Before the
Federal Communications Commission
Washington, D.C. 20554

Draft Eligible Services List for the Schools and Libraries Universal Service Program	)))	CC Docket No. 02-6 GN Docket No. 09-51 WC Docket No. 13-184

REPLY COMMENTS
OF
NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA")[1] hereby submits these reply comments in response to comments filed on the *Public Notice*[2] seeking comment on the draft 2015 funding year Eligible Services List ("ESL") for the Universal Service Fund ("USF") Schools and Libraries ("E-rate") program. The draft ESL was created based on reforms to the E-rate program recently adopted by the Federal Communications Commission ("Commission") in the *E-Rate Modernization Order* adopted on July 23, 2014.[3]

I. THE ELIGIBLE SERVICES LIST SHOULD BE BASED ON ACCURATE DATA AS TO SCHOOLS' AND LIBRARIES' CONNECTIVITY NEEDS

NTCA supports, subject to certain amendments, a request for additional data gathering made by EducationSuperHighway.[4] Specifically, EducationSuperHighway states that several

---

[1] NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers ("RLECs"). All of NTCA's members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

[2] *Wireline Competition Bureau Seeks Comment on Draft Eligible Services List for Schools and Libraries Universal Service Program*, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket No. 13-184, Public Notice, DA 14-1130 (rel. Aug. 4, 2014) ("*Public Notice*").

[3] Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking (rel. Jul. 23, 2014) ("*E-rate Modernization Order*").

[4] Comments of EducationSuperHighway, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket No. 13-184 (fil. Sep. 3, 2014), p. 1.

schools across the nation connect to the Internet at speeds that do not meet the Commission's definition for "broadband" for residential use, much less at speeds needed by today's Community Anchor Institutions ("CAIs").[5] While stating that such connections should remain eligible for E-rate support,[6] EducationSuperHighway asks the Commission to collect certain data that should, if collected correctly and viewed in the appropriate manner as discussed below, assist the Commission in ensuring that individual schools and libraries can obtain access to broadband connections that meet their needs and local budget resources. Specifically, EducationSuperHighway asks the Commission to gather from the CAIs referenced in their request the following data:

> if a faster connection was an available option, what price that connection was available at, or
>
> if no faster connection speed is available to that location, the distance to the closest available high-speed network node operated by that service provider (e.g., a splice point or wire center with fiber-capable equipment)[7]

While not weighing in specifically with respect to the scope or wording of these particular requests, NTCA supports more generally Commission action to gather additional data on schools' and libraries' connectivity needs and the current status of those connections. Reform of the E-rate mechanism must account for the unique need that each individual school or library has in the first instance (whether that be a connection to the facility in the first place, a more robust connection, an affordable connection, or internal connections). Any reform must be based

---

5 *Id*.

6 *Id*.

7 *Id*.

upon a gathering of data that can be used to assess and validate such needs on a granular level. A data-driven approach to modernization of the E-rate mechanism will ensure that the program can cost-effectively deploy resources to meet the needs of individual schools and libraries while also effectively and efficiently working in conjunction with other, complementary universal service programs that connect residents and businesses in high-cost areas as well.

As an initial matter, NTCA supports the proposed data gathering exercise, yet cautions the Commission to view with a keen eye what each data point does, and does not, represent. As a general matter and as to any data gathering exercise, it is critical that the Commission does not conflate "subscription" with "availability." EducationSuperHighway states in its comments that "most applicants who are using [the services of less than 4Mbps] do so because high-speed broadband options are not yet available to them."[8] However, the speed purchased by an individual school or library, viewed in isolation, can provide the mistaken implication that such a connection was all that was truly available, when in fact a higher-capacity connection was available yet deemed unnecessary by school or library officials based upon a broader, more locally-informed evaluation of their educational mission, state or local standards, and available budgets and competing priorities. Subscription does not equal availability, in other words. The Commission must avoid creating an incomplete view of the state of broadband availability to schools and libraries, when a more accurate and broader data set would better inform policymakers as to the choices that must be made as to where to direct limited E-rate resources going forward. Using subscription as a proxy for availability will almost certainly lead to "false

---

[8] *Id.*

positives" with respect to the identification of locations lacking fiber access, and in turn potentially lead to the inefficient use of E-rate resources for outside plant deployment in areas where they are not needed. Such an outcome would then leave schools or libraries that face a true "unavailability" issue or that face an affordability issue from gaining access to the funds they need because those resources have been consumed on duplicative outside plant builds.

As to those choices, NTCA's message on E-rate has consistently been that to most cost-effectively deploy E-rate resources the Commission should focus on "solving" the "problem" that each individual school or library has, whether that be one of availability or affordability. NTCA thus encourages the Commission to expand its data gathering beyond those schools and libraries referenced in the EducationSuperHighway comments, *i.e.*, to all schools and libraries across the nation. A more comprehensive data collection is critical to account for the unique needs of the thousands of schools, libraries, and school districts and library systems serving rural and urban areas of all sizes. Such an inquiry as to availability should provide the Commission with a view into the options available to schools and libraries, and provide valuable insight into the network assets already in place – in many cases due to support available from various state and federal initiatives, including the High-Cost program[9] – to meet schools' and libraries' needs, now and in the future. It should also ensure that limited resources are not expended to solve a perceived "availability" issue that does not exist where those resources could instead "pay down" the price of services on existing networks where affordability serves as the barrier to an anchor institution securing a higher speed connection.

---

[9] These include the High-Cost universal service program and the Rural Utilities Service, as well as the Broadband Technology Opportunities Program ("BTOP") and the Broadband Infrastructure Program ("BIP") programs.

Finally, NTCA agrees that the Commission should not remove broadband connections of any speed from the ESL at this time. To be clear, NTCA strongly supports the Commission's efforts to ensure that each school or library has access to the speeds that it needs to serve its mission. NTCA members have made fiber-based connections available to a large number of the schools and libraries in the areas they serve,[10] and the association has stated in this and other proceedings that robust connections to anchor institutions must be a cornerstone of the Commission's broadband policy.[11] However, in those cases in which a T-1 connection is, for example, the only connection available to a school or library – or such a connection currently meets that institution's needs – that school or library should not be deprived of the availability of E-rate funds to support that connection.

---

[10] *See*, Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 16, 2013), p. 12. In those comments, NTCA discussed a member survey which found that of the 1,208 K-12 schools identified by NTCA members as located within their serving areas, 75% of those are already connected by Fiber-to-the-Premises ("FTTP") and another 11% are connected by Fiber-to-the-Node ("FTTN"). The fiber connectivity numbers for libraries were 46% for FTTP and 13% for FTTN. Of those connected schools, NTCA members reported offering maximum speeds of 912 Mbps (mean) and 100 Mbps (median), while the average speed purchased is 128 Mbps (mean) and 20 Mbps (median). Of those connected libraries, NTCA members reported offering maximum speeds of 248 Mbps (mean) and 40 Mbps (median), while the average speed purchased is 13 Mbps (mean) and 6 Mbps (median). *Id*. *See also*, letter from Michael R. Romano, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 13-184 (fil. Jul. 7, 2014) (providing survey from a June 2014 survey of NTCA's members, which found a similar percentage of schools and libraries connected to fiber).

[11] *See*, Comments of NTCA, WTA, ERTA, and NECA, *et al.* ("Rural Associations"), WC Docket No. 10-90, *et al*. (fil. Aug. 8, 2014), pp. 40-41 (stating that all would-be eligible telecommunications carriers and unsubsidized competitors should be required to offer robust connectivity to community anchor institutions).

II. ANY AMENDMENTS TO THE ELIGIBLE SERVICES LIST REGARDING DARK FIBER COMPONENTS SHOULD COME ONLY AFTER A THOROUGH EXAMINATION OF THE AVAILABILITY OF FIBER ASSETS ALREADY IN PLACE AND AN EXAMINATION OF THE E-RATE BUDGET

The Commission should not add dark fiber modulating electronics to the ESL at this time. In keeping with the Commission's recently enacted goal of "Maximizing the Cost-Effectiveness of Spending for E-rate Supported Purchases,"[12] the Commission should look, first, toward leveraging existing fiber assets already in place to provide high speed connections to schools and libraries. As noted above, NTCA members and many other carriers have made substantial progress in making high speed, fiber-based connections available to a large percentage of the schools and libraries they serve. Leveraging these existing assets will ensure that E-rate funds are used most efficiently and effectively. The Commission should, therefore, look first towards a comprehensive data gathering exercise that examines this "availability question," examining schools' and libraries' bandwidth needs and the availability of fiber-based network facilities already in place to meet those needs.

Moreover, the Commission recently sought comment on the E-rate budget in light of the *E-rate Modernization Order* adopted in July. Completing that process – which as NTCA stated in another context should include greater data gathering, along with awaiting a recommendation from the Federal-State Joint Board on Universal Service on how contributions reform might affect the budget[13] – should be a condition precedent to adding any services to the ESL. The fiscal implications of adding dark fiber modulating electronics to the ESL is not clear at this

---

12 *E-rate Modernization Order*, ¶ 50.

13 Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 15, 2014), pp. 1-7.

time, nor is the need to do so, particularly in the areas served by NTCA members that have made great progress in connecting their schools to fiber facilities today. Furthermore, it is not clear at this time what impact the *E-rate Modernization Order* will have on schools' and libraries' ability to secure high speed connections and to fully utilize them (via new support for internal connections). A full and comprehensive assessment of these impacts – and the overall E-rate budget along with the "availability review" proposed above – will enable the Commission to determine if additional items such as dark fiber modulating electronics should be added to the ESL in the future.[14]

Finally, it should be noted once again that in a true "total unavailability" situation – that is, a complete lack of access to *any* option for a high-capacity broadband connection – there may be a need to utilize E-Rate funds to support capital expenditures for deployment of physical

---

[14] Sprint asks the Commission to "explicitly note that because managed WiFi is different from internal connections components, managed WiFi may have different funding support requirements." Comments of Sprint Corporation, CC Docket No. 02-6, GN Docket No. 09-51, WC Docket No. 13-184 (fil. Sep. 3, 2014), p. 2. Sprint goes on to state that "[g]iven the difference in functionality and possibly in equipment ownership arrangements, managed WiFi may well have a different rate structure or higher cost per student than that associated with the purchase by the E-rate applicant of the hardware or software on a stand-alone (nonmanaged) basis. In any analysis of cost-effectiveness or PIA (Program Integrity Assurance) review, the Commission and USAC must recognize that different capabilities involve different prices, and refrain from direct comparisons of the costs of Category 2 managed WiFi versus stand-alone internal connection components." *Id*. NTCA supports this request to the extent that it asks the Commission to understand that any Universal Service Administrative Company cost-effectiveness review of an E-rate applicant's request for funding for "managed" services must ensure that it is not making "apples to oranges" comparisons in pricing. Indeed, as NTCA understands it, the service Sprint refers to is an integrated service that can have a higher per student cost but may offer the school or library a more efficient and cost-effective way to procure Wi-Fi services for its students or patrons. NTCA members report offering or planning to offer similar services. Thus NTCA supports Sprint's request to highlight that the Commission should avoid cost comparison exercises that may deem a particular service to not be cost-effective simply because certain services or the hardware or software associated with them could in theory be purchased at a lower per student price if done on a standalone basis. Also, NTCA supports Sprint's request that a funding request for such services can be made by an E-rate applicant via a single FCC Form 471 for the purposes of administrative ease. *Id*., p. 2.

outside plant network infrastructure, including access to dark fiber. However, it is critical that the use of E-Rate funds for such purposes come about and be approved only after a thorough review process.[15] Such an analysis is necessary to prevent deployment of redundant networks in areas where access to a high-capacity broadband network is already available. In areas where networks are already in place (either via private capital or as a result of or in combination with other federal programs), E-Rate should be focused primarily on ensuring schools and libraries can adopt, and can continue to procure, high-capacity broadband services provided over those existing networks and to obtain other much-needed items, such as robust internal connections. Most importantly, this will ensure that E-rate resources are available to address availability or affordability issues at as many schools and libraries as possible.

[15] For those institutions seeking to use E-Rate support for the construction of physical broadband outside plant infrastructure (presumably only in areas where other federal programs are not already at work deploying such networks), rigorous safeguards should be adopted. These safeguards should at a minimum include: (1) a robust, public challenge process that requires an E-Rate applicant seeking funding for any physical outside plant infrastructure construction to demonstrate that they have sought out existing providers or access to existing network facilities and that no such facilities are in fact available to support broadband services that are needed in the reasonably foreseeable future; (2) a 60-day period in which an existing provider can demonstrate that their network facilities are capable of connecting, within 180 days, the school or library in question with broadband services meeting the target speed; (3) a meaningful matching funds requirement that is the same for the purchase of services from an existing provider and the deployment of broadband infrastructure; and (4) a bright-line prohibition on using revenues from excess capacity as a source of matching funds.

Respectfully Submitted,

NTCA–THE RURAL BROADBAND ASSOCIATION

By: *<u>/s/ Michael R. Romano</u>*
Michael R. Romano
Senior Vice President – Policy
mromano@ntca.org

Brian Ford
Regulatory Counsel
bford@ntca.org

4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

September 18, 2014