

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

REPLY COMMENTS OF XO COMMUNICATIONS, LLC

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XO Communications, LLC (“XO”) hereby files its reply to the initial comments submitted in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-referenced docket. XO supports the Commission’s goals of ensuring affordable access to broadband as well as modernizing and streamlining administration of the E-rate program.¹ XO currently provides a variety of services to over 400 customers that receive E-rate funding and understands the need for flexibility in providing tailored service to these customers.

INTRODUCTION AND SUMMARY

XO appreciates the Commission’s focus on ensuring schools and libraries have access to high-capacity broadband connections.² It is critical, however, for Commission to ensure its rules encourage the most cost-effective selection of services for individual applicants while maintaining technological neutrality and allowing maximum flexibility for each applicant to determine the best suite of services to satisfy its needs. For example, XO does not support any phase out of services that are used only for voice communications or any requirement to break out voice from its bundled services. In order to allow maximum flexibility for applicants to

¹ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, ¶ 12 (rel. July 23, 2013) (“NPRM”). Unless otherwise noted, reference to a party’s “Comments” is a reference to initial comments filed in response to the NPRM on or around September 16, 2013.

² *NPRM* ¶ 5.

determine their individual service needs, XO supports elimination of the distinction between priority one and two services and opposes adoption of nationwide broadband metrics or target speeds. Moreover, the Commission should not assume that fiber deployment or bulk purchasing automatically provide the most cost-effective provision of services. While XO agrees that providers should provide service to E-rate applicants on comparable terms and conditions as their other customers, XO does not support the Commission establishing a maximum rate or any other regulation of rates or public disclosure regarding rates for E-rate funded services. In sum, XO stresses that the Commission should ensure flexibility for individual applicants to tailor their own telecommunications services.

XO supports the Commission's proposals that will streamline the process and ease the administrative and regulatory burdens while increasing the efficiency of the E-rate program, all of which would benefit providers and applicants by reducing uncertainty and unnecessary costs of administration. XO supports modifying the BEAR disbursements process to permit schools and libraries to receive disbursements directly from USAC, but opposes other burdensome proposals such as extending the data retention period beyond 5 years, requiring an officer signature on certifications, and requiring additional audits that would be excessively burdensome or duplicative. The latter proposals could instead increase the costs of an already too complex process while producing no tangible benefits,³ thereby discouraging providers from participating in the E-rate program.

I. Ensuring Cost-effective Selection of Eligible Services

The Commission seeks comment on the means of assuring affordable access to broadband given that requests for E-rate support have recently substantially exceeded available

³ Comcast Comments at 34; Verizon and Verizon Wireless Comments at 3.

funding.⁴ XO does not support increasing the overall size of the E-rate program and stresses that any overall increase should be offset by a corresponding reduction in another area of the universal service fund, likely the high-cost program. Thus, XO agrees that the Commission “should establish a cap on the overall size of the Universal Service Fund and take steps to ensure the cap is not exceeded.”⁵

XO agrees that cost-effectiveness must continue to be the primary driver for an applicant’s selection of services and providers.⁶ However, the Commission must bear in mind that variations among individual applicant’s buildings and infrastructures will lead to varying service needs; therefore, individual applicants must have flexibility to determine the services and network components that meet their needs.⁷ One standard telecommunications solution will not satisfy every school and library facility, so XO stresses that the Commission balance cost-effectiveness with the need for simplicity and flexibility in evaluating each of its proposals.

A. Eliminate Distinction Between Priority One And Two Services

XO supports simplification of the E-rate program to eliminate the distinction between priority one and two services.⁸ In establishing priority one and two services under the current system, the Commission has essentially dictated the priority rankings for all applicants across the board. But XO agrees that elimination of the rigid, tiered prioritization of individual products and services would enable schools and libraries more easily to use E-rate funding to offset the costs of tailored solutions that provide long-term efficiencies.⁹ Schools and library

⁴ *NPRM* ¶ 64.

⁵ National Cable & Telecommunications Association (NCTA) Comments at 11.

⁶ *Id.* at 12.

⁷ Comcast Comments at 18.

⁸ *NPRM* ¶ 146.

⁹ Windstream Comments at 4; NCTA Comments at 2.

administrators should be permitted to prioritize their own service needs.¹⁰ By adopting a “whole network” approach, the Commission can promote deployment of more efficient networks, rather than networks designed for the purpose of receiving E-rate support.¹¹

B. Update List of Eligible Services

The Commission seeks comment on whether to adopt specific goals for communications services, including voice services.¹² XO does not support any phase out of services that are used only for voice communications and agrees that the Commission should be careful not to eliminate funding for voice services that facilitate communications between educators, parents, and students.¹³ In areas where households often lack access to the Internet and smartphones, voice services, and some supplemental services such as voicemail, remain a critical link between families and teachers.¹⁴ Voice services are the foundation of universal service, and they remain essential for communication and public safety.¹⁵ If the Commission, however, does choose to reduce support for stand-alone voice services, it should do so gradually to allow schools and libraries to adjust their spending plans, while continuing to support voice services that are included as part of a bundle with high-speed broadband services.¹⁶

XO agrees that the Commission should not adopt any change that would require providers to unbundle services with a voice component in order to determine cost allocations since the applicant has likely selected bundled service as a more cost-effective and simple service option.¹⁷ Moreover, like Telepacific, XO offers bundled integrated services that allow

¹⁰ NCTA Comments at 14.

¹¹ Comcast Comments at 22.

¹² *NPRM* ¶ 19.

¹³ Windstream Comments at 6.

¹⁴ *Id.*

¹⁵ CenturyLink Comments at 11.

¹⁶ NCTA Comments at 10-11.

¹⁷ Windstream Comments at 7.

the customer to use the bandwidth for either and/or both voice and Internet access services, dependent upon the customer's needs at any given time.¹⁸ Because the bandwidth is dynamic, all of the customer's bandwidth may be used for broadband services at a particular time so there is no need to eliminate or reduce funding of such integrated services simply because they contain a voice component.

XO agrees that "outdated services, for which there is little demand, can reasonably be removed as lacking demonstrated need," such as paging services, directory assistance service, dial-up services, text messaging, and 800 services.¹⁹ While XO does currently provide a small portion of directory assistance and toll-free services to some E-rate eligible customers, XO believes alternatives, such as online white pages, exist to justify eliminating funding for these services. On the other hand, XO agrees that the Commission should not phase out E-rate support for beneficial supplemental services such as email and web hosting because these are fundamental means of online learning and communication between and among students and educators.²⁰ Furthermore, XO agrees that E-rate funding should be provided for cloud data storage since it is generally more cost effective for schools and libraries than provisioning these data storage requirements on their own.²¹

XO agrees that E-rate funds should not be provided for school or library districts to build their own wide area networks (WANs) because it is generally more cost effective for service providers to build, maintain, and operate infrastructure and networks.²² Most of these requests would require overbuilding where provider networks already exist, thus they would require

¹⁸ Telepacific Comments at 4.

¹⁹ CenturyLink Comments at 8; *see also* Windstream Comments at 6-7.

²⁰ Windstream Comments at 6-7.

²¹ CenturyLink Comments at 8-9.

²² *Id.* at 7.

wasteful spending on expensive and unnecessary network construction, diverting funds that other schools and libraries could use to obtain high capacity connections.²³

C. Neutral Consideration of Broadband Speed Benchmarks and Fiber Deployment

The Commission seeks comment on whether to adopt performance measures to support its proposed goal of ensuring eligible schools and libraries have affordable access to high-capacity broadband at speeds that will support digital learning.²⁴ XO does not support the Commission adopting rules that would require measurement of service provider broadband performance.²⁵ XO wholeheartedly agrees with NCTA’s recommendation: “[r]ather than encouraging or mandating that schools purchase particular levels of bandwidth, the Commission should focus its efforts on creating an environment where schools are more likely to solicit bids for those high-capacity services and more likely to have the resources to deliver faster speeds to students in the classroom.”²⁶ Although there may be schools and/or libraries that do not have access to the highest broadband speeds available, XO urges the Commission not to mandate an arbitrary national speed that assumes all communities are homogenous with the same telecommunications demands.²⁷ Sprint highlighted Commissioner Pai’s observation that “different communities have different needs,”²⁸ so the Commission must ensure that each applicant has the maximum flexibility to assess its own needs and select services and providers that best meet those needs. “Forcing schools and libraries to spend money on a one-size-fits-all

²³ Verizon and Verizon Wireless Comments at 17-8.

²⁴ *NPRM* ¶ 20.

²⁵ *Id.* ¶ 33.

²⁶ NCTA Comments at 7.

²⁷ Sprint Comments at 6.

²⁸ *Id.*

connectivity target could lead to insufficient spending on other important elements that are not covered by the program, such as teacher training and devices for students.”²⁹

Similarly, the Commission should not favor deployment of fiber over other technologies and should not assume that fiber deployment provides the most cost-effective provision of services to any particular school or library facility. XO disagrees with Windstream that fiber should be considered the most cost-effective and future-proof method for delivering robust broadband to schools and libraries.³⁰ Most importantly, “the Commission should be technologically neutral, and it should not be attempting to spur fiber or other broadband deployments through dedicated funding.”³¹ As TelePacific points out, recent technological advancements have provided economical means of providing very high speed broadband connections with Ethernet over Copper (“EoC”).³² XO’s Ethernet access service provides scalable, dedicated bandwidth options up to 100 Gbps. So, XO concurs with TelePacific’s caution for “the Commission not to overlook the efficacy of the wires already in the ground.”³³ “Fiber deployment may be cost prohibitive or simply unnecessary in some areas or for some schools, and no one service is best suited to all circumstances.”³⁴ Again, ensuring flexibility in meeting individual applicant’s telecommunications needs rather than arbitrarily encouraging a particular service or technology is key.

D. Proper Emphasis on Bulk Purchasing

²⁹ NCTA Comments at 7.

³⁰ Windstream Comments at 2; CenturyLink Comments at 5-6.

³¹ CenturyLink Comments at 6.

³² Telepacific Comments at 3.

³³ *Id.* at 3.

³⁴ Verizon and Verizon Wireless Comments at 9.

The Commission should not artificially encourage or overemphasize consortium buying or other bulk purchasing. In some cases consortia may prove beneficial, but they may also increase the bureaucracy and administration of the E-rate program or simply not meet the needs of particular individual school or library facilities.³⁵ Specifically, while bulk purchasing can often result in lower prices, not every bulk buying arrangement is the most suitable for an individual E-rate customer, particularly when volume and term commitments are taken into account.³⁶ Moreover, requiring bulk purchasing at the school district level could limit the flexibility and availability of services because a service provider may not be willing or able to provide service to the entire district and would therefore be locked out of providing service to individual schools or groups of schools, even though its services may be the most cost-effective for particular schools or facilities.³⁷ Finally, the RFP process for such a project would likely be much larger than the process for a single school or library and some providers may not have the resources to respond to such a large request regardless of whether the provider's services provide the best fit for the E-rate applicant.

E. No Commission Direct Monitoring or Setting E-rate Pricing

While XO agrees that providers should provide service to E-rate applicants on comparable terms and conditions as its other customers, XO does not support the Commission establishing a maximum rate or any other regulation of rates or public disclosure regarding rates for E-rate funded services. It is not clear why the Commission is considering this action, and XO agrees the Commission should exercise caution in considering mandating the public filing of E-rate pricing information.³⁸ Providers may face issues with publishing such information due to

³⁵ See NCTA Comments at 16.

³⁶ CenturyLink Comments at 17; Verizon and Verizon Wireless Comments at 23.

³⁷ See NCTA Comments at 16.

³⁸ Sprint Comments at 15.

the Commission's rules relating to customer proprietary network information (CPNI).³⁹ Additionally, a price list may be misleading or otherwise useless without additional information on specific customer and network circumstances.⁴⁰ The market is already vigorously competitive, and the public posting of E-rate price information is unlikely to increase the competitiveness of this market.⁴¹ Moreover, it is unreasonable for the Commission to set maximum prices for individual E-rate services because needs vary widely among applicants.⁴² Setting maximum rates for services may deter providers from offering E-rate services and deprive applicants of the opportunity to obtain tailored telecommunications solutions.

II. Streamlining Administration of E-Rate Program

XO urges the Commission to simplify the administration of the E-rate program wherever possible and to avoid additional regulatory burdens. As Telepacific notes, "the more complexity the Commission puts in place, the more time and money schools and libraries will be forced to spend on outside consultants to help them through the process."⁴³

A. Direct Payments Permitted Under BEAR Process

XO agrees with commenters that support the Commission's proposal to modify its process to permit schools and libraries, paying the full cost of services under the BEAR process, to receive disbursements directly from USAC. 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."⁴⁴ Streamlining the BEAR disbursement process would immediately simplify the disbursement process and eliminate inefficiencies and

³⁹ USTelecom Comments at 11-14.

⁴⁰ AT&T Comments at 13.

⁴¹ Sprint Comments at 15-16.

⁴² CenturyLink Comments at 7; Verizon and Verizon Wireless Comments at 23.

⁴³ Telepacific Comments at 2.

⁴⁴ Windstream Comments at 7-8; USTA Comments at 13; Sprint Comments at 12; CenturyLink Comments at 26-7.

reduce payment delays with little, if any, incremental costs to USAC.⁴⁵ XO would also support consideration of additional modifications to simplify the disbursement process, such as permitting service providers to make one annual certification that would cover all of the BEAR-related certification requirements for the year.⁴⁶

B. Data Retention Not Extended Beyond 5 Years

XO, along with most of the service provider commenters, opposes the Commission's proposals to double the existing record retention requirement from five to at least 10 years.⁴⁷ In most instances, especially with multi-year contracts, service providers currently save E-rate program records between 6 - 10 years because existing rules require maintaining records for five years after the last date of service. Adoption of the Commission's proposal would therefore require service providers to retain such records for an inordinately prolonged period, potentially up to 15 years and increasing storage costs for service providers and schools and libraries.⁴⁸ Additionally, XO agrees that the Commission should not require service providers to keep records of all communications related to unsuccessful bids.⁴⁹ If a service provider submits a bid which is not accepted, there is no purpose to requiring the service provider to retain documentation relating to that losing bid.⁵⁰ Data retention is costly and burdensome so it should only be required to the extent necessary to fulfill a strong Commission goal, and extending those requirements should not be considered lightly.

⁴⁵ AT&T Comments at 14; Sprint Comments at 12.

⁴⁶ Verizon and Verizon Wireless Comments at 21-22. *See also* AT&T Comments at 15 (“For example, USAC could place E-Rate funds into dedicated accounts for applicants that receive funding approval through the current process. Successful applicants could then draw on this account to pay for E-Rate services in a manner akin to a regular market transaction.”)

⁴⁷ Windstream Comments at 8-9.

⁴⁸ USTelecom Comments at 4; Windstream Comments at 8; Verizon and Verizon Wireless Comments at 28-9; CenturyLink Comments at 28.

⁴⁹ Sprint Comments at 13.

⁵⁰ *Id.*

C. Officer Signature Not Required

Similar to other service providers, XO urges the Commission not to elevate the certification to require signature of a corporate officer rather than the “authorized person” with knowledge about the E-rate accounts.⁵¹ Currently, the “authorized person” certifying the forms at XO has substantial knowledge about the accounts, what is being provided and the relevant discounts.⁵² Given the number of forms regularly processed by XO, XO agrees that requiring officers to sign the certifications “will increase – by orders of significant magnitude – the time needed to complete the relevant forms.”⁵³ Moreover, there is no reason to believe that a corporate officer has more details about the certification than an authorized person who regularly administers the program within the company.⁵⁴ XO agrees that this requirement would be contrary to the Commission’s goal of streamlining the administration of the E-rate program⁵⁵ and would instead discourage participation in the E-rate program and potentially lead to higher prices, all to the ultimate detriment of the program and the public interest.⁵⁶ Instead of making the certification more burdensome, XO agrees that the Commission should update its rules to simply the process by allowing use of electronic signatures on E-rate documents, including contracts and purchase orders.⁵⁷

D. No Duplicative and Burdensome Audits

While XO also supports Commission efforts to maintain and enhance the integrity of the E-rate program through the use of audits, XO agrees with commenters that oppose the

⁵¹ USTelecom Comments at 6; NCTA Comments at 15; CenturyLink Comments at 29. Verizon and Verizon Wireless Comments at 28.

⁵² Windstream Comments at 8-9.

⁵³ USTelecom Comments at 6.

⁵⁴ Sprint Comments at 13-14.

⁵⁵ NCTA Comments at 15.

⁵⁶ USTelecom Comments at 6.

⁵⁷ CenturyLink Comments at 29.

Commission adopting additional audit requirements that would be excessively burdensome or duplicative.⁵⁸ Both applicants and providers are already subject to robust audit mechanisms within the E-rate program, through which the Commission today monitors and identifies problematic issues with specific applicants and/or providers.⁵⁹ Before the Commission alters the audit requirements for the E-rate program, it should review the effectiveness of the existing audit program and determine specific deficiencies that would be remedied with an independent auditor. XO agrees that there are very few outside auditors that have the very narrow subject matter expertise necessary to conduct a meaningful review in this area.⁶⁰ Furthermore, if the Commission does decide to implement an independent audit process, XO agrees that “[i]nstead of a universal independent audit requirement, the Commission should limit such a rule to service providers that are new to the E rate program, and to service providers where the Commission or USAC have particular grounds that justify closer scrutiny.”⁶¹

⁵⁸ USTelecom Comments at 7.

⁵⁹ *Id.* at 7.

⁶⁰ Verizon and Verizon Wireless Comments at 28.

⁶¹ CenturyLink Comments at 32; USTelecom Comments at 2.

CONCLUSION

For the forgoing reasons, XO respectfully requests that the Commission adopt proposals consistent with XO's comments herein.

Respectfully Submitted,

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