



November 19, 2013

**ERRATUM**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Modernizing the E-rate Program for Schools and Libraries;  
WC Docket No. 13-184

Dear Ms. Dortch:

The United States Telecom Association (USTelecom) filed comments in the above referenced proceeding on September 16, 2013. On November 8, 2013, USTelecom intended to submit its reply comments in the same docket, but inadvertently refiled its comments.

USTelecom respectfully requests that the attached reply comments be accepted for filing in the above referenced docket. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin G. Rupy".

Kevin G. Rupy  
Senior Director, Law & Policy

**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** )

**REPLY COMMENTS OF  
THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom)<sup>1</sup> submits these reply comments in response to the Federal Communications Commission’s (Commission) above-referenced Notice of Proposed Rulemaking (*Notice*).<sup>2</sup> Through its *Notice*, the Commission has initiated a comprehensive and thorough review and update of the schools and libraries universal service support program (the “E-Rate Program”).

**I. The Record Confirms that the E-rate Program Should Not Support Owned Fiber.**

The *NPRM* asks whether E-rate should support schools and libraries becoming network operators – building, owning and maintaining their own fiber wide area networks (“WANs”)<sup>3</sup> or wireless community hotspots.<sup>4</sup> The initial comments confirm that using E-rate funds in this manner is both contrary to law and bad policy. Nonetheless, if the Commission were to authorize E-rate support for schools and libraries planning and operating their own fiber

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<sup>1</sup> USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

<sup>2</sup> See, Notice of Proposed Rulemaking, *Modernizing the E-rate Program for Schools and Libraries*, 78 Fed Reg. 51597 (July 23, 2013) (*Notice*).

<sup>3</sup> See, *Notice*, ¶¶ 71-72 (proposing to provide priority one support for “modulating electronics necessary to light leased dark fiber” and “special construction charges for leased dark fiber”); *Id.*, ¶ 80 (seeking comment on whether to permit schools and libraries “to build or purchase their own WAN rather than to lease a WAN”).

<sup>4</sup> See, *id.*, ¶¶ 319-23.

networks – which it should not do – it would have to impose a number of conditions and safeguards to ensure efficient use of program funds.

**A. The Record Shows that Schools and Libraries Constructing Their Own Networks Is Unlikely to Be Cost-Effective for the Fund.**

Schools or libraries are not well-equipped to build or operate their own telecommunications networks. They generally lack the technical expertise and experience necessary to perform these functions in a cost-effective manner.<sup>5</sup> As one school district candidly admitted, “[i]t is unlikely in today’s environment that a district could cost-effectively build a network with life-cycle costs included compared to leasing.”<sup>6</sup> Other commenters confirm that it is more cost-effective for schools and libraries to lease network facilities rather than build or purchase them<sup>7</sup> – especially in areas where high-capacity broadband already is available.<sup>8</sup> As such, self-builds by schools and libraries are likely to be a cost-effective solution only in the rarest of cases.<sup>9</sup> In fact, at least one state education agency is not aware of *any* situation in which it would be more cost effective for a school to build or purchase a WAN.<sup>10</sup> The Commission therefore should not divert limited program dollars to support schools and libraries assuming these network responsibilities, when it likely would cost the fund more.

**B. As a Matter of Law, E-rate Cannot Be Used to Support Schools and Libraries Constructing and Operating Their Own Fiber Networks.**

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<sup>5</sup> Clark County Comments, p. 8 (“Many school districts do not have the in-house capabilities to manage the construction of a school district owned WAN.”).

<sup>6</sup> Dallas ISD Comments, p. 2.

<sup>7</sup> *See, e.g.*, CenturyLink Comments, p. 7.

<sup>8</sup> *See*, AT&T Comments at 5-6 (“Grossly inefficient and wasteful; no policy reason to use government money to build additional, and especially private, networks in areas where high-speed broadband is already being provided commercially.”).

<sup>9</sup> *See*, NCTA Comments, p. 12.

<sup>10</sup> *See*, South Dakota DoE Comments, p. 9.

Proposals to have schools and libraries build and operate their own fiber networks are inconsistent with section 254 and Commission precedent.

Section 254 authorizes the Commission to designate “telecommunications services” and “additional services” as eligible for E-rate support. 47 U.S.C. §§ 254(c)(1), (3); *see also* 47 U.S.C. § 254(h)(1)(B). The Commission consistently has interpreted the term “services” to include only those components necessary to transport information to individual classrooms. For example, in concluding that it had the authority to treat dark fiber as a service eligible for E-rate support, the Commission noted that “dark fiber is part of the transmission path that enables the requisite functionality (delivery of voice, video and/or data) to be delivered to the classroom.”<sup>11</sup> Likewise, in allowing eligible schools and libraries to secure E-rate support for the installation and maintenance of internal connections, the Commission limited support for only those components “necessary to transport information all the way to individual classrooms.”<sup>12</sup>

However, modulating electronics necessary to light dark fiber leaving the school or library premises and special construction charges for leased dark fiber are unrelated to the transmission of information to individual classrooms. Therefore, these components are not “services” eligible for E-rate support under section 254 and Commission precedent. The same is true for built or purchased fiber networks. As the Commission correctly concluded more than 15 years ago, “wide area networks purchased by schools and libraries and designed to provide

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<sup>11</sup> Sixth Report and Order, *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future*, 25 FCC Rcd 18762, ¶ 12 (2010) (*Sixth Report and Order*).

<sup>12</sup> Report and Order, *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 459 (1997) (*Report and Order*), *aff’d in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (subsequent history omitted); *see also Report and Order*, ¶ 460 (finding that “support should be available to fund discounts on such items as routers, hubs, network file servers, and wireless LANs and their installation and basic maintenance because all are needed to switch and route messages within a school or library.”) (footnotes omitted).

telecommunications do not meet the definition of services eligible for support under the universal service discount program.”<sup>13</sup>

**C. Supporting Schools and Libraries Building and Operating Their Own Fiber Networks Is Bad Policy.**

In the *Healthcare Connect Fund Order*, the Commission permitted rural health care providers to build their own networks, but “imposed several safeguards ... to ensure that consortia only exercised their option to self-construct when it was absolutely necessary.”<sup>14</sup> In particular, the Commission permitted construction only if construction was determined to be the most cost-effective option after competitive bidding.”<sup>15</sup> Some commenters have suggested allowing schools and libraries to construct their own networks and imposing similar safeguards here.<sup>16</sup> But the *Healthcare Connect Fund* model will not work in this context.

In the *Healthcare Connect Fund Order*, the Commission required the Universal Service Administrative Company (USAC) “carefully to evaluate” the applicant’s cost-effectiveness showing and observed that USAC “already had experience in evaluating the cost-effectiveness

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<sup>13</sup> *Federal-State Joint Board on Universal Service; Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, ¶ 193 (1997) (*Fourth Order on Reconsideration*); see also 47 C.F.R. § 54.518. The Commission reasoned that: (i) “the building and purchasing of equipment and facilities do not meet the statutory definition of ‘telecommunications’”; (ii) WANs “are not internal connections because they do not provide connections within a school or library”; and (iii) WANs “built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for access to the Internet because wide area networks provide broad-based telecommunications.” The record does not contain any legal basis for revisiting the Commission’s reasoning here.

<sup>14</sup> *Notice*, ¶ 81 (citing Report and Order, *Rural Healthcare Support Mechanism*, 27 FCC Rcd 16678, 16712-13 ¶¶ 73-75 (2012) (*Healthcare Connect Fund Order*)).

<sup>15</sup> *Id.*

<sup>16</sup> See, SECA Comments, p. 19; NCTA Comments, p. 12; ATT Comments, pp. 6-7; Cox Comments, p. 7.

for large scale projects from the Pilot Program.”<sup>17</sup> But that approach – *i.e.*, USAC-conducted cost-effectiveness reviews – is not viable for the E-rate program.

Making such assessments is a complex task. Even if that task was manageable in the *Healthcare Connect Fund Order* context (which has not been demonstrated), the Healthcare Connect Fund is a vastly smaller fund with many fewer applicants than E-rate. The Healthcare Connect Fund is geared primarily to rural areas, with funding capped at \$400 million, of which only a portion is available for infrastructure projects.<sup>18</sup> By contrast, for funding year 2013, USAC received more than 46,000 applications from schools and libraries across the country seeking E-rate support under a program that is capped at just over \$2.38 billion.<sup>19</sup> Because assessing the cost-effectiveness of self-construction compared to other bids is a far more complex task than the ordinary processing of E-rate applications, extending a cost-effectiveness review requirement to the much larger E-rate program likely would overwhelm USAC.<sup>20</sup>

Moreover, the E-rate program – at least as it is currently structured – provides fewer incentives for applicants to make cost-effective choices than the Healthcare Connect Fund. In the *Healthcare Connect Fund Order*, the Commission adopted a 65 percent discount percentage in order to ensure that applicants “have a sufficient financial stake to seek out the most cost-

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<sup>17</sup> *Healthcare Connect Fund Order*, ¶ 73.

<sup>18</sup> *See*, 47 C.F.R. § 54.623(a).

<sup>19</sup> *Notice*, ¶¶ 45, 59.

<sup>20</sup> Moreover, the goals of the Healthcare Connect Fund and the E-rate program are fundamentally different. Specifically, one of the purposes of the Healthcare Connect Fund is to improve the financial prospects for healthcare providers in rural areas by permitting them to utilize telemedicine “to retain or increase their revenues.” *Healthcare Connect Fund Order*, ¶ 28. The E-rate program is not intended to provide participating schools and libraries with increased revenue opportunities. Indeed, section 254(h)(3) expressly bars schools and libraries that obtain discounts from reselling the discounted services.

effective method of obtaining broadband services.”<sup>21</sup> By contrast, because E-rate’s discount percentages can be as high as 90 percent, the incentive for applicants to seek out the “most cost-effective method” and carefully evaluate whether owned fiber is in fact the most cost-effective solution would be significantly attenuated.

**D. If the Commission Were to Support Owned Fiber, Which It Should Not Do, It Would Have to Impose Safeguards.**

If the Commission nevertheless were to use E-rate to support schools and libraries building and operating their own networks, which it should not do, it would have to impose safeguards based on those implemented in the *Healthcare Connect Fund Order* but supplemented in important respects.

As in the *Healthcare Connect Fund Order*, the Commission should require any E-rate applicant seeking support to build or operate a network to demonstrate cost-effectiveness.<sup>22</sup> And, as in the Healthcare Connect Fund, total requests for applicants seeking to build their own networks should be limited, in order to manage the impact on the fund and to help ensure that USAC could manage the cost-effectiveness reviews.<sup>23</sup> In addition, support for owned fiber should be limited to schools and libraries in areas that do not already have commercially-deployed fiber. This is similar to the approach the Commission took with respect to the Connect America Fund (CAF), which provides support only in areas lacking an unsubsidized competitor.<sup>24</sup> The Commission should also require the applicant to demonstrate that it has the technical resources to plan, implement, and maintain the project.

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<sup>21</sup> *Healthcare Connect Fund Order*, ¶ 91.

<sup>22</sup> *See, Notice*, ¶ 81 (citing *Healthcare Connect Fund Order*, ¶¶ 73-75).

<sup>23</sup> *Healthcare Connect Fund Order* ¶ 4.

<sup>24</sup> Report and Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663, FCC 11-161, ¶ 156 (released November 18, 2011). While the Healthcare

Finally, as AT&T explained in its comments, the Commission should not in any event permit a school or library that self-provisions a private fiber network using E-rate funds to sell or trade capacity to a third party or to provide others with access to the subsidized network.<sup>25</sup> Such activity is prohibited under Section 254(h)(3): “That provision clearly and unequivocally provides that *any* telecommunications services or network capacity provided to a school or library at discounted rates under section 254(h) may not be ‘sold, ‘resold,’ or ‘otherwise transferred’ ‘for money or *any other thing of value.*”<sup>26</sup>

**E. The Commission Should Not Expand Support to Wireless Community Hotspots.**

Commenters agree that using E-rate to support schools and libraries building and constructing wireless community hotspots would be costly and is very different than allowing schools to open their doors to offer community access to E-rate supported services when classes are not in session.<sup>27</sup> Whereas the *Schools and Libraries Sixth Report and Order* simply allowed access to E-rate services already in place, Congress did not intend E-rate funding to be used for non-educational pursuits by the broader community.<sup>28</sup>

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Connect Fund program does not limit owned fiber in this way, that program was focused on rural areas and the Commission presumed that “HCP-owned infrastructure will be most useful in providing last-mile broadband connectivity *where it is currently unavailable....*” *Healthcare Connect Fund Order*, ¶ 71 (emphasis added).

<sup>25</sup> See ATT, pp. 7-8.

<sup>26</sup> *Id.*, p. 7 (emphasis in original).

<sup>27</sup> See, e.g., ITTA, p. 17; CenturyLink, p. 33; CTIA, p. 9; Comments of the United States Telecom Association (USTelecom Comments), pp. 9-11; WV DOE, pp. 119-120.

<sup>28</sup> See ITTA, p. 16.

Respectfully submitted,

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November 8, 2013