that services which are “integral, immediate, and proximate to the education of students” are eligible for E-rate funding.<sup>38</sup> The American Library Association asserted that voice services are essential to its members.<sup>39</sup> Many libraries lack an alternative to basic voice service, only have access to cost-prohibitive alternatives, or do not have fast enough broadband speeds to make VoIP service a reliable solution. The School District of Philadelphia (SDP) wrote that “even the largest telecommunications carriers in Philadelphia still cannot deliver VOIP-based telephony to buildings and/or directly to classrooms in a more cost-favorable manner than traditional analog or PRI-based services.”<sup>40</sup> So many libraries and schools rely on voice service to conduct their operations that the Commission should continue to allow the use of E-rate funds

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<sup>36</sup> COMPTEL does not endorse the requirement that only consortia may obtain funds to construct new networks.

<sup>37</sup> Miami-Dade County Public Schools Comments at 5.

<sup>38</sup> *Id.*

<sup>39</sup> American Library Association Comments at 14-15.

<sup>40</sup> School District of Philadelphia Comments at 8.

for voice service as long as there are applicants who cannot get reliable or cost-effective access to alternative voice service.

Removing support altogether for voice services could jeopardize the capabilities of these community anchor institutions to fulfill their missions. In addition, voice service continues to be the supported service in both the high-cost and Lifeline programs. As such, the Commission should focus its efforts on how to incent recipients to choose the most cost effective voice service available. For example, where a recipient receives broadband service that can support a VoIP service, a bundled product is likely less expensive than a standalone broadband and voice service, and the Commission could require recipients to purchase the bundled service.

Fiber builds are also an important part of the E-rate program but the present rules do not give them the support they need to fully realize their potential as a tool for schools and libraries. There would be more fiber builds if the Commission permitted greater use of E-rate funds to cover the construction costs for fiber. The Commission could help increase fiber builds by permitting one time approval for multi-year construction projects which would reduce the uncertainty schools face when seeking construction funding.

Fiber builds would also increase if lit and dark fiber received the same treatment.<sup>41</sup> COMPTTEL agrees with the Joint Commenters that there is no reason for the current disparity which excludes dark fiber leases from receiving priority one support for modulating electronics and special construction charges beyond a recipient's property line.<sup>42</sup> Greater parity between

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<sup>41</sup> See, e.g., Fatbeam LLC Reply Comments at 2 (“[T]here would likely be more fiber builds if the Fund picked up more of the initial construction costs for fiber and treated lit and dark fiber networks the same.”).

<sup>42</sup> Joint Commenters at 6, citing *E-rate NPRM* ¶¶ 71-72.

funding for dark and lit fiber would allow providers to offer more broadband solutions to schools.<sup>43</sup>

**V. Information from the Commission’s Special Access Mandatory Data Collection Will Facilitate E-rate Reform.**

The Commission seeks comment on “how to measure high-capacity broadband availability and affordability and the metrics that should be used.”<sup>44</sup> Cbeyond, EarthLink, Integra, Level 3, and tw telecom (“Cbeyond, et. al.”) appropriately point out that the NPRM “overlooks the fact that much of the information the Commission needs to evaluate the availability and affordability of high-capacity broadband connections to schools and libraries will be available through the Commission’s mandatory special access data collection.”<sup>45</sup>

COMPTEL agrees with the general observations about the relevance of the data to be collected in the special access rulemaking proceeding to the Commission’s E-rate reform goals.

In particular, the special access data will provide the Commission with pertinent information about the number and location of schools and libraries are currently being served via fiber, the broadband speeds they are using, and the prices they are paying for high-capacity broadband service.<sup>46</sup> The Commission should use this data to measure the availability and affordability of broadband to schools and libraries. In addition, the special access data can be

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<sup>43</sup> Some of COMPTEL’s members do not join in this paragraph.

<sup>44</sup> *E-rate NPRM* ¶ 36.

<sup>45</sup> Cbeyond, EarthLink, Integra, Level 3, and tw telecom Reply Comments at 4.

<sup>46</sup> Cbeyond, et al. suggest using the network maps submitted by competitive provides to identify where they can provide or could provide services to schools and libraries. Cbeyond, et. al. Reply Comments at 5, citing *Special Access for Price Cap Local Exchange Carriers, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-153, ¶ 35 (“Special Access Data Request Order”)*.

used to identify the number of providers in a given geographic area, which areas would benefit from fiber build outs, and reasonable prices for service.<sup>47</sup>

The E-rate program should leverage fiber that already exists wherever possible. Several of COMPTEL's members have spent a significant amount of their own private capital to build fiber networks. The Commission, however, lacks information about the availability of fiber, which puts it at a disadvantage in reforming the E-rate program. This is another reason why the Commission should prioritize the data collection in the special access proceeding so that it may be used to better inform the Commission in its reform of the E-rate program.

Finally, the facilities and pricing information obtained in the special access proceeding could be a useful tool for sizing the need and budget for building higher capacity networks to schools and libraries.<sup>48</sup> Indeed, the Commission should use the pricing data to evaluate the overall budget of the program.

#### **VI. The Commission Should Reduce Complexity in The Administrative Process.**

Improved administrative simplicity and program efficiency will drive down costs and eliminate barriers that prevent recipients and providers from participating in the E-rate program. Schools, libraries, and businesses alike can be dissuaded from taking part in E-rate by the often complex administrative procedures and burdensome filing requirements.

COMPTEL agrees with Sprint that the Commission should not adopt a proposal to require service providers to “keep records of all their communications relating to [unsuccessful competitive] bids.”<sup>49</sup> These records would serve no useful purpose that would justify the cost of maintaining them. Sprint notes that “[d]ocument retention involves a cost” and holding records

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<sup>47</sup> Cbeyond, et al. notes that this data could be used to help the Commission understand reasonable pricing for high capacity broadband services. Cbeyond, et. al. Reply Comments at 5.

<sup>48</sup> *Special Access Data Request Order* ¶ 36.

<sup>49</sup> *E-rate NPRM* ¶ 297.

of unsuccessful bids would be burdensome to companies and could deter participation in the program.<sup>50</sup> This proposal would burden large service providers that respond to many E-rate RFPs and smaller providers who lack the resources to maintain a high volume of records for unsuccessful bids.

***More transparency is needed when funds are held.*** There needs to be more transparency in the complaint process that results in holds for funding. The current USAC practice is to withhold funding where one whistleblower complaint is filed and provide no information to the provider on the status of complaints. USAC should be directed to provide more information to providers during the complaint process.

The Joint Commenters propose a process that would be transparent to the provider about the USAC hold, an opportunity to address the complaint, and a specific timeframe for the hold to be resolved.<sup>51</sup> COMPTTEL agrees that a transparent process with a definitive time frame should be implemented. The timeframe should be as brief as possible to minimize disruption to providers and their customers. This is especially the case where construction projects are underway. Smaller companies cannot afford the uncertainty of non-payment from USAC. Multiple months of delay can significantly impact a small company's revenue stream.<sup>52</sup> The uncertainty of payment from USAC also discourages smaller providers from participating in the E-rate program. Fewer providers competing for the E-rate dollars is contrary to the goals of an efficient and effective program (as discussed above).

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<sup>50</sup> Sprint Corporation Comments at 13.

<sup>51</sup> Joint Commenters at 15-19.

<sup>52</sup> See, e.g., Fatbeam, LLC Reply Comments at 2 (supporting a process wherein there is more transparency and an opportunity to address issues within a specific, abbreviated timeframe).

The Commission should direct USAC to only place holds on funding where complaints are substantiated. Substantiated complaints should be supported by an affidavit or statements under penalty of perjury. Moreover, due process requires at a minimum that the substantiated complaint be forwarded to the provider and that the provider be given the opportunity to respond. If the provider's response adequately addresses the issues raised in the complaint, USAC should release the funding. To the extent USAC is dissatisfied with the provider's response, it should inform the provider and allow the provider to seek redress from the Commission. This entire process should take no longer than three months.

***Approval timelines should be adjusted.*** E-rate funding should be approved before the school year starts. The current approval timeline creates too much uncertainty for applicants and providers; a streamlined review process and one review for multi-year contracts would be better for recipients and providers. The Houston Independent School District stated that the current timing for E-rate applications creates administrative burdens because the applications are not reviewed until the fall or winter of a given school year and thus fail to reflect changes that were not known to the district at the time of filing.<sup>53</sup>

***Sizing funding commitments more accurately to actual spend.*** In the NPRM, the Commission noted that “[i]n some cases applicants request more in funding commitments than they actually use, and there is no requirement or incentive for applicants to notify USAC in a timely fashion that they have received funding commitments that they will not use.”<sup>54</sup> According to TelePacific Communications, initial E-rate forecasts are often overstated, which leads to E-

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<sup>53</sup> Houston Independent School District Comments at 4.

<sup>54</sup> *E-rate NPRM* ¶ 45.

rate funds becoming unintentionally over-subscribed, meaning that funds are not available to other applicants.<sup>55</sup>

TelePacific Communications proposes that the Commission require a copy of the initial invoice which shows the specific services obtained by the applicant and the pricing of those services. This would allow for a reconciliation of funding between the first invoice and the initial award. In the event that the first month's invoice is not an accurate depiction of the applicant's annual needs the Commission could rely on the previous year's funding commitment. The process would free up funding commitments and the over-subscribed dollars could be provided to other schools and libraries. If adopted, this proposal would effectively allow the Commission to increase the number of E-rate recipients without adding to the overall cost of the program.

***Allowing BEAR payments to be made directly to recipients.*** The Commission asks for comment on whether changes should be made to the disbursement process such that applicants paying the full cost of the services under the Billed Entity Application for Reimbursement (BEAR) process would be allowed to receive direct reimbursement from USAC. Under the current rules, USAC distributes payments directly to service providers who must then remit those payments to the recipient school or library. COMPTTEL submits that the Commission should amend the rules to allow payments to be made directly to applicants if the applicants so choose. Applicants should also retain the option, however, of receiving payment through their service providers as they do under the existing rules.

***The current record retention requirements should be retained.*** COMPTTEL opposes the Commission's proposal to double the existing record retention requirement from 5 to at least 10

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<sup>55</sup> TelePacific Communications Comments at 2.

years.<sup>56</sup> The increased document storage costs would be burdensome for providers and recipients who would be required to spend resources on document retention. Windstream noted in its comments that most E-rate contracts are for three to five years with retention mandated for five years from the last date of service.<sup>57</sup> This means that parties must retain contracts for eight to ten years in most cases as practical matter. If the Commission doubles the current retention policy it will effectively require many service provider, schools, and libraries to retain documents for nearly 15 years. This is especially burdensome for small providers and small recipients.

COMPTEL also opposes the proposal to require that an officer of the service provider sign Forms 472, 473, and 474.<sup>58</sup> Thousands of documents could potentially be involved for any given provider and it is unlikely that a service provider's officer would have direct knowledge about each document. Sprint noted that service providers do not submit applications for eligible services, so it is not clear why the signature of an officer would be necessary.<sup>59</sup>

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<sup>56</sup> *E-rate NPRM* ¶ 295.

<sup>57</sup> Windstream Comments at 8.

<sup>58</sup> *E-rate NPRM* ¶¶ 300-302.

<sup>59</sup> Sprint Corporation Comments at 14.

**VII. Conclusion.**

The modernization of the E-rate program is necessary to provide schools and libraries with the high speed capability they need to serve their communities. COMPTEL applauds the Commission's efforts to improve this program to make the best use of the limited funds in the USF. COMPTEL strongly urges the Commission to adopt a reform approach that maximizes competition for networks and services so that schools and libraries can take full advantage of the efficiency of broadband networks and services while minimizing cost. The Commission should strengthen the competitive bidding process, give schools and libraries more flexibility when choosing broadband solutions, improve the administrative efficiency of the program, and use the data from the special access proceeding to guide the E-rate program.

Respectfully submitted,

COMPTEL

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