

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Modernizing the E-rate
Program for Schools and Libraries

WC Docket No. 13-184

REPLY COMMENTS OF THE AMERICAN CABLE ASSOCIATION

The American Cable Association (“ACA”) respectfully submits reply comments in response to the Public Notice released by the Wireline Competition Bureau on March 6, 2014 (“Public Notice”),¹ which seeks focused comments on several issues raised in the E-rate Modernization NPRM.²

TO MODERNIZE THE E-RATE PROGRAM, THE COMMISSION SHOULD CONTINUE TO FOLLOW ITS RIGOROUS PROCESS OF IDENTIFYING DEMONSTRABLE PROBLEMS AND DEVELOPING SPECIFIC SOLUTIONS

In the Public Notice, the Commission concludes that public input to date indicates that it should achieve its modernization objectives by focusing the program in the near term on

¹ *Wireline Competition Bureau Seeks Focused Comment on E-Rate Modernization*, WC Docket No. 13-184, Public Notice, DA 14-308 (rel. Mar. 6, 2104).

² *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, FCC 13-100 (rel. July 23, 2103) (“E-rate Modernization NPRM”).

providing support for “high-speed connectivity to and within schools and libraries.”³ The initial commenters largely agreed,⁴ as does ACA. However, ACA believes it is most important that the Commission translate this high-level objective into a workable framework so that high-speed connectivity can be provided most efficiently and effectively. After all, funding is limited, and there are clearly schools and libraries, particularly in rural and poorer areas, where services are lacking and support can do the most good. It, therefore, recommends that the Commission focus most intently on identifiable problems and overall solutions as set forth below.

1. As a First Step, the Commission Must Define the Needs of Schools and Libraries.

From the beginning of this proceeding, ACA has highlighted the fact that the Commission needs to collect data about specific problems with bringing high-speed connectivity to schools and libraries.⁵ The recent comments and filings further support this point. Perhaps most importantly, the Commission needs to address the discrepancy among interested parties about the state of high-speed connectivity to schools and libraries. Verizon, for instance, stated “The record is clear that a majority of schools...has either met the President’s bandwidth goals already – years ahead of schedule – or is well on its way.”⁶ CenturyLink makes a similar point,

³ Public Notice, ¶ 3.

⁴ *See, e.g.*, Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 13-184, at 1 (Apr. 7, 2014) (“SHLB Coalition Comments”) (“High-capacity broadband is the key infrastructure that...anchor institutions need for the 21st century. Enhancing the broadband capabilities of these community anchor institutions is especially important to the most vulnerable segments of our population.”).

⁵ *See, e.g.*, Reply Comments of the American Cable Association on the Notice of Proposed Rulemaking, WC Docket No. 13-184, at 3 (Nov. 8, 2013) (“ACA Reply Comments”).

⁶ Comments of Verizon, WC Docket No. 13-184, at 6 (Apr. 7, 2014) (“Verizon Comments”). Verizon further states that “in many states, virtually all schools already have access to fiber,” and that recent Form 471 data “show that school districts with some of the highest levels of free and reduced lunch eligibility are able to afford gigabit services under the existing priority one system” *Id.* at 6-7.

explaining “that the large majority of school and library buildings in the company’s ILEC footprint are within wire centers already outfitted with Ethernet service, and more wire centers are being added all the time.”⁷ At the same time, SHLB commented, “our schools and libraries are suffering from a severe shortage of broadband connectivity.”⁸ Further, EducationSuperHighway, in a recent *ex parte*, examined a sample of Form 471 (Line 21) data and concluded that 63 percent of schools do not meet current ConnectED goals.⁹ The Commission clearly needs to sort this out and, as Verizon stated, “gather better data about schools’ connectivity” so it “can evaluate whether to allocate funds for the provision of supplemental deployment support.”¹⁰ By being “data-driven,” the Commission will ensure the program maintains its integrity and its ability to achieve its mission.

2. The Commission Should Permit and Encourage Applicants to Procure “Solutions.”

Once the needs of schools are sharply determined, the Commission can then target support. In the Public Notice, the Commission inquires “how best to focus E-rate funds on high-capacity broadband, especially high-speed Wi-Fi and internal connections.”¹¹ ACA believes the focus should be on “solutions” that address the demonstrated needs of schools and libraries,

⁷ Further Comments of CenturyLink, WC Docket No. 13-184, at 6 (Apr. 7, 2014) (“CenturyLink Comments”).

⁸ See SHLB Comments at 2.

⁹ See EducationSuperHighway *Ex Parte* Presentation, WC Docket No. 13-184 (Apr. 10, 2014) and attachment, “Connecting America’s Students: Opportunities for Action,” Education Superhighway, April, 2014, available at: <http://apps.fcc.gov/ecfs/document/view?id=7521097864> (“ESH Presentation”).

¹⁰ *Id.* at 7. See also Comments of the United States Telecom Association, WC Docket No. 13-184, at 5 (Apr. 7, 2014) (“USTelecom Comments”) (“The Commission should therefore quantify the limited number of schools and libraries falling into this category and target support to them.”).

¹¹ Public Notice, ¶ 4.

which may include providing fully developed high-speed services packages that not only connect all the way to the student or library patron but also provide transmission and service related capabilities with quality of service assurances. This approach was highlighted by James Funkhouser of Shentel in a meeting two weeks ago with Commission staff:

Rather than focusing on obtaining discrete facilities and services, Shentel believes schools and libraries should seek to obtain “solutions” for their communications needs – all the way to the student’s desk and library carrel. In Shentel’s experience, that is how other large customers obtain communications services, and schools and libraries are in no different position. In effect, this means requirements should be based more on performance objectives. In addition, providers of metro transport and last-mile connectivity should be able to team with entities specializing in providing in-building connectivity to provide these solutions.¹²

This concept also was proposed by numerous commenters. Comcast, for instance, “stressed the importance of a ‘whole network’ approach” and urged the Commission to use that as the basis for reforming the E-rate program.¹³ AT&T proposed that the Commission “establish standards that enable and facilitate the purchase of high-speed broadband...and allow schools and libraries, using the applicable competitive bidding requirements, to select the most cost-effective solution.”¹⁴ NCTA suggested the Commission “let schools decide how best to spend the money they receive to achieve the goal of enabling all students to access high-speed broadband.”¹⁵ ACA submits that the Commission should endeavor to orient the E-rate program so that schools and libraries can obtain the service capabilities and quality assurances they need, which should be no less than what large commercial customers can acquire.

¹² American Cable Association *Ex Parte* Presentation, WC Docket No. 13-184, at 3 (Apr. 7, 2014) (“ACA *Ex Parte*”).

¹³ *See* Comments of Comcast Corporation, WC Docket 13-184, at 6 (Apr. 7, 2014).

¹⁴ Comments of AT&T, WC Docket No. 13-184, at 3 (Apr. 7, 2014).

¹⁵ Comments of the National Cable & Telecommunications Association, WC Docket 13-184, at 2 (Apr. 7, 2014) (“NCTA Comments”).

On the specific issue of how to provide support for Wi-Fi and internal connections and whether the costs of these are more predictable, another ACA member, Metrocast, explained recently to Commission staff that:

While the cost of providing connectivity to an individual school or library can differ greatly because so many factors are in play, the provision of Wi-Fi within an institution largely turns on coverage and throughput. Thus, the cost can be more easily determined and is more consistent. This may enable the Commission to provide more predictable, longer-term support to drive Wi-Fi deployments.¹⁶

Thus, because prices of these internal connections are relatively easy to determine and tend to be more predictable, the Commission has a sound basis to pursue its “third option” in the Public Notice to make “at least some funding available annually for each applicant.”¹⁷ ACA notes that this option also received support from such commenters as Microsoft¹⁸ and NCTA.¹⁹

3. High-Speed Connectivity and Related Services Can Most Effectively and Efficiently be Procured from Incumbent and Other Experienced Service Providers.

Also discussed extensively in the comments was the issue of whether and when to permit schools and libraries to build and operate their own networks. In its prior comments, ACA submitted that schools and libraries can most efficiently obtain the high-speed connectivity and related services from incumbent and other experienced service providers and that they should be required to use existing infrastructure of these providers to the maximum practical extent.²⁰ Mr. Funkhouser also made this point to Commission staff:

¹⁶ ACA *Ex Parte* at 4.

¹⁷ Public Notice, ¶ 20,

¹⁸ See Comments of Microsoft Corporation, WC Docket No. 13-184, at 1-2 (Apr. 7, 2014) (“The *Public Notice* is correct in the expectation that ‘prices of many parts of LAN and Wi-Fi deployments...should vary little based on the geographic location of schools.’”).

¹⁹ See NCTA Comments at 3.

²⁰ See, e.g., ACA Reply Comments at 14. ACA also noted that overbuilding of existing facilities would deter private investment.

In providing communications solutions to schools and libraries under the program, there are many reasons to prefer using incumbent communications providers or other entities that are in the business of providing communication services as opposed to enabling schools and libraries to have their own networks and provide their own services. The reasons include – these providers have greater expertise in designing, constructing, and operating networks; they can integrate services from all customers over shared facilities and therefore provide them more efficiently; and they can upgrade services most readily with more advanced technology.²¹

Many commenters supported this contention. For instance, US Telecom explained that “existing providers will likely be best situated to provision last-mile broadband services” and most often can do so “though minimal construction efforts.”²² CenturyLink commented that “self-provisioning” by schools and libraries is unnecessary since “commercial fiber networks already reach the great majority of communities nationwide, and they are being extended and upgraded every day.”²³ ACA thus reiterates its proposal that the Commission require applicants seeking to self-provision facilities to certify that they have (1) conducted sufficient due diligence to acquire the necessary connectivity solutions and have been unable to do so, and (2) the necessary technical and operational skills and experience to provide the solutions on their own.²⁴

4. Competitive Pricing Can Best be Attained and Assured by Maintaining Price as the Key Selective Criterion and by Maximizing the Number of Bidders.

ACA of course understands that the Commission is concerned about whether schools and libraries are obtaining services at competitive prices.²⁵ But, ACA submits the current system, where price is the primary selection criteria, is working and will work even better if the

²¹ ACA *Ex Parte* at 3.

²² US Telecom Comments at 6.

²³ CenturyLink Comments at 8.

²⁴ See ACA Reply Comments at 14-15.

²⁵ See, e.g., Public Notice, ¶ 27.

Commission facilitates participation by small and mid-sized providers.²⁶ In fact, the Commission itself recognized that by increasing the number of bidders, prices will be driven to competitive levels.²⁷ Further, competition by service providers has already heated up. At the meeting with Commission staff, Mr. Funkhouser stated, “Competition to provide E-rate supported services has grown intense.”²⁸ Further, he “expects this trend to continue, and even accelerate, as more providers learn about the E-rate program.”²⁹ Thus, by adhering to the objective measure of “price” as the key selection criterion and by enhancing participation, the Commission should feel confident that prices are at competitive levels.

Of the other proposals designed to ensure prices are at competitive levels, ACA believes the most beneficial would be to enable multi-year contracts. Commercial customers routinely get lower prices (term discounts) for longer term purchases. This would have the additional benefit of giving schools and libraries greater certainty about the procurement and amount of support.

ACA also believes there may be value in further enabling buying consortia,³⁰ but it is concerned that consortia, especially larger groups of schools and libraries which aggregate

²⁶ ACA suggested that the Commission can facilitate participation by smaller providers by developing a “template Form 470.” *See* ACA Reply Comments at 17.

²⁷ *See* E-rate Modernization NPRM, ¶ 202.

²⁸ ACA *Ex Parte* at 3.

²⁹ *Id.* Mr. Funkhouser also stated, “Shentel’s prices for services to schools and libraries participating in the E-rate program vary considerably, but the trend is clear: prices for all services are decreasing.” *Id.* at 2. In addition, Metrocast stated that “the level of competition...has ramped up in the past several years...It is clear that winners are selected on price.” *Id.* at 4.

³⁰ EducationSuperHighway in its recent presentation emphasized the need for “more efficient procurement” to increase “the impact of economies of scale” in broadband purchasing. *See* ESH Presentation. *See also* Verizon Comments at 8 (“Consortia can also be an effective way to encourage cost-effective purchasing.”).

purchasing power over (and mandate bids for) a substantial geographic area, will limit competition by making it infeasible for smaller service providers to participate. This concern was raised by NCTA, and it noted that “some of NCTA’s member companies have found themselves in situations where a consortium’s RFP was structured in a manner that made it difficult for anyone other than a larger incumbent LEC to participate in the bidding.”³¹ As a result, NCTA recommended that “any RFP issued by a consortium explicitly provide the opportunity for multiple parties to provide supported services.”³² ACA thus urges the Commission to proceed cautiously in enabling larger consortia. Not only may their potential benefits be outweighed by less participation by service providers in the competitive bidding process; if the current market is a good indicator, larger consortia may not be needed to bring about intense competition to serve schools and libraries.

³¹ NCTA Comments at 5.

³² *Id.*

In sum, ACA believes that the Commission should feel confident that concerns about pricing are less severe than many first thought, and the trend is clearly for further and continued reductions in prices. In fact, EducationSuperHighway recently explained, “Commercial providers with existing fiber networks who price their WAN services aggressively can actually offer superior costs while also reducing the need for districts to manage their own network.”³³

Respectfully submitted,



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³³ “Connecting America’s Students: Opportunities for Action: An Analysis of E-rate Spending Offers Key Insights for Expanding Educational Opportunity,” EducationSuperHighway, at 31. April, 2014, available at: <http://apps.fcc.gov/ecfs/document/view?id=7521097866>.