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
	)	
	)	

To: The Commission

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox") submits these comments in response to the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.[1] Cox commends the Commission for its thoughtful and important work reforming and refocusing the E-rate program in the accompanying Report and Order ("*Order*").[2] These comments focus on one discrete issue raised in the *Further Notice*: Consistent with Cox's previous comments,[3] the Commission should be wary of further encouraging consortia in a manner that ultimately will reduce competition for E-rate services and thereby increase costs to the program.

I. CERTAIN PROPOSALS TO FURTHER ENCOURAGE CONSORTIA PURCHASING LIKELY WOULD BE COUNTERPRODUCTIVE

Cox remains concerned that certain of the proposals in the *Further Notice* would encourage larger consortia that bid at the full, near-full, or other substantial consortium levels.

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[1] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) ("*Further Notice*").

[2] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) ("*Order*").

[3] Comments of Cox Communications, Inc., WC Docket No. 13-184, at 5-6 (filed Sept. 16, 2013) ("Cox NPRM Comments").

These types of consortia bids would require bidders to cover all or a large portion of members thus decreasing bidder participation and increasing prices. Specifically, Cox believes that an additional five percent discount for consortia would force many schools and libraries to participate in consortia in order to take advantage of the discount, even if doing so is not the most efficient way for them to meet their service needs. Despite the best intentions of consortium leads, as consortia become bigger, it can become increasingly difficult to optimize the process for all members. In addition, Cox is concerned that private-sector participation in E-rate consortia would further risk increasing the size of consortia, to the detriment of competition, as well as create additional concerns about waste, fraud, and abuse.

As previously detailed, Cox agrees that bulk purchasing, including consortium purchasing and procurement via state master contracts, can be an efficient means of purchasing E-rate services.[4] Cox has noted, however, the importance of allowing schools and libraries the flexibility to purchase consistent with their educational goals, which may not be served by bulk purchasing in all circumstances.[5] This is particularly true with respect to Internet connectivity services, where providers' service footprints impose limits on their ability to bid effectively as consortia get larger. Cox and other commenters emphasized that overly encouraging consortia purchasing could actually increase prices.[6]

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[4] Cox NPRM Comments at 5.

[5] *Id.* at 5-6.

[6] *Id.* at 6; Comments of Bright House Networks, WC Docket No. 13-184 (filed April 17, 2014) at 6; Education Networks of America, WC Docket No. 13-184, at 3 (filed April 17, 2014); Comments of ITTA, WC Docket No. 13-184 (filed April 17, 2014) at 12; Comments of Kentucky Dept. of Libraries and Archives, WC Docket No. 13-184 (filed April 17, 2014) at 3; Comments of National Cable & Telecommunications Association, WC Docket No. 13-184, at 5 (filed April 17, 2014); Comments of WTA, WC Docket No. 13-184 (filed April 17, 2014) at 8-9.

Although Cox appreciates the Commission's clarification that consortia may invite vendors to bid on services to a subset of consortia members,[7] Cox is concerned that adoption of the proposal to provide an additional five percent discount for consortia ultimately would undermine the ability to do so.[8] Specifically, providing an additional five percent discount for consortia that meet minimum size standards effectively will force additional schools and libraries, to join ever-growing consortia, which may not ultimately be in their best interest. A larger consortium will create a greater need for tradeoffs among the interests of the consortium members. For example, despite the best of intentions, consortium leads may be incented to bid and choose providers with the greatest scope despite the fact that some members may be better served by regional or local providers based on their needs. Indeed, members of the consortium may sacrifice their own needs to ensure that the consortium or certain subsets of the consortium benefits. In sum, as a practical matter, the five percent discount could very well effectively eradicate the ability for vendors to bid on services to true subsets of consortia members. As competition decreases, prices actually may increase, undermining the Commission's goal in encouraging consortia.

In addition, Cox is concerned that private-sector participation in E-rate consortia will again encourage even larger consortia and create the same problems discussed above, while also complicating the E-rate bidding process.[9] First, although private sector participants may purchase the same types of service (e.g., Internet Access, transport, internal connections), their product needs may differ substantially from schools and libraries that would have to be

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[7] *Order* ¶ 179.

[8] *See Further Notice* ¶ 294.

[9] *Id.* ¶¶ 296-97.

addressed in the RFP/Form 470 process, including potentially different pricing based on the requirements. This would be complicated further by the fact that the lowest corresponding price rules do not apply to private sector companies. Therefore, including them in E-rate bids, would amount to regulation of non-E-rate pricing or require different pricing in bid responses for different consortium members. Second, contract terms and early termination clauses frequently are different for private sector companies than for E-rate customers, introducing another complication to the bidding process. The terms and conditions sought by these different types of customers may not align. Third, document retention rules for E-rate already require substantial resources, and including private sector participants for whom there is no such document retention requirement would add to the burden. Service providers would be forced to retain documents for all consortium members, or take additional time to separate out documentation for E-rate and non-E-rate participants.

Moreover, allowing private-sector participation in E-rate consortia will create heightened needs for vigilance against waste, fraud, and abuse, and add new complications inhibiting the Commission's ability to identify and prosecute such issues. Private-sector participation would necessitate potentially complex cost-allocation rules, which in turn would divert valuable, limited resources from the Commission and other E-rate ecosystem participants.

CONCLUSION

Cox urges the Commission to continue its reform of the E-rate program in a manner consistent with these comments.

Respectfully submitted,

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