

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Focused Comment on E-rate Modernization

WC Docket No. 13-184

PUBLIC NOTICE COMMENTS OF THE
NATIONAL EDUCATION ASSOCIATION

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PUBLIC NOTICE COMMENTS OF THE NATIONAL EDUCATION ASSOCIATION

The National Education Association (“NEA” or “Association”) is pleased to offer these comments in response to the Federal Communications Commission’s (Commission’s) Public Notice for which the Commission’s Wireline Competition Bureau (Bureau) seeks 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 commends the Bureau for seeking further comment on (a) how best to focus E-rate funds on high-capacity broadband, especially high-speed and internal connections, (b) whether or how the Commission should begin to phase down or phase out support for traditional voice services in order to focus more on broadband, and (c) whether there are demonstration projects or experiments that the Commission should authorize as part of the E-rate program.

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.

DISCUSSION

In the *E-rate Modernization NPRM*, the Commission proposed three goals for the E-rate Program: (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning; (2) maximizing the cost-effectiveness of E-rate funds; and (3) streamlining the administration of the program.² The NEA supports the Commission’s goals and firmly believes a modernized E-rate Program must be realistically funded to ensure the sustainability of the program. In addition, the NEA stressed the continued equitable distribution

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 *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304 (2013) (*E-rate Modernization NPRM*).

of limited E-rate funds. To that end, the NEA will focus its comments on proposed modernizations that would improve the existing E-rate Program in addition to those that would undermine the Program’s intent and seriously risk the future sustainability. The NEA will also raise a key proposal glaringly missing from the Commission’s Public Notice – discussion of adjusting the E-rate Program’s funding cap.

At the outset, on behalf of the students and educators in our classrooms – the beneficiaries – 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, moving forward, 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. While we appreciate the Commission’s interest in exploring potential changes to the existing Program, especially those that alleviate administrative burdens for applicants and beneficiaries, changes made in the name of “modernizing” will not be the panacea. 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 firmly believes that additional, sustained investment in the E-rate Program is required to bolster the broadband infrastructure of our nation’s schools.³

Equity and the E-rate Program

The Commission’s Public Notice very briefly touches upon the concept of equity. In the 24 page Public Notice, “equitable” appears once in a section header and the word “equity” is altogether absent. 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. Throughout our comments, the NEA will draw attention to proposals that reduce or abjectly remove equity from equations on how to prioritize and distribute funds to applicants. The primary measure of determining an equitable distribution of E-rate funds is based on poverty

³ 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. *See also* “Learning First Alliance Calls for Increase to E-Rate Funding Cap”, Learning First Alliance, August 12, 2013, *available at* http://learningfirst.org/sites/default/files/assets/E-RateFundingIncreaseStatement_FINAL.pdf

(calculated by applicants' percentage of students that qualify for free and reduced school lunches), also taking into account geographic isolation. Specifically, the E-rate program's calculation of poverty captures concentrations of poverty. It is the concentration, not the mere presence, of poverty that has been well documented to negatively impact student learning and achievement. Concentration of poverty is reflected in the percentage of eligibility, as opposed to a straight count of students in poverty. This distinction – the E-rate Program's historic use of concentration of poverty (versus a per-pupil calculation) – is critical to the continued distribution of E-rate funds in a truly equitable way.

Focusing Funding for High-Capacity Broadband

The Commission proposes several ideas to narrow E-rate Program eligible services to those that support high-capacity broadband connectivity to schools. This shift away from the Program supporting beneficiaries' recurring expenses for basic telephone and other "legacy" services in Priority One (P1), and placing a near-term priority distributing up to an additional \$2 billion in "found" E-rate funds on internal connections and related Priority Two (P2) eligible technologies, are proposed under the thinly veiled act of "modernizing" the Program.

"Modernizing" the E-rate to reflect prioritized support of 21st century services squarely places basic telephone services (Plain Old Telephone Service or POTS) on the chopping block, for the sake of modernization. The NEA cautions against the notion that eliminating POTS will result in significant savings. P1 demand is based largely on broadband today. In fact, the cost of POTS has become a fixed cost in the last several years for our schools. Even with the trend toward broadband, schools must subscribe to services that depend upon POTS when broadband-supported services fail (e.g. when electricity goes out), for safety and emergency response services including 911, security systems, elevators, among others. The exponential demand in P1 growth over the years has not been due to POTS, as these costs have essentially leveled off or declined over the past years; it is a result of increased demand for high-speed broadband. Eliminating POTS-based services from E-rate Program eligibility may make a great "modernization" sound bite; however, doing so will not significantly reduce demand for P1 in a significant way.

The Commission also seeks comment in response to it, "...free[ing] up an additional \$2 billion over the next two years to help support broadband networks in our nation's schools and

libraries.” The NEA appreciates the Commission’s “freeing up” funds from existing E-rate coffers, especially in light of E-rate demand having reached more than double the capped funds available. The NEA would appreciate greater specificity and transparency from the Commission to understand exactly from where the additional \$2 billion in E-rate funds were freed up. The NEA raises the concern that a portion of the additional \$2 billion may have resulted from E-rate funds being held back from applicants and not distributed in prior years.

The NEA also questions directing additional one-time funds for P2 services. While the Commission explains earmarking the “found” funds for P2 services stating “...deployment of equipment inside school and library facilities is as essential to comprehensive broadband service at a given location as the high-speed connectivity to that facility,”⁴ However, at the close of the FY2014 application filing window for E-rate, the funds requested for P1 services had already reached \$2.643 billion, and requests for P2 were at \$2.225 billion. It is important to note that these figures will only go up, as additional applications still need processing. Given demand, the Program will be unable to meet all demand for P1. Devoting additional funding to P2 will deny some beneficiaries’ support for on-going P1 services. In addition, an additional infusion of \$2 billion to P2 over a two-year period will not meet even half of what is being requested by applicants for next fiscal year. The Commission’s plan to direct the “found” E-rate funds for P2 services does not help schools that do not have sufficient high-speed connectivity to their facilities; thus not helping reach President Obama’s “99 in 5” goal either. While the NEA is grateful additional funding will be distributed to beneficiaries, we do wish to express concern that a one-time infusion of funds earmarked for P2 services do not solve, nor alleviate in a significant way, the on-going inability of the E-rate Program to meet beneficiary demand.

Focusing Funding for High-Capacity Broadband – Access to Funding

The Commission considers ways to determine eligibility for and distribution of an additional \$2 billion from existing E-rate coffers over a two-year period to fund P2. Currently, P2 funding adheres to a “two-in-five” rule that allows eligible beneficiaries to apply two years out of every five. We appreciate the Commission considering how best to prioritize funding by discount level (i.e. using concentration of poverty, a key component of the program), while rotating eligibility to schools and libraries. The Commission identifies a “one-in-five” year

⁴ E-rate Modernization PN para. 8.

option. However, we are unconvinced that data supports a one-in-five alternative would be any more beneficial than the existing two-in five year rule; therefore, not supporting nor justifying the programmatic change.

The Commission also considers another alternative that would rotate eligibility for P2 funding so that once an applicant received funding for P2 they would be ineligible until all other applicants have the opportunity to receive funding also. While this method may appear to be the fairest way to distribute P2 funding, it would prove completely unpredictable for applicants. It would be nearly impossible to anticipate when an applicant may be eligible again, making technology planning, let alone budgeting, extremely challenging. This option, while seemingly simple, simply will not work for our beneficiaries.

While we appreciate the Commission's proposals to distribute the one-time \$2 billion for P2, the NEA proposes an alternative distribution method. We propose that those applicants who have received funding for P2 within the last five years be ineligible to apply for the one-time P2 funds. In addition, we support a modest decrease of applicants' eligible discount rate no more than ten percent. This approach meets two objectives: 1) it would prevent a small number of applicants from disproportionately using available funding and provide more schools and libraries an opportunity to receive and use P2 funds; and, 2) it would keep intact the existing equity-based discount matrix that uses concentration of poverty as a key metric.

In response to the Commission's inquiry into "front-loading" P2 funding and determining level of funds available for each services priority, the NEA believes doing so would segment existing E-rate Program funds. If you segment, or split, the annual E-rate fund between P1 and P2 by using a percentage or specific dollar amount allocation, you undermine the Program. For example, siphoning funding from P1 that support ongoing connectivity to the Internet, to ensure funds will be available for P2, would result in robbing some existing beneficiaries' of their much needed discounts for P1 services. The mainstay of the E-rate Program – its priority to P1 services to support ongoing connectivity to the Internet – would be compromised. Inevitably, in these challenging economic times, some schools and districts would no longer receive discounts for ongoing connectivity because funds would be "earmarked" for P2.

The NEA is concerned that the Commission's overt interest in "one-time" funding to P2 is a signal of how they would like to proceed - setting the stage for segmenting annual E-rate

Program funds moving forward. However, increasing funding for P2 does not solve, nor replace, applicant need for ongoing connectivity support, or P1. Even if recurring broadband connectivity costs fall over time, we believe demand will continue to increase.

Other Methods to Prioritize Internal Connections Funding

The Commission seeks comments on proposals on how to prioritize P2 funding distribution to beneficiaries. One such proposal the Commission seeks comment on is a simplified version of a distribution method advocated by Funds for Learning.⁵ Specifically, the proposal calls for estimating the total pre-discount requests that could be supported by E-rate funds. Then “...the Commission would arrive at an amount to be allocated to each applicant.”⁶ The NEA does not support any formula funding proposals that diminish or eliminate using the concentration of poverty as a primary metric. Any proposals that calculate a distribution of E-rate funds by a “per-pupil” or “per-capita” allocation the NEA will strongly oppose. Such allocations outright strip a formula from being based on concentration of poverty, giving priority to the neediest applicants, from the equation – therefore eliminating the *equitable* distribution of E-rate funds from the Program. In addition, per-pupil or per-capita allocations harm small, rural and geographically isolated schools and districts; arguably those who have the greatest need for E-rate Program discounts.

The Commission also considers whether adopting an annual funding allotment or block grant for all applicants and eliminating poverty as a metric, would provide a level of certainty to potential beneficiaries. Essentially, any school or library that applies to the E-rate Program, no matter their level of need, would receive funding. The NEA strongly believes that any level of funding certainty would come at the expense of nearly all beneficiaries. Again, stripping the existing E-rate Program of prioritizing applicants based on need (i.e. equitably), in favor of providing all applicants independent of need (i.e. equally), a per-pupil or per-capita funding allotment, is akin to turning the E-rate Program into block grant program. Making such a significant, fundamental change to the E-rate Program is extremely troubling because it would not be based on technology or broadband capacity needs.

⁵ E-rate Modernization PN para. 22.

⁶ E-rate Modernization PN para. 21.

Consortia Applications

The Commission seeks input on consortia applicants by asking whether they should be prioritized.⁷ The NEA interprets this question to mean should consortia application processing be prioritized by the Universal Service Administrative Company (USAC). In addition the Commission seeks comment on: 1) encouraging the formation of consortia; and, 2) encouraging existing consortia to add members.⁸ The NEA believes that consortia have the potential to provide benefits to participants and USAC. With respect to USAC, while currently more complicated to process, consortia applications reduce the overall number of applicants to process. Also, by prioritizing processing of consortia applications, USAC is able to more quickly distribute a greater percentage of E-rate Program funds to beneficiaries.

With respect to E-rate applicants, the NEA believes that participating in consortia applications should be encouraged; as administrative burdens may be reduced and purchasing power may increase. However, the NEA strongly cautions against penalizing applicants who do not participate as part of a consortia application. For example, schools or school districts that acquire additional applicants will likely also acquire additional workload. In addition, an individual school or district's measure of poverty is averaged when joining a consortium, potentially resulting in a less equitable distribution of limited funds to the neediest, highest poverty schools. Also, those schools districts with higher E-rate eligible costs due to location or service availability (or lack of competition), will have a much more difficult time finding consortia partners as they bring with them the unwanted burden of driving up the overall costs of the consortia application. While we agree with the Commission's goal to seek more efficiency with less complexity, ultimately, penalizing those who do not apply as part of a consortium, for any reason, undermines a key cornerstone of the E-rate Program – equity.

Last-Mile High-Capacity Broadband Deployment

The Commission seeks input on how to address the challenges facing some schools and libraries that responded to the NPRM, that even with E-rate support, cannot afford to pay their

⁷ E-rate Modernization PN para. 23.

⁸ E-rate Modernization PN para. 35.

share of deploying last-mile high-capacity broadband.⁹ In response, the NEA observes that the already oversubscribed E-rate Program would be further strained if said schools and libraries sought E-rate support for costly last-mile broadband deployment projects. The fact is schools and libraries seek P1 funding to help with their ongoing, recurring connectivity costs. The NEA asks the Commission to consider the possibility of coordinating with other, existing programs that may be better suited (and funded) to support last-mile build-out. Rather than viewing programs that support broadband build-out as silos, perhaps the Commission should consider how it could coordinate across federal programs, departments or agencies. A more holistic approach to utilizing resources to help schools and libraries with last-mile build-out would likely result in a more efficient use of limited resources.

The NEA strongly opposes the Commission undertaking a limited initiative, with existing P1 funds, to incent schools and libraries to seek last-mile broadband deployment. Such an initiative would be a carve-out from existing P1 funds from which anticipated total applicant demand will exceed the total E-rate funds available for FY2014. The NEA opposes reducing in any way E-rate Program funding to beneficiaries for carve-outs or “set-asides,” which only reduce existing funds to current beneficiaries.

Data Collection and Transparency

In response to the Commission’s renewed request for input on applicant data collection, it is evident that there is a great desire for more transparency with regard to the data collected by USAC. While the NEA and other beneficiary organizations have advocated for years for greater transparency and access to data collected by USAC, we have also advocated for more data collection to help inform policy decisions. For example, having transparency of data on funded services linked to connectivity helps construct a more accurate picture of cost (e.g. cost of providing a gigabyte of connectivity). In addition, data on existing broadband connection speeds to schools and libraries – to the building, the classroom and to the student – help inform capacity need. Such data will also help dissuade the overbuilding of high-capacity broadband.

⁹ E-rate Modernization PN para. 26.

Ensuring Equitable Distribution

The Commission seeks input on how to best distribute support among applicants for high-speed connections to schools and libraries and asks how to best identify those who do not have access to high-speed connections, how to determine the best projects to fund, and how to prioritize applications. The NEA harkens back to the need for data collection on existing broadband speeds to schools and libraries – to the building, the classroom and also to the student. Currently, accurate data collection on broadband speed is challenging because many schools do not have the expertise to measure connectivity and typically rely on vendors to assist them with procuring sufficient, or adequate, broadband connectivity. Therefore, it is difficult to determine broadband connectivity need. And, even if it were collected, that data point alone does not reflect local need.

With regard to connectivity, there should be recognition that “one size” does not necessarily fit all and that imposition of metrics as mandates could lead to inefficiencies and investment in unused capacity (i.e. overbuilding). There should be flexibility to assess the current and future needs of particular schools in particular locations (e.g., rural, geographically isolated, or low density population areas) and allow adjustment of targets. Nor should connectivity standards become a ceiling on investment and connectivity. Advances in technology and the capacity demands of applications used by schools (e.g., high-definition video) will require growth in capacity over time. Connectivity standards, or more aptly “targets,” should not become a limitation on E-rate support for greater connectivity metrics where justifiable and cost effective.

With respect to the Commission considering alternative methods for determining which projects would be “best” to fund, and seemingly dismissing need, the NEA is quite concerned. Other methods to determine the best projects to fund quickly devolve into competition, and resemble a competitive grant program. Competitive grant programs result in a limited handful of “winners,” with the majority of applicants being “losers.” There is nothing equitable about reducing a historically successful E-rate Program into a competitive grant program in an attempt to “modernize” it. Therefore, the NEA strongly cautions against abandoning the existing discount matrix.

Encouraging Cost-Effective Purchasing

The Commission seeks comment on how to encourage or facilitate more cost-effective or bulk purchasing. In response, the NEA would like to highlight state contract pricing already exists. In many cases, there is already a consortia or Educational Service Agencies (ESAs) agreement addressing pricing. The NEA believes the Commission should continue to support and encourage consortia or ESA purchasing, but not attempt to prioritize it for the purposes of allocating funds. Encouraging consortia purchasing should not be required nor incentivized at the risk of raising costs of other consortia members. In addition, schools or districts that do not participate in bulk or consortia purchasing should not be penalized; as they, too, have sought competitively bid prices. Ultimately, it is transparency with purchase prices that would drive competition, thus likely drive down costs.

Technology Planning

With regard to whether the requirement to submit a technology plan when applying for P1 funds should be re-instituted, the NEA believes it should not.¹⁰ The Commission's decision to eliminate the need for technology plans for P1 funds reduced administrative burden for applicants, without detriment to the Program. The NEA advocates for retaining the current requirement that P2 applications must be accompanied by a technology plan, as it fosters increased planning for and more efficient use of P2 services.

Data Collection and Transparency

The Commission seeks comment on how best to collect data on the speed and quality of school and library connections. We advocated for requiring an online submission Item 21 via the USAC submission process. Online submission of Item 21 data provides the most efficient means reporting data collected and will help provide transparency on pricing. In addition, the Commission should consider adding a line to Form 471 requesting schools and libraries to specify the speed of connection to the building, classroom and student.

¹⁰ E-rate Modernization PN para. 36.

Streamlining the Administrative Process

The NEA will expand on previously submitted comments to the Commission in response to for additional comment on streamlining the administrative process.¹¹ As stated in our Initial Comments, we continue to advocate for a multi-year application process. We believe that a multi-year application process for recurring services would reduce the burden of work on applicants in subsequent years, as well as reduce administrative burden and costs at USAC. In addition, the option of applying for a multi-year contract for recurring services arms applicants with the ability to negotiate with carriers on a fixed, longer-term price, with the potential to realize greater “buying power.” Also, schools will have the ability to budget plan further into the future with greater certainty.

The Commission also seeks specific input on desired changes to invoicing deadlines, as current deadlines can be difficult to meet. The NEA acknowledges that with some larger projects it is very difficult to meet the current deadlines. Therefore, we agree with the idea of granting new broadband deployment projects 18 months to meet invoicing deadlines, with the option of an extension being granted for extenuating, documented circumstances.

Demonstration Projects

The NEA appreciates the Commission’s request for thoughts on local decision-making with regard to demonstration projects. However, that appreciation does not translate into support for demonstration projects. Demonstration projects, no matter how meritorious, result in skimming funds from an already oversubscribed E-rate Program. A demonstration project is a set-aside, a special interest carve-out, from existing fixed funds. Any available funding, including one-time funding, should be directed to alleviating unmet E-rate applicant demand. With limited, fixed resources we need to direct funding in such a way that reaches the most applicants of the Program, rather than diverting existing funds for new purposes. We should meet current applicant demand via the E-rate Program *before* investigating new issues or investing in new initiatives. Demonstration projects will also lead to the rise of a new class of consultants – for which E-rate funds should NOT be eligible. The NEA applauds the

¹¹ Comments of the National Education Association, WC Docket No. 13-184 (filed September 16, 2013).

Commission for pursuing simplifying and streamlining the administration of the Program. However, demonstration projects will only add complexity.

In addition, the NEA is opposed to the Commission pursuing any demonstration projects with existing E-rate funding. 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 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.

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 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.

Given this challenge, it is surprising that the Commission does not seek further input into the issue of sufficient E-rate funding, or lack thereof. It is no secret that since 1998 the E-rate Program had been capped at \$2.25 billion. In 2010, only after years of advocacy on behalf of beneficiaries, did the cap receive an adjustment for inflation, bringing the current cap for FY2014 to \$2.43 billion. In other words, the E-rate Program – a program whose applicant demand was more than double what was available in FY2013 – has not even kept up with inflation. When one considers developments in technology and increased bandwidth demands over the last fifteen years alone, the level at which the E-Rate is currently funded is quite simply outdated. And of course that trend continues.

The NEA is unconvinced of the Commission's desire to address the Program's chronic underfunding and is troubled by some of the changes the Commission is considering under the

guise of “modernizing the E-rate.” The Commission’s overt interest in modernization, without also addressing the Program’s chronic underfunding, is simply akin to “rearrange 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.

Given the global environment in which our country’s students must be prepared to compete, 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 has never been greater.¹² 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.¹³ 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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¹² 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/>

¹³ 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.