

May 29, 2014

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Notice of Ex Parte Presentation,*
Modernizing the E-Rate Program for Schools and Libraries, WC Docket No. 13-184

Dear Ms. Dortch:

The Education Coalition¹ urges the Commission to take decisive action to reform the E-rate program this Summer. It is critical that the Commission move forward on this once-in-a-generation opportunity to reorient the E-rate program to support digital learning and 21st century broadband connectivity, including the development of clear incentives to the formation of consortia to promote bulk purchasing and economies of scale.

Core Reforms. Numerous commenters from school groups to national broadband providers echoed the Education Coalition's call to target E-rate funding to support high-speed bandwidth to and within schools and libraries.² The record also reflects support for the Education Coalition's position that such a recalibration should enable additional flexibility in utilizing E-rate funds for internal network components,³ as well as increased certainty for schools by the use of multi-year contracts,⁴ and the leveraging of statewide contracting and bulk buying opportunities.⁵ Finally, while some parties continued their thoughtful advocacy on the need to retain some level of voice support,⁶ widespread support can be found for a rational and

¹ Coalition Members include The Council of Chief State School Officers, Foundation for Excellence in Education, Alliance for Excellent Education, Chiefs for Change, International Association for K-12 Online (INACOL), Knowledge Alliance, and the Clayton Christensen Institute for Disruptive Innovation.

² See e.g., California Emerging Technology Fund Reply Comments at 13; Alliance for Excellent Education Reply Comments at 4; Schools, Health & Libraries Broadband Coalition Reply Comments at 3.

³ See, e.g., Council of the Great City Schools Reply Comments at 4; EducationSuperHighway Reply Comments at 5; Mississippi Educational Technology Leaders Association at 3.

⁴ See e.g., Alliance for Excellent Education Reply Comments at 4; City of Boston, Massachusetts Reply Comments at 6.

⁵ See e.g., EducationSuperHighway Reply Comments at 6; Chicago, Illinois & Chicago Schools & Public Libraries Reply Comments at 3; Wisconsin Department of Public Instruction Reply Comments at 5-6.

⁶ See e.g., Education and Library Networks Coalition Reply Comments at 13.

predictable phase-out of voice services.⁷ These proposals would represent a true down payment as the Commission continues its efforts “to recast the E-rate program”⁸ and make true the promise of digital learning.

We believe that a consensus has formed around these core components of E-Rate reform, and we urge the Commission to adopt this package of common sense and impactful reforms that would make a real difference in the educational opportunities for children across the country, particularly in rural and remote areas that too often lack both the telecommunications and educational resources they need.

As leaders in helping transform education through digital learning opportunities, we think the last core component of an initial reform package is strong support for consortia purchasing and program participation.

The Benefits of Consortia. The most recent round of comments revealed strong support for the use of consortia as a means to drive economies of scale and more efficient purchasing.⁹ Consortia can also facilitate greater state engagement in IT, network planning, and technical support to help schools and charter schools fully integrate a suite of digital learning solutions more efficiently and effectively.

Consortia applications represent a fiscally responsible approach to limited E-Rate funds and can help enable a level of scalability that more effectively advances digital learning opportunities. While the Commission has concluded that “consortium purchasing can drive down prices,” E-rate structural challenges have resulted in only 13 percent of E-rate funds going to consortia applications.¹⁰ At the same time, consortia are increasingly used by school districts to increase efficiencies around other components of digital learning including digital curricula and devices. The reason is simple: consortia enable smart spending strategies that drive purchasing efficiencies.

Consortia-Related Reform. The Commission should first eliminate existing disincentives for consortia applicants, particularly the needless delay and uncertainty applicants face today. Reform offers a chance to remove existing barriers for consortia applications and at least place these applications on a level playing field to offer schools a viable vehicle for pooling purchases and achieving cost savings.

⁷ See e.g., Alliance for Excellent Education Reply Comments at 5; Cox Reply Comments at 7; EducationSuperHighway Reply Comments at 6-10.

⁸ Remarks of Chairman Tom Wheeler, National Cable & Telecommunications Association (April 30, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0430/DOC-326852A1.pdf.

⁹ See e.g., California Department of Education Reply Comments at 6; EducationSuperHighway Reply Comments at 6; General Communications, Inc. Reply Comments at 12; National Association of State Chief Information Officers Reply Comments at 1-2; National Education Association Reply Comments at 7, 10.

¹⁰ E-Rate NPRM, ¶ 165.

The FCC should also prioritize consortium applications in the review process and allocate dedicated and specially trained consortium reviewers to ensure the review process is conducted in a timely manner. Similar changes to the review and audit processes should ensure that consortium and individual schools are subject to the same average length of review. Consortia applications should be funded first at each priority level with a consortium-specific process, where applicable, and the FCC should also adopt an additional five percent consortia discount to provide the necessary incentives to achieve the important cost efficiencies that consortia can enable.¹¹

Consortia Definition. The Education Coalition proposes the following definition for consortia for purposes of the E-Rate program incentives.¹² This proposed definition allows for flexibility in consortia structure, reduces the risk of regulatory gamesmanship, and helps ensure that consortia incentives flow to those entities that can drive the economies of scale and buying power that underscore the policy objectives of incenting consortia formation. To qualify for the “consortium” incentives, a group of eligible entities must satisfy the following five criteria:

- (1) The group of eligible entities must meet at least one of the following conditions:
 - (a) serve at least 30 percent of the total number of students enrolled in public, private and charter schools in a state (unless a single LEA constitutes 30 percent or more of the student population in which case the group of eligible entities must also satisfy (1)(b));
 - (b) include schools from at least 30 percent of the local education agencies (LEAs) in the state (a charter schools shall be deemed a school within the LEA that authorized the charter unless the charter school is treated as an LEA under state law); OR
 - (c) Be designated as a “consortia” through a process created by a state education agency;¹³
- (2) The group of eligible entities must document the participation of individual entities with a letter of agency, memorandum of agreement, memorandum of understanding, service level agreement, or other equivalent document;¹⁴
- (3) The group of eligible entities must maintain some level of governance or sponsorship such as a board, council, advisory body, state agency, intermediate service agency, or university;¹⁵

¹¹ See E-Rate Provider Services Comments at 10 (suggesting a consortia-wide discount); State Consortia Group Comments at 3-4

¹² Eligible schools and libraries would remain free to file jointly under the E-Rate rules, but would simply not qualify for these “consortium” incentives unless they meet the outlined criteria.

¹³ See 34 CFR § 77.1(c) (defining state educational agency as “the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.”).

¹⁴ State Consortia Group Reply Comments at 4.

¹⁵ *Id.*

- (4) The group of eligible entities must perform large-scale, centralized procurement that results in state master contracts or master agreements for equipment, Wide Area Network circuits, statewide backbone circuits, Internet access, or other E-rate eligible services or equipment;¹⁶ and
- (5) Membership in the consortium must be open to all eligible schools and libraries, including public charter schools and private schools.

With such a definition, the Commission will be positioned to eliminate the current disincentives – and indeed institute incentives – to large consortia formation. There is no one-size-fits-all definition or structure for such consortia, and it is important that the Commission provide states and school districts with some latitude to form the partnership and organizational structure that makes the most sense for their students. The Coalition also believes incorporating the potential for a more active state leadership role is important to act as a catalyst to greater participation in digital learning solutions and infrastructure, as well as funding, from state leaders.

This definition would also encourage the formation of consortia with a sufficient size to spur commercial providers to build out to currently underserved school districts.¹⁷ Allowing two schools or libraries – or even two individual school districts – to qualify for consortium incentives under the E-Rate program would undermine the rationale for supporting consortia and risk failing to deliver the scale-based solutions that could more efficiently and effectively utilize finite E-Rate funds.

To provide some context as to how this definition would work in operation, the state of Florida contains 74 school districts (or “local educational agencies” under the proposed definition), with just over 3 million students in 2012-13.¹⁸ Therefore, to qualify as a “consortia” under this definition, a group of eligible entities would have to include schools from at least 25 districts, serve approximately 900,000 students, or be otherwise authorized by the state of Florida. The largest school district in Florida (Miami-Dade) has approximately 350,000 public school students, which underscores that this definition will help drive schools towards larger scale consortia solutions.

Consortia Support. Commenters provide near universal support for the potential of consortia to better utilize finite E-Rate funds. A handful of commenters raise concerns with the risk of

¹⁶ *Id.*

¹⁷ See, e.g., Panhandle Area Education Consortium, North East Florida, Educational Consortium, Heartland Educational Consortium Ex Parte (Feb. 21, 2014).

¹⁸ See Office of Independent Education and Parental Choice, Florida Department of Education, Florida’s Private Schools Annual Report 2012-13 at 1 (June 2013), http://www.floridaschoolchoice.org/information/private_schools/annual_reports/Private_School_Annual_Report_2012-2013.pdf.

poorly constructed consortia limiting vendor choice and actually increasing costs.¹⁹ The Education Coalition believes that existing E-Rate consortia responsibly contract and manage their operation to avoid that circumstance, and support consortia-issued RFPs that are structured to allow for multiple providers. For instance, states such as Washington have E-rate eligible state master contracts with multiple vendors,²⁰ while Network Maine conducts statewide bids in which any service provider could bid solely on the area that provider serves.²¹ Through a requirement that consortia “consider bids from all local providers of broadband service ... even if the smaller providers can fill only piece parts of larger projects or initiatives,”²² the Commission can address the reasonable concern that smaller providers could be “excluded from the bidding process.”²³

A few entities also suggest that the Commission need not incent consortia as schools and libraries have already established consortia when helpful.²⁴ While the Education Coalition agrees that consortia participation should always be voluntary, such advocacy fails to recognize the extent to which the current E-rate regulations disincent consortia as the Education Coalition has pointed out and the record reflects.²⁵ Achieving greater E-rate efficiencies hinges upon providing E-rate applicants with the incentive to rethink how they contract for broadband and telecommunications services.²⁶ Too many schools and school districts had negative experiences under current rules and will not realistically reconsider joining or utilizing consortia participation absent clear and convincing proof that the process has changed and a real incentive to participating.

Coupled with the procedural reforms outlined above, a modest five percent consortia funding discount will provide that financial incentive, and will likely generate cost efficiencies several-fold – a key goal as parties and the Commission have recognized E-rate’s budgetary constraints – through the enabling of smarter and more efficient spending approaches. Specifically, utilizing consortia will help applicants make more informed and more efficient purchasing decisions, vendors will have fewer contracting parties and negotiations, and USAC as well as the

¹⁹ See NCTA Comments at 4-5 (noting potential “negative consequences,” “administrative challenges,” and “significant risk” of disadvantaging smaller providers); NTCA Reply Comments at 2 (noting “unique risks” of consortium bidding that can increase E-rate costs).

²⁰ See State of Washington, Office of Superintendent of Public Instruction, Educational Technology, <http://www.k12.wa.us/edtech/e-rate/default.aspx> (last visited May 20, 2014).

²¹ See Remarks of Jeff Letourneau of NetworkMaine, E-Rate Modernization Workshop, May 6, 2014, <http://www.fcc.gov/events/e-rate-modernization-workshop>.

²² NTCA Reply Comments at 7-8.

²³ NCTA Comments at 5.

²⁴ United States Telecom Association Reply Comments at 8.

²⁵ See *e.g.*, State of Arkansas Comments at 8-9; Pennsylvania Association of Intermediate Units Comments at 7.

²⁶ Some parties have tried to link flexibility to self-provision with increased consortia participation. The Education Coalition does not view these issues as linked, and does not believe that the Commission should address self-provisioning issues within the context of encouraging consortia.

FCC will have to review fewer applications from fewer applicants. Further, rural America stands to benefit greatly from the increased use of consortia, which can offer buying power and technical leadership and also help accelerate and justify the buildout of high-speed connectivity by commercial providers to unserved and underserved areas.

Pursuant to Section 1.1206 of the Commission’s Rules, this letter is being filed electronically.

Respectfully submitted,

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