

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

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

**REPLY COMMENTS OF
CBEYOND, EARTHLINK, INTEGRA, LEVEL 3, AND TW TELECOM**

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Cbeyond Communications, LLC (“Cbeyond”), EarthLink, Inc. (“EarthLink”), Integra Telecom, Inc. (“Integra”), Level 3 Communications, LLC (“Level 3”), and tw telecom inc. (“tw telecom”) (collectively, the “Joint Commenters”), through their undersigned counsel, hereby submit these reply comments in the above-captioned proceeding on the Commission’s Notice of Proposed Rulemaking (“*NPRM*”)¹ to modernize the E-rate program.

I. INTRODUCTION AND SUMMARY.

The Joint Commenters strongly support the Commission’s stated E-rate modernization goals of (1) ensuring that schools and libraries have affordable access to 21st 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.² Several of the Joint Commenters have participated in the E-rate program for years, and all of them provide the high-speed broadband services needed to support digital learning. That experience informs the following recommendations.

¹ *Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, 28 FCC Rcd. 11304 (2013) (“*NPRM*”).

² *Id.* ¶ 12.

First, the Commission should use the information it gathers through the special access data request to (1) assess the availability and affordability of the high-capacity broadband services demanded by today’s schools and libraries; and (2) make changes to the E-rate program accordingly. As discussed in Part II.A, completing the special access rulemaking proceeding will not only help the Commission make more informed decisions in the E-rate context, but it will also likely advance the Commission’s goals of ensuring that E-rate applicants have access to affordable high-speed broadband and that finite E-rate funds are used efficiently.

Second, the Commission must ensure that its E-rate reforms do not increase the size of the Universal Service Fund (“USF” or “Fund”). Expanding the size of the Fund will, among other things, increase the already heavy universal service contribution burden—a burden that must ultimately be borne by American businesses and consumers. Accordingly, the Commission should only increase the cap on funding for the E-rate program if such an increase can be offset by a corresponding reduction in spending on other universal service programs. Moreover, as discussed in Part II.B, the Commission should reject reform proposals that would make inefficient use of limited E-rate funds. These include proposals to provide E-rate support for (1) the construction of private fiber networks; (2) the construction or purchase of wide area networks (“WANs”); and (3) cloud services.

Third, the Commission should adopt reforms to streamline administration of the E-rate program, including its proposals to (1) facilitate the use of multi-year contracts; (2) streamline the E-rate disbursement process; and (3) speed up the Universal Service Administrative Company’s (“USAC’s”) issuance of funding commitment decisions. As discussed in Part II.C, these and other reforms that make it easier for service providers to participate in the E-rate program will result in increased competition, lower prices for schools and libraries, and thus

better use of E-rate funds. This should be one of the Commission's key objectives because there is little competition today in the provision of broadband services to schools and libraries. In fact, as Verizon points out, most E-rate applicants receive only one or no bids.³

Fourth, the Commission should abandon several of its burdensome proposed rule changes because they would only serve to deter service provider participation and undermine the agency's E-rate reform goals. As explained in Part II.D, these flawed proposals include so-called "transparency" rules, officer certification requirements, and extended record retention requirements.

Finally, the Commission should complete the pending universal service contribution reform proceeding as it undertakes E-rate reform. As explained in Part II.E, fixing the broken contributions system will, among other things, (1) help the Commission achieve its E-rate modernization goals by ensuring that the Fund remains sustainable in the long-term; and (2) remove competitive distortions (*e.g.*, in the broadband Internet access services market) created by the existing contributions regime.

II. DISCUSSION.

A. Completing the Special Access Rulemaking Proceeding Will Aid the Commission in Ensuring the Availability and Affordability of High-Capacity Broadband Connections to the Nation's Schools and Libraries.

In the *NPRM*, the Commission seeks comment on "how to measure high-capacity broadband availability and affordability and the metrics that should be used."⁴ For instance, the Commission asks whether it should "use the National Broadband Map to estimate what fraction of schools and libraries have access to at least one broadband provider within the same census

³ Verizon Comments at 27. All references to "Comments" herein are to those filed in WC Dkt. No. 13-184.

⁴ *NPRM* ¶ 36.

block offering broadband at speeds that meet [its] proposed performance metrics.”⁵ In addition, the Commission asks whether, in order to assess affordability, it should benchmark the prices paid by schools for broadband connections “against some objective measure.”⁶ These questions appropriately reflect the need for data to drive sensible reform of the E-rate program.⁷ However, 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. For example, the Commission could utilize the information requested in the special access data request in the following ways:

- Use the facilities information submitted by competitive and incumbent providers (*i.e.*, the address and geocode of each end-user location to which the provider has a connection) to identify the location of facilities (*e.g.*, fiber) currently being used to serve schools and libraries;⁸
- Use some of the other requested facilities information (*i.e.*, the total bandwidth provided to the location as sold and the total bandwidth provided to end users at the location as sold) to find out the broadband speeds being used by schools and libraries;⁹

⁵ *Id.* ¶ 37.

⁶ *Id.* ¶ 38.

⁷ *See, e.g.*, Verizon Comments at 8-13 (arguing that the Commission should make sensible changes to the E-rate program after it has collected and analyzed data about schools’ existing connectivity); CTIA Comments at 12-13 (urging the FCC to assess whether changes to E-rate funding levels are necessary after collecting data on “schools’ and libraries’ current broadband purchasing as well as their needs”).

⁸ *See Special Access for Price Cap Local Exchange Carriers*, Report and Order, DA 13-1909, Appendix B, II.A.4 & II.B.3 (2013) (“*2013 Special Access Data Request Order*”).

⁹ *See id.*, Appendix B, II.A.4 & II.B.3.

- Use the network maps submitted by competitive providers to identify “where [such] providers can provide, or could potentially provide” high-capacity broadband services to enterprise customers and community anchor institutions, including schools and libraries;¹⁰
- Use the panel regression analysis conducted by the Wireline Competition Bureau and the “build vs. buy” business rules submitted by competitive providers to assess where fiber will likely be deployed in the future;¹¹
- Use the pricing information collected to make comparisons of different providers’ prices (“after controlling, where necessary, for differences in cost-causing factors”) for high-capacity broadband services, such as Ethernet services, that are eligible for E-rate funding, thereby assisting the agency in understanding what a reasonable price is for such services;¹² and
- Use the terms and conditions information submitted to understand how incumbent LECs’ exclusionary special access purchase arrangements are preventing competitive providers from deploying fiber that could be used to serve not only enterprise customers but also schools and libraries.¹³

¹⁰ See *Special Access for Price Cap Local Exchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd. 16318, ¶ 35 (2012) (“*2012 Special Access Data Request Order*”).

¹¹ See *id.* ¶ 68.

¹² See *id.* ¶ 36.

¹³ See *id.* ¶ 39 (requesting information to determine “whether the terms and conditions associated with the sale of special access services . . . may inhibit facilities-based entry into special access markets”).

Based on the foregoing, it is clear that the Commission will be in a better position to make informed judgments about the extent to which service providers will be able to serve schools and libraries (*e.g.*, the extent to which one, two, or multiple providers are able to serve a particular location now or will likely be able to do so in the foreseeable future), and the prices at which they will be able to provide such service, after the Commission has gathered and analyzed the information requested in the special access rulemaking proceeding.¹⁴

In addition, completing the special access rulemaking proceeding would likely further the Commission's goals of ensuring that schools and libraries have access to affordable high-capacity broadband connections and that limited E-rate funds are used cost-effectively. For instance, if the Commission were to adopt new rules to constrain incumbent LECs' prices for special access services (*e.g.*, Ethernet services demanded by enterprise customers) in the markets where the incumbent has market power, then the prices for such services would decrease and,

¹⁴ It is worth noting that once the Commission receives Paperwork Reduction Act ("PRA") approval of the special access information collection from the Office of Management and Budget ("OMB"), nothing prohibits the FCC from using the collected information in the E-rate reform proceeding. In fact, one of the purposes of the PRA is to "ensure the greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government." 44 U.S.C. § 3501(2). To that end, the OMB has urged agency heads to "maximi[ze] the re-use of data that are already collected." See Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, OMB, Memorandum for the Heads of Executive Departments and Agencies, "Reducing Reporting and Paperwork Burdens," at 2 (June 22, 2012), *available at* <http://www.whitehouse.gov/sites/default/files/omb/inforeg/memos/reducing-reporting-and-paperwork-burdens.pdf>. See also *Tozzi v. EPA*, No. Civ. 98-0169, 1998 WL 1661504, *3 (D.D.C. Apr. 21, 1998) (deferring to OMB's view that "it is the agency's collection of information, not the agency's subsequent use of the collected information, that requires OMB's approval," and "[a]ccordingly, . . . the PRA does not require an agency to obtain OMB approval in order for the agency to use information that it collects in addition[al] ('new') ways") (internal citation omitted). Therefore, the Commission could use the information gathered via the special access data collection in the E-rate reform proceeding by (1) announcing to the public that it is incorporating the special access data request responses into the record of the E-rate reform proceeding; and (2) issuing a protective order in the E-rate reform proceeding that restricts access to the data request responses on terms and conditions similar to those adopted in the forthcoming protective order in the special access rulemaking proceeding.

under the E-rate program’s “lowest corresponding price” rule, the prices that schools and libraries must pay for these services would also decrease.¹⁵ Moreover, if competitors were able to obtain special access inputs to high-capacity broadband services at reasonable prices and on reasonable terms and conditions in the markets where the incumbent has market power, they would be able to participate in more bids for E-rate supported services, thereby driving down prices. For example, competitive providers that could not otherwise serve all locations of a consortium of schools would be able to do so, thereby alleviating the Commission’s concern that lack of competition could leave a larger consortium with “a single bidder facing little pressure to pass on any reduced costs to applicants.”¹⁶

B. The Commission Must Control the Size of the Universal Service Fund and Make Efficient Use of Limited E-rate Funds.

In the *NPRM*, the Commission seeks comment on whether it should temporarily or permanently increase the cap on E-rate funding to reach its reform goals.¹⁷ The Commission has previously demonstrated a commitment to controlling the size of the Fund as it transitions to support broadband,¹⁸ and it must adhere to that principle here.¹⁹ The Commission must ensure

¹⁵ See *NPRM* ¶ 39 & n.62 (explaining that service providers cannot charge schools or libraries a price above the “lowest corresponding price” for E-rate supported services, which is defined as “the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services”).

¹⁶ *Id.* ¶ 185.

¹⁷ *Id.* ¶¶ 173-174.

¹⁸ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 121 (2011).

¹⁹ See *ACA Comments* at 4 (“[I]n establishing the Connect America Fund, the Commission made fiscal responsibility a prime objective, increasing efforts to expand broadband deployment within a fixed budget based on previous high-cost fund expenditures. It should adhere to these precedents in this proceeding . . .”).

that its E-rate reforms do not increase the size of the Fund as a whole for two reasons. *First*, American businesses and consumers will otherwise be forced to pay even more in universal service contributions. Indeed, the contribution factor has already increased by more than 60 percent—from 9.5 percent to 15.6 percent—in the last five years.²⁰ *Second*, increasing the size of the fund will exacerbate the competitive distortions caused by the existing contributions system.²¹ Therefore, if the Commission concludes that it must increase the cap on E-rate funding to meet schools and libraries’ growing demand for higher bandwidth connections, it must offset any such increase with an equivalent reduction in spending on other universal service programs.²² As NCTA states, the Commission “should be diligent in trying to ensure that any increase in E-rate support does not place an additional contribution burden on American consumers but should instead come from a corresponding reduction in another area of the Fund,” such as the high-cost support program.²³

Furthermore, the Commission should reject proposals that would make inefficient use of limited E-rate funds. For example, the Commission should not adopt E-rate funding proposals that would create artificial incentives for schools and libraries to construct their own private fiber networks or use dark fiber solutions that are generally unlikely to deliver the same service

²⁰ Compare *Proposed First Quarter 2009 Universal Service Contribution Factor*, Public Notice, 23 FCC Rcd. 17947 (2009), with *Proposed Fourth Quarter 2013 Universal Service Contribution Factor*, Public Notice, DA 13-1880 (2013); see also *NPRM*, Statement of Commissioner Ajit Pai.

²¹ See *infra* Part II.E.

²² See NCTA Comments at 11; Cox Comments n.12 (“Cox supports providing sufficient funding for E-rate within the current overall budget for the federal universal service program as a whole.”).

²³ NCTA Comments at 11.

quality as efficiently and cost-effectively as finished services delivered over existing networks.²⁴ As the record demonstrates, scarce E-rate funds should not be used to underwrite a school or library's construction of a fiber network or acquisition of dark fiber.²⁵ To begin with, as AT&T points out, "there is no sound policy reason to utilize government money to build additional, and especially private, networks in areas where high-speed broadband is already being provided commercially."²⁶ Moreover, private fiber networks are generally not the most cost-effective method for schools and libraries to access high-capacity broadband. Schools often underestimate the costs of lighting dark fiber or constructing and maintaining their own fiber networks.²⁷ And they frequently lack the technical expertise and resources to handle the burdens of operating such networks.²⁸

Nor should the Commission adopt its proposal to provide E-rate support for schools and libraries to build or purchase their own WANs.²⁹ The record shows that network operators and service providers—not schools and libraries—are best equipped to perform the functions necessary to deploy and operate WANs (*e.g.*, obtaining access to public rights of way,

²⁴ *See, e.g., NPRM ¶¶ 67-78* (proposing to provide "Priority 1" support for the modulating electronics necessary to light leased dark fiber and for special construction charges for leased dark fiber).

²⁵ *See, e.g., NCTA Comments at 12-13; Cox Comments at 6-8; AT&T Comments at 5-7; USTelecom Comments at 15-16; CenturyLink Comments at 6.*

²⁶ AT&T Comments at 6.

²⁷ Cox Comments at 6.

²⁸ *See NCTA Comments at 12.*

²⁹ *See, e.g., Verizon Comments at 17-18; Windstream Comments at 5; CenturyLink Comments at 7.*

conducting periodic technology “refreshes” and replacing routers and other end-user equipment, and performing day-to-day maintenance) in the most efficient manner.³⁰

Finally, the Commission should reject CenturyLink and Windstream’s calls for the Commission to provide E-rate support for cloud services.³¹ There is simply no need for the Commission to subsidize services in a market characterized by very low entry barriers and fierce competition.

C. The Commission Should Adopt Reforms That Streamline Administration of the E-rate Program and Thereby Encourage School and Service Provider Participation.

The Joint Commenters strongly support the Commission’s effort to find ways to streamline the administration of the E-rate program.³² Streamlining and simplifying the application, review, funding commitment, and disbursement processes will increase participation by eligible schools and libraries.³³ Importantly, reducing the administrative burdens associated with E-rate will also boost participation by service providers (both those that already participate in the program and those that do not).³⁴ And greater service provider participation will increase the choices available to schools and libraries and lower the cost of E-rate supported services. As

³⁰ See Windstream Comments at 5; see also Verizon Comments at 17-18; CenturyLink Comments at 7.

³¹ See CenturyLink Comments at 8-9; Windstream Comments at 4.

³² NPRM ¶¶ 224-226.

³³ See, e.g., GAO, *FCC Should Assess the Design of the E-rate Program’s Internal Control Structure*, GAO-10-908, at 9 (Sept. 2010) (“In our 2009 E-rate report, we found that some nonparticipating schools and libraries elected not to apply to the program because they considered the process to be too burdensome (e.g., too complex, time-consuming, or resource-intensive.)”); FCC, *Connecting America: The National Broadband Plan*, at 238 (rel. Mar. 16, 2010) (acknowledging that the “procedural complexities” and “administrative burdens” of the E-rate program “may deter eligible entities from even applying for funds in the first place”).

³⁴ See, e.g., ACA Comments at 13-14; NCTA Comments at 14.

the Commission has recognized, “[i]f more service providers are viewing and responding to [eligible schools’ requests for] proposals, the resulting additional competition should help keep prices lower for applicants and, in turn, require fewer dollars from the universal service fund.”³⁵ It follows that the Commission should adopt a number of its proposals to streamline program administration.

Facilitating the use of multi-year contracts. The Commission should adopt its proposals regarding multi-year contracts.³⁶ Such contracts drive down service costs for schools and libraries while enabling service providers to recoup their investments.³⁷ Yet, the Commission currently requires that E-rate applications associated with multi-year contracts be re-approved each year to receive funding commitments.³⁸ As one commenter points out, this requirement is “not only counter-intuitive, but it can actually discourage the very type of investment in broadband connectivity that the Commission desires to promote.”³⁹ Accordingly, the Commission should facilitate the use of such contracts in the E-rate program by adopting its proposals to (1) allow applicants with multi-year contracts to file and undergo review of a single Form 471 application for the full term of the contract;⁴⁰ and (2) allow those applicants to receive multi-year funding commitments.⁴¹ There is widespread support in the record for one-time

³⁵ *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, Sixth Report and Order, 25 FCC Rcd. 18762, ¶ 71 (2010).

³⁶ *NPRM* ¶¶ 239-242.

³⁷ *See, e.g.*, Sunesys Comments at 9; SmartEdgeNet Comments at 8.

³⁸ *NPRM* ¶ 239.

³⁹ Internet2 Comments at 18.

⁴⁰ *NPRM* ¶ 241.

⁴¹ *Id.* ¶ 242.

USAC review of funding requests for multi-year contracts.⁴² In addition, as Comcast explains, awarding multi-year funding commitments will provide schools and libraries—which currently “have no guarantee that they will receive funding for the latter years of multi-year contracts”—with much-needed certainty.⁴³

The Commission should not, however, limit the proposed rule changes to multi-year contracts that are a maximum of three years in length.⁴⁴ As several commenters have pointed out, longer-term contracts may be preferable in certain circumstances (*e.g.*, “where significant new fiber builds are involved”),⁴⁵ and applicants and service providers should have the flexibility to enter into such agreements.⁴⁶

Streamlining the E-rate disbursement process. The Commission should adopt its proposal to allow schools and libraries to receive E-rate disbursements directly from USAC.⁴⁷ As numerous commenters explain, the proposed change would remove service providers from

⁴² See, *e.g.*, Sprint Comments at 18 (“Eliminating redundant reviews will speed the approval process in subsequent years, and ease the burden on both USAC and the applicant.”); Cox Comments at 12; NCTA Comments at 14; Verizon Comments at 19-21; SmartEdgeNet Comments at 8-9; WISPA Comments at 6; EducationSuperHighway Comments at 23; SETDA Comments at 20.

⁴³ Comcast Comments at 41; *see also* NCTA Comments at 14 (arguing that permitting schools and libraries to receive a multi-year funding commitment will “provide applicants with certainty that they will be able to receive E-rate funding for lower priced multi-year contracts”).

⁴⁴ *NPRM* ¶¶ 241-243.

⁴⁵ *Id.* ¶ 244.

⁴⁶ See, *e.g.*, Comcast Comments at 40; Verizon Comments at 20-21; SmartEdgeNet Comments at 8-9; Internet2 Comments at 18; Sunesys Comments at 9.

⁴⁷ See *NPRM* ¶ 261 (seeking comment on “adopting a revised disbursement process that allows applicants, paying the full cost of the services under the [Billed Entity Application for Reimbursement (“BEAR”)] process, to receive direct reimbursement from USAC”).

the inefficient and burdensome role of “middleman” between USAC and E-rate applicants in the BEAR disbursement process.⁴⁸

Accelerating the issuance of funding commitment decisions. The Commission should establish deadlines for USAC to issue funding commitment decisions and complete its other processing tasks.⁴⁹ USAC’s delays in releasing funding commitment decisions serve as a barrier to program participation for some schools and libraries⁵⁰ and undermine the Commission’s goal of swift broadband deployment.⁵¹ Furthermore, as tw telecom has explained elsewhere, USAC’s failure to issue funding commitment decisions in a timely manner—in some cases, for more than two years and counting—discourages businesses such as tw telecom from continued participation in the E-rate program because they have no ability to estimate when they will receive payment for the discounted portion of the cost of services they provide.⁵² Therefore, the Commission should give both applicants and service providers greater certainty and ability to plan by “requir[ing] USAC to make its funding decisions before the start of the E-rate funding year” (*i.e.*, June 30th).⁵³

⁴⁸ See, e.g., Sprint Comments at 12-13; AT&T Comments at 14; Verizon Comments at 8; CenturyLink Comments at 26; Windstream Comments at 8 (“Under the current system, service providers serve as an unnecessary ‘pass-through for the reimbursement of funds,’ requiring them to implement a costly accounting, processing and approval system.”).

⁴⁹ *NPRM* ¶ 234.

⁵⁰ See NTCA and WTA Comments at 22.

⁵¹ See ITTA Comments at 4.

⁵² See Petition of tw telecom inc., CC Dkt. No. 02-6 & WC Dkt. No. 05-195, at 11 (filed July 3, 2013) (requesting that the Commission issue an order directing USAC to complete its review of two long-pending E-rate funding applications by the New York City Department of Education and issue a funding commitment or denial within 30 days of the release of the order).

⁵³ NCTA Comments at 14-15.

D. The Commission Should Not Adopt Proposals That Increase Administrative and Operational Burdens on Service Providers and Undermine the Agency’s E-rate Reform Goals.

In the *NPRM*, the Commission proposes several costly rule changes to the E-rate program that would have no corresponding benefit. In fact, the record demonstrates that adoption of these burdensome requirements could deter service provider participation,⁵⁴ and thereby impede the Commission’s goal of “driv[ing] down prices of E-rate supported services in order to maximize the cost-effectiveness of . . . E-rate funds.”⁵⁵ The proposed requirements would also directly contravene the Commission’s stated goal of streamlining administration of the E-rate program.⁵⁶ Accordingly, the Commission should not adopt these proposals.

“Transparency” rules. The Commission should abandon its proposal to require public disclosure of service providers’ responses to bids for E-rate supported services and the prices applicants are paying for such services.⁵⁷ As numerous commenters point out, pricing information, by itself, would not be helpful to E-rate applicants—and could in fact cause customer confusion—because “[p]rices for E-rate services can legitimately vary from customer to customer depending on a number of factors” (*e.g.*, the type and volume of services at issue, the length of the contract, the state in which the E-rate customer does business, and the customer’s location relative to the service provider’s network).⁵⁸ Furthermore, to the extent that

⁵⁴ See, *e.g.*, USTelecom Comments at iv; Verizon Comments at 19; see also NCTA Comments at 14-16.

⁵⁵ *NPRM* ¶ 178.

⁵⁶ See, *e.g.*, Cox Comments at 12 (“As the Commission streamlines existing paperwork burdens, it must avoid creating unnecessary new ones.”);

⁵⁷ *NPRM* ¶¶ 191-196.

⁵⁸ See Sprint Comments at 15; see also Verizon Comments at 23-24; USTelecom Comments at 14 (“Given that the underlying factors behind each project are numerous and variable, discrete

pricing information is helpful to applicants, the record shows that much of it is already publicly available.⁵⁹ For example, E-rate applicants can find pricing information in state master contracts⁶⁰ and “the purchase price for E-rate contracts that are awarded through the competitive bidding process are disclosed following the award.”⁶¹

Officer certification requirements. There is widespread agreement among the commenters⁶² that the Commission should not adopt its proposal to require “an officer of the service provider [to] sign certain forms submitted to USAC in support of an application for eligible services and any request for payment.”⁶³ If adopted, the proposal would force corporate officers—whose day-to-day responsibilities are unlikely to include oversight and administration of the company’s provision of service to E-rate applicants—to devote substantial time to learning the FCC’s and USAC’s E-rate program processes and rules. It is not clear that such costs outweigh any potential benefits of the proposal. In fact, an officer certification requirement would likely serve to undercut the Commission’s E-rate modernization goals.⁶⁴ As CenturyLink explains, the requirement “would likely lead larger service providers to decline to respond to

data sets cannot and should not be used for the purpose of making broad generalizations about potential costs for a unique E-rate funding project.”); CenturyLink Comments at 18-19; ITTA Comments at 12-13.

⁵⁹ See, e.g., Sunesys Comments at 8; AT&T Comments at 12; Verizon Comments at 24.

⁶⁰ See, e.g., ITTA Comments at 12; Verizon Comments at 24; CenturyLink Comments at 18.

⁶¹ See ITTA Comments at 12; see also CenturyLink Comments at 18.

⁶² See, e.g., ITTA Comments at 8-9; CenturyLink Comments at 29-30; NCTA Comments at 15; Sprint Comments at 13-14; Verizon Comments at 28; Windstream Comments at 8-9.

⁶³ NPRM ¶ 300.

⁶⁴ See, e.g., NCTA Comments at 15; ITTA Comments at 7.

some [E-rate applicants' requests for bids] . . . , which could only lead to higher costs for applicants and the program.”⁶⁵

Extended record retention requirements. There is also agreement among service providers and schools and libraries that the Commission should not extend the E-rate program's document retention requirements from five years to at least ten years.⁶⁶ While the Commission believes such an extension would be helpful in the event of potential litigation under the False Claims Act that relates back substantially more than five years,⁶⁷ the mere possibility of such litigation is insufficient to justify imposing such a burdensome requirement on E-rate participants.⁶⁸

E. The Commission Should Complete Universal Service Contribution Reform While It Undertakes E-rate Reform.

In the *NPRM*, the Commission acknowledges that “[f]unds available through the E-rate program come from contributions made by consumers and businesses to the USF,”⁶⁹ but it makes no mention of the need to fix the broken universal service contributions system. As the Commission has previously recognized, that system is flawed in part because (1) as discussed, it imposes increasingly heavy contribution burdens on consumers and businesses;⁷⁰ and (2) it causes competitive distortions by applying different contribution obligations to similar services

⁶⁵ CenturyLink Comments at 30.

⁶⁶ *See, e.g.*, New York City Department of Education Comments at 8; Windstream Comments at 8-9; ITTA Comments at 11-12; Verizon Comments at 28-29; CenturyLink Comments at 28.

⁶⁷ *NPRM* ¶¶ 295-296.

⁶⁸ *See* ITTA Comments at 11-12; Verizon Comments at 28-29; CenturyLink Comments at 28.

⁶⁹ *NPRM* ¶ 41.

⁷⁰ *See id.*, Statement of Commissioner Ajit Pai (“The Universal Service Fund contribution factor has already increased from 9.5% to 15.1% in just the last four-and-half years.”).

depending on how they are provided.⁷¹ The Commission has further recognized that if it does not reach its stated contribution reform goals (*e.g.*, ensuring that the Fund remains sustainable over time), it may not achieve its universal service distribution goals.⁷² Therefore, it makes little sense to proceed with E-rate distribution reform without also completing universal service contribution reform. The Commission has compiled a substantial record in the ongoing contribution reform rulemaking, and it should move swiftly toward issuing an order in that proceeding. Taking such action will not only ensure that the Fund can support a modernized, broadband-focused E-rate program, but also help remove some of the competitive distortions in the broadband Internet access services market created by the current contributions regime.⁷³

III. CONCLUSION.

For the foregoing reasons, the Commission should adopt the recommendations discussed herein by the Joint Commenters.

⁷¹ *Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, Further Notice of Proposed Rulemaking, 22 FCC Rcd. 5357, ¶ 4 (2012).

⁷² *Id.* ¶ 25 & n.93.

⁷³ For example, absent contribution reform, competitive LECs that purchase special access inputs to broadband Internet access services will continue to be indirectly subject to a “tax” at the current universal service contribution factor (*i.e.*, 15.6%) while their facilities-based competitors in the downstream retail market for broadband Internet access services will continue to be free of that obligation. *See, e.g.*, Comments of tw telecom inc. and EarthLink, Inc., WC Dkt. No. 06-122, at 2-6 (filed Sept. 6, 2013).

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