BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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

COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTelecom)[1] submits these comments in response to the Federal Communications Commission's (Commission) above-referenced Further Notice of Proposed Rulemaking (*Notice*).[2] Through its *Notice*, the Commission is continuing the review and update of the schools and libraries universal service support program (the "E-Rate Program").

I. THE COMMISSION SHOULD DETERMINE E-RATE PROGRAM FUNDING NEEDS BEFORE CONSIDERING ANY CHANGES TO THE FUNDING CAP.

It is premature for the Commission to discuss any changes in E-Rate Program funding until it fully develops its anticipated needs for the program. The Commission has not yet accurately determined either a factual foundation of the availability of broadband facilities or fully developed the appropriate level of services that should be supported by E-rate funding.

There are several pending issues that could substantially impact the need for E-Rate Program funds. For example, the Commission is in the process of determining the level of fiber

[1] 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.

[2] *See*, Report and Order and Further Notice of Proposed Rulemaking, *Modernizing the E-rate Program for Schools and Libraries*, 79 Fed Reg. 49036 (August 19, 2014) (*Notice*).

connectivity to schools and libraries throughout the country.[3] USTelecom is encouraged that the Commission is moving forward with a process to quantify the limited number of schools and libraries falling into this category and target support to them.[4]

The Staff Report issued by the Commission's Wireline Competition Bureau and Office of Strategic Planning and Policy acknowledges that there are numerous and significant variables evident in the "large and data-intensive record" collected by the Commission to date.[5] For example, the Staff Report projects $3.5 billion in projected savings resulting from the Commission's decision to phase-out non-broadband services – an amount it acknowledges "may be larger to the extent spending on voice services decreases as discount levels are reduced."[6] With respect to fiber deployment, the extent of connectivity to schools and libraries remains unclear, with the Staff Report acknowledging that in only has "actual" data sets "on the connectivity status of about half of all U.S. public schools and about two thirds of all U.S. library locations."[7]

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[3] *See*, Public Notice, *Wireline Competition Bureau Releases E-Rate Modernization Staff Report and Online Maps of School and Library Fiber Connectivity Data*, DA 14-1177 (released August 12, 2014) (*E-Rate Data Public Notice*). USTelecom has previously expressed its view that high-speed broadband networks are already extensively deployed throughout the country, and broadband providers are extending their reach even further through significant capital expenditures. See, Comments of the United States Telecom Association, WC Docket No. 13-184, pp. 3 – 6 (April 7, 2014). At most, USTelecom believes that the Commission would only need to commit a limited amount of E-rate funds to a narrow range of schools that do not have any or have inadequate high-speed broadband connections under E-rate program's existing system.

[4] *See*, *E-Rate Data Public Notice*; *see also*, Staff Report, Wireline Competition Bureau & Office of Strategic Planning and Policy, WC Docket No. 13-184 (released August 12, 2014) (*Staff Report*) (available at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0812/DA-14-1177A2.pdf) (visited September 15, 2014).

[5] *Staff Report*, p. 1.

[6] *Id.*, p. 18, Figure 10.

[7] *Id.*, p. 10.

Regardless of the results of the Commission's analysis, the answer to that question alone will have a substantial impact on necessary funding levels. USTelecom believes the Commission should fund E-Rate Program needs within the current budget and defer funding size questions to a later date, until such time as it has a better grasp on the E-Rate Program's actual needs.

The Commission should under no circumstances deplete other funded programs to increase E-Rate Program funding levels. The Commission has established the Connect America Fund (CAF) and a strict budget to address broadband availability. To develop and implement the CAF, the Commission engaged in a lengthy and deliberate process to ensure that the fund would be sufficient to meet the needs of those residing in high-cost rural areas. Any reduction in CAF funds would undercut the Commission's efforts to increase broadband availability through this program. Such an approach would be contrary to the goals of the high-cost program, rural healthcare program and the E-Rate Program by detrimentally impacting broadband build-out in high-cost rural areas, potentially diminishing extension and improvement of broadband service available to anchor institutions, including schools, libraries and health care facilities.

Moreover, the Commission already has mechanisms in place whereby it can make adjustments to ensure that the impact of E-Rate Program funds are maximized. For example, it can shift funds within the program from one area (*e.g.*, Category 2) to another area (*e.g.*, Category 1). The Commission can also adjust discount rates for Category 1 and Category 2 services. If after considering these adjustments it determines that funding levels still are insufficient, only then should the Commission review the appropriate size of the E-Rate Program.

II. THE COMMISSION SHOULD PROCEED CAUTIOUSLY IN IMPLEMENTING MAXIMUM LENGTHS FOR MULTI-YEAR CONTRACTS.

Given the "dynamic" nature of the market acknowledged by the Commission,[8] it should proceed cautiously in determining whether to institute a 'one size fits all' approach to contract lengths. The Commission seeks to determine the best manner in which to ensure efficiencies when administering multi-year contracts, including whether to institute a maximum contract length. The Commission appropriately notes that there are both benefits and drawbacks to instituting a standard contract length, whether for shorter or longer periods.[9]

On the one hand, USTelecom agrees with the Commission that longer terms are generally necessary and favorable in infrastructure-related contracts, since they enable schools, libraries and network providers to extend the substantial infrastructure costs over longer periods.[10] On the other hand, longer contracts lock a school or library into specific providers for potentially lengthy periods that limit the ability of schools and libraries to switch to alternative providers who may offer more competitive rates and services.

If the Commission does establish a maximum contract length, any existing contracts should be grandfathered. Given the multi-year term of many infrastructure contracts, providers are required to make substantial up-front investment in the facilities to be deployed. Failure to grandfather these existing contracts would mean that such providers would unfairly bear the burden of those substantial sunk costs. Carriers prevented from recovering those costs would be severely disadvantaged and could suffer significant harm.

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[8] *Notice*, ¶273.

[9] *Id.*, ¶¶272 – 273.

[10] *Id.*, ¶276.

The Commission has often grandfathered existing contracts. For example, in adopting new rules to implement a uniform rate structure for bulk contracts, the Commission was careful to grandfather existing contracts that would otherwise be in violation of the new rules. The Commission stated that the "elimination of existing contracts would be unnecessarily disruptive to those subscribers receiving discounts, as well as to those cable companies offering the discounts."

III. THERE IS NO NEED TO FURTHER ENCOURAGE CONSORTIUM PARTICIPATION.

USTelecom is supportive of schools and libraries choosing to participate in consortium opportunities. There is no need, however, for the Commission to incent consortia purchasing, particularly with respect to applying additional discount rates. In many instances, consortia purchasing is already an established and accepted practice amongst various educational institutions at the municipality, county and even state level. Particularly with respect to applying an extra discount of 5% to certain qualifying consortia, the Commission's proposal to may have the unintended consequence of punishing non-participating eligible entities.

Many schools and libraries have differing reasons for declining to participate in existing consortia. For example, an eligible entity may be located in an area that is non-contiguous to an established consortium. Others may decline to participate due to needs that are unique to their particular school or library. To the extent such schools and libraries feel compelled to participate in qualifying consortia they may very well sacrifice their ability to acquire services more appropriate to their specific needs.

Despite sound reasons for not participating in qualifying consortia, these schools and libraries would be effectively punished through increased costs in comparison to consortia participants receiving the additional discount. Given that the E-Rate Program operates under a

funding cap, this raises the potential that schools and/or libraries not participating in consortia could receive lower levels of E-rate funding. In essence, adoption of the Commission's proposal would be the equivalent of 'robbing Peter to pay Paul.'

IV. PRIVATE SECTOR ENTITIES SHOULD NOT BE PERMITTED TO JOIN E-RATE CONSORTIA.

The Commission cannot adopt its proposal to permit private-sector entities to join consortia.[11] Regardless of any purported benefits that may (or may not) arise under such an arrangement, the Communications Act expressly limits E-Rate Program funding eligibility to "public and nonprofit elementary and secondary school classrooms, health care providers, and libraries."[12] In addition, the Act stipulates that "[n]o entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business."[13]

Even if the Commission *could* allow for-profit entities to participate in E-Rate consortia (which it cannot), that does not mean that it *should* allow for such arrangements. In its most recent E-Rate Program order, the Commission adopted numerous proposals that will likely enhance the ability of eligible school, libraries and consortia to enhance their purchasing power for E-Rate supported services.[14] Indeed, the Commission's entire E-Rate reform initiative is intended to maximize the impact of limited funding for such services.

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[11] *Notice*, ¶ 296.

[12] 47 U.S.C. §254(h)(2)(A).

[13] 47 U.S.C. §254(h)(4).

[14] For example, the Commission will phase down its planned transition from voice service support, eliminating support for certain legacy services over a specific timeframe and conducting the transition in a measured manner. Specifically, the FCC will reduce voice support by subtracting the discount rate applicants receive for voice services by 20 percentage points each funding year. *Notice*, ¶¶ 134 – 153.

When Congress adopted the framework for the E-Rate program with the passage of the Telecommunications Act of 1996, it made a determination that for-profit schools should not be eligible for E-Rate Program funds. By adopting its proposal, the Commission would be acting contrary to Congressional intent and explicit statutory language. The finite funds available in the program would be reduced for the intended beneficiaries under the Act. Given the Act's express prohibition on providing E-Rate Program funds to private entities, and the negative policy implications resulting from such an approach, the Commission should not adopt its proposal to permit private sector participation in consortia.

V. CONCLUSION.

USTelecom supports reforms to the E-Rate Program and the development of an efficient and effective framework that supports broadband connectivity. To ensure the greatest efficiencies in the revised framework, the Commission should refrain from considering changes in E-Rate Program funding until it fully develops its anticipated needs for the program. In determining whether it should establish a maximum contract length for E-Rate Program contracts, the Commission should consider the unique aspects of infrastructure related contracts, and weigh the benefits and drawbacks for such an approach. If the Commission does establish a maximum contract length, it should grandfather any existing contracts. The Commission should be cautious as it considers additional ways to encourage consortium participation, particularly with respect to applying additional discount rates. Finally, the Commission is prohibited by statute from allowing private-sector entities to participate in consortia bidding.

Respectfully submitted,

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September 15, 2014