

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Focused Comment on E-rate Modernization

WC Docket No. 13-184

**REPLY COMMENTS OF THE
NATIONAL EDUCATION ASSOCIATION**

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REPLY COMMENTS OF THE NATIONAL EDUCATION ASSOCIATION

The National Education Association (“NEA” or “Association”) offers reply comments in response to the Federal Communications Commission’s (Commission’s) Public Notice for which the Commission’s Wireline Competition Bureau (Bureau) sought focused comments on how to modernize the E-rate Program (“E-rate Program” or “Program”) for schools and libraries.¹ The NEA has supported the Program since it was established in 1997 and we firmly believe that the E-rate Program is a program that works. For the past 18 years, the E-rate has been vital in connecting schools and libraries to the Internet. The discounts provided to E-rate beneficiaries have helped our nation’s schools and libraries not only establish Internet access, but have also been instrumental in helping sustain that access. The long-term success of the E-rate Program relies on its ability to meet the challenge of ensuring sufficient high-speed broadband capacity without abandoning its mission to also ensuring sustainable support to current and future Program beneficiaries.

INTRODUCTION

The NEA, which is the nation’s largest professional association, is committed to advancing the cause of public education. The Association’s 3 million members work at every level of the educational structure – from pre-school to university graduate programs. The NEA has affiliated organizations in every state and in 14,000 communities across the United States. Among the Association’s members are countless K-12-related individuals and entities that participate in or are directly affected by the E-rate Program and the support it provides to its many beneficiaries. The NEA submits our comments on behalf of beneficiaries of the E-rate Program - the students and educators in our classrooms.

DISCUSSION

The NEA would like to address comments filed with the Commission that relate to issues raised in the NEA’s initial comments.² As stated in our initial filing, the NEA strongly believes that equity is a cornerstone of the E-rate Program and the Commission must ensure and protect the continued distribution of E-rate funds in an equitable way. The NEA will take this

¹ See *Wireline Competition Bureau Seeks Focused Comment on E-rate Modernization, Public Notice*, WC Docket No. 13-184, FCC 13-100 (March 6, 2014) (“E-rate Modernization PN”).

² NEA PN Initial Filing

opportunity to briefly address comments filed that advocate for proposals to modernize the E-rate that either reduce or abjectly remove equity, abandon technology neutrality, or functionally turn the program into a competitive grant program. The initial reaction is one of concern on behalf of E-rate beneficiaries at the comments put forth by organizations including: 1) requesting the E-rate Program abandon equity and need in favor of prioritizing by type of institution (public libraries over schools); 2) companies and organizations that do not represent E-rate beneficiaries by requesting preferential treatment be given by type of service provider in a way that would hurt access by students and schools that need it the most; and, 3) entities other than USAC assuming the role of program data collector. The NEA is concerned that requests that key cornerstones of the E-rate Program including equity, calculated need using poverty and geographic isolation (versus institution type), and technology neutrality are being discarded in favor of proprietary or discriminatory behavior.

E-rate Program Applicant by Institution Type

In their filings, library organizations request the Commission direct resources or award E-rate Program funds based on “type” of institutional applicant. Specifically, the American Library Association’s (ALA’s) filing in response to the Public Notice (PN) requests the Commission allocate a “*considerable portion of the \$2 billion [from “freed up” E-rate funds] toward demonstration “programs.”*”³ Historically, the E-rate Program has not distinguished or discriminated among applicant (or beneficiary) type. In addition, the Urban Libraries Council (ULC) argues on behalf of simplifying the E-rate Program by requesting the Commission,

To meet the distinct needs and challenges of libraries, administer library funding separately through an “L-Rate” Program, with funds raised in the same way as the E-rate, but with the size, contracting and networking methodology crafted for the special requirements of libraries.⁴

Both library organizations’ requests advocate the Commission discriminate among applicants in order to award E-rate funds that are not only inequitable (and not based poverty-calculated need), diverging from the inclusive purpose of the E-rate Program, as established and championed by

³ See Comments of the American Library Association, WC No. 13-184 (April 7, 2014), page 10.

⁴ See Comments of the Urban Libraries Council, WC No. 13-184 (April 7, 2014), page i.

Senators Rockefeller and Snowe, along with Senators Exxon and Kerrey, as part of the U.S. Telecommunications Act of 1996.

The NEA questions the intent to turn the E-rate Program into a subsidy program for all public libraries, independent of need – at the expense of our country’s classrooms.⁵ Given the global environment in which our country’s students must be prepared to compete in a 21st century global economy, coupled with cuts to federal funding for education and the damaging effects of the sequestration, the need for the E-Rate Program and the support that it provides schools has never been greater.⁶

Both the ULC and the ALA point to language in the Congressional mandate that established the E-rate Program in their filings – in defense of their positions that the E-rate was established to support *all* public libraries. Specifically, the ULC stated in its filing,

[T]he E-rate program does not fulfill the Congressional mandate that the Commission guarantee access to “advanced telecommunications services’ to all libraries, discount the cost (such as through matching grants) and administer the program to produce that result.

The ALA stated in its filing,

Congress created the E-rate program to ensure all libraries (and schools) “should have access to advanced telecommunications and information services.” Section 254(h) of the Communications Act directs the FCC to “enhance . . . access to advanced telecommunications and information services for all . . . libraries.” The statutory mandate to address the needs of “all” libraries is particularly significant, because many rural and small libraries face particular challenges in providing sufficient internet access to their communities.

Both the ULC and the ALA construe (to their benefit) the statutory language. In fact, if one were to read the statutory language the way in which the library organizations do, it would also be construed to mean that the Commission was also “mandated” to address the needs of “all”

⁵ *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC 13-184, Public Notice, ¶ 56.

⁶ Further, the Center on Budget and Policy Priorities reports that “[s]tates new budgets are providing less per-pupil funding for kindergarten through 12th grade than they did six years ago – often far less.” “Most States Funding Schools Less Than Before the Recession”, Michael Leachman and Chris Mai, Center on Budget and Policy Priorities, September 12, 2013, *available at* <http://www.cbpp.org/>

schools. And, it is significant to highlight that school organizations could also call this mandate “particularly significant” because our schools in rural and less populated areas also face the same “particular” challenges in providing sufficient internet access to their communities. The NEA recognizes the E-rate Program as a program rooted in the equitable distribution of resources based on need – *not* a blanket subsidy to be applied to *all* of a particular type of institution. The NEA wonders if the library organizations’ purported need for *all* libraries may not be better met via another program, such as the Connect American Fund or through a library-centric program (as suggested by the ULC) managed by the Institute of Museum and Library Services, rather than the E-rate Program.

Demonstration Projects or “Programs”

The NEA observes that a significant number of filings in response to the PN were for requests for specific demonstration projects, or as the ALA refers to them “programs.” The requests resemble competitive grant requests – effectively turning the Commission into a grant-making agency. The NEA has long opposed competitive programs or “demonstration projects” – for which equity is discarded in favor of an *inequitable* distribution of funds – with a small handful of special interest “winners” and the rest the program’s applicants are losers. Not to mention, funding for demonstration projects, taken from (already oversubscribed) program funds will result in denying existing beneficiaries E-rate support. Any additional E-rate Program funding available should be directed to meet program applicants’ needs.

While the NEA has already taken a stance in opposition to demonstration projects funded by the E-rate Program, the NEA will take this opportunity to respond to several proposed categories of projects. The first category of projects include those advocating E-rate funds be identified specifically for broadband build-out. One example of such a project is a library-centric “school-library wide area network partnerships” program requested by the ALA. Specifically, the ALA “proposes a modest expansion” on existing allowable services under the E-rate Program’s Priority One (P1) for build-out deployment costs “to better enable school-library partnerships.” The ALA explains, “In numerous instances it would be more cost-effective for the nearby library to leverage the school’s broadband capacity than for the library to obtain its own broadband capacity...”⁷ In a similar vein, the Schools, Health & Libraries Broadband (SHLB)

⁷ See Comments of the American Library Association, WC No. 13-184 (April 7, 2014), page 10.

Coalition suggests that “the Commission should embrace a capital investment approach within the E-rate program...to encourage greater investments in high-capacity, future-proof, long-term, last mile connections to schools and libraries.”⁸ The NEA believes that both the ALA and SHLB’s build-out projects are both eligible under existing E-rate rules. In addition, the ALA’s project will likely occur organically, and where it makes sense, with greater encouragement of consortia applications to the E-rate Program. The NEA has already articulated support for consortia (applications), as they have the potential to provide benefits to participants and USAC, and thus should be encouraged.⁹

Another category of demonstration project requests call for technical support to be included in the list of E-rate eligible services. For example, EducationSuperHighway lists as one of the demonstration projects it believes the Commission should focus on is “Providing better technical assistance to schools and libraries that require it.”¹⁰ It is not lost on the NEA that what EducationSuperHighway is requesting the E-rate Program support for is strikingly similar to their “Education Geek Squad” services currently being offered via their web site.¹¹ The ALA also proposes a demonstration program that seeks to make “network diagnostics and technical support” E-rate support eligible.¹²

The NEA *strongly* objects to any type of technical support (i.e. consulting services) being E-rate eligible, for libraries or schools, and articulated our strong objections in our initial filing.¹³ The NEA believes demonstration projects for technical support will lead to the rise of a new class of consultants – for which E-rate funds should NOT be eligible. Also, the NEA is opposed to demonstration projects that expand the scope of services eligible for E-rate funding, including technical assistance or consulting. The E-rate Program’s statutory purpose was and continues to be to provide telecommunications and advanced Internet services to eligible schools and libraries. Over the years the NEA, among other beneficiary members, has worked to ensure the

⁸ See Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC No. 13,184 (April 7, 2014), page 9.

⁹ See Comments of the National Education Association, WC No. 13-184 (April 7, 2014), page 9.

¹⁰ See Comments of EducationSuperHighway, WC No. 13-184 (April 7, 2014), page 12.

¹¹ See <http://www.educationsuperhighway.org/provide-technical-expertise.html>.

¹² See Comments of the American Library Association, WC No. 13-184 (April 7, 2014), page 17.

¹³ See Comments of the National Education Association, WC No. 13-184 (April 7, 2014), page 14.

Program was not pilfered for unintended uses. Devices (e.g. tablets, laptops, etc.), training, technical assistance or consulting – all fall well beyond the statutory intent of the Program and purview of the Commission.

E-rate Program Neutrality

The NEA has long heralded the E-rate Program’s technology-neutral position and filed in support of upholding this principal. As articulated in our initial comments, the NEA believes that maintaining a technology neutral stance with regard to services by E-rate beneficiaries champions local decision making, a key tenet of ensuring beneficiaries most efficiently and cost-effectively procure the services that meet their specific needs (taking into consideration local and low-density population, etc.). In fact, AT&T states it best, perhaps, when it reiterates in its comments,

...whatever approach the Commission implements to prioritize broadband connectivity to schools and libraries, the program must be administered with technology neutral principles. Because of significant geographical and topographical diversity among the nation’s schools and libraries, there is no one technology solution that will best meet the needs of all such institutions. Consequently, fiber, wireless LTE, hybrid copper/fiber, and satellite, should all be among the available technology platforms that are permitted to compete for schools and libraries’ broadband connectivity requirements.¹⁴

Additionally, the NEA finds itself also needing to clearly articulate that technology neutrality should also be extended to service provider type. Some commenters would like the E-rate Program to discriminate among providers to “maximize[ing] the use of Research and Education (R&E) networks.”¹⁵ The NEA believes the E-rate Program should not arbitrarily route procurement of broadband services to any specific “type” of provider over another – such as an R&E network, a rural commercial telecommunications provider, or an established national commercial telecommunications provider, among others. The determination for where services are to be procured should continue to be based on local need and competitive bidding processes already in place. Frontier Communications Corporation addresses this issue by explaining,

¹⁴ See Comments of AT&T, WC 13-184 (April 7, 2014), page 2.

¹⁵ See Comments of EducationSuperHighway, WC No. 13-184 (April 7, 2014), page 12.

Despite the examples that proponents of educational Internet backbone networks have provided of how they can provide a low-cost broadband solution, rural networks will always cost more. . . . This is the reason that many existing state educational [R&E] networks do not extend into the most rural, most costly to serve areas.¹⁶

The NEA advocates for maintaining technology neutrality with regard to service providers and is opposed to the Commission advocating for or rewarding or encouraging E-rate Program applicants from selecting (or limiting selection) of provider based on provider type.

The NEA believes comments made by CenturyLink Corporation capture and articulate the historic intent of the E-rate Program that should be carried forward, when it advised,

...the Commission should proceed carefully. Schools, public school districts, and public libraries rely on the [E-rate] program, so policy changes should not be abrupt. School and library administrations should retain flexibility to determine what services they need. And the Commission must also resist calls to direct E-rate funding in ways the Telecommunications Act of 1996 does not authorize.¹⁷

The NEA would like to weigh in on one final issue – that of E-rate Program data collection. For the record, the NEA would like to convey that the organizations representing E-rate beneficiaries have worked with the Commission on what the beneficiary communities need to ensure access to affordable E-rate services, increase efficiencies within the program, and streamline the application process. The same organizations have also advocated for well over a decade for more data collection and for collected data to be made more available and transparent. The NEA, among other beneficiary organizations, will continue to look to the Universal Services Administration Company (USAC) to provide data, as designated by the Commission as the independent, not-for-profit corporation to administer the Universal Service Fund.

Conclusion

The E-rate Program is a program that works. The E-rate has helped more than 95 percent of schools and more than 99 percent of public libraries *connect* to the Internet. The Commission’s desire to build upon the success of the E-rate Program and achieve the same level

¹⁶ See Comments of Frontier Communications Corporation, WC No. 13-184 (April 7, 2014), page 5.

¹⁷ See Further Comments of Centurylink, WC No. 13-184 (April 7, 2014), page 2.

of success with respect to ensuring all schools and libraries have sufficient high-speed broadband *capacity* is on target. The existing infrastructure and administration of the Program lends to realizing capacity goals, too. However, the greatest challenge facing the program's ability to support sufficient high-speed broadband capacity has been its inability to keep up with applicant demand.

The NEA continues to advocate for an adjustment in the E-rate Program's funding cap along with a commitment to sustained funding to help meet the Commission's goals for the E-rate Program. The Commission's overt interest in modernization, without also addressing the Program's chronic underfunding, is simply akin to "rearranging the deck chairs." While a one-time expenditure of funds from existing E-rate coffers may be called an "infusion" of funds, it does not diminish nor remedy the simple fact that the E-rate Program continues to be underfunded.

In closing, the NEA firmly believes that additional, sustained investment in the E-rate Program is required to bolster the broadband infrastructure of our nation's schools.¹⁸ The NEA strongly recommends that the E-Rate Program cap be adjusted and funded, with continued annual inflationary adjustments.

Respectfully submitted,

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¹⁸ There is without question a confluence of support for such investment, as reflected in the Obama Administration's ConnectED initiative and Senator John D. Rockefeller's call for E-Rate 2.0.