

**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

FURTHER NOTICE OF PROPOSED RULEMAKING
COMMENTS OF THE
NATIONAL EDUCATION ASSOCIATION

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The National Education Association (NEA) is pleased to offer these comments in response to the Federal Communications Commission’s (Commission’s) recently issued *Modernizing the E-rate Program for Schools and Libraries Report and Order and Further Notice of Proposed Rulemaking* (FNPRM).¹ The NEA has been a supporter and strong advocate of the E-rate program (“program”) since it was established in 1997 and commends the Commission for seeking further comment on the funding needs of the E-rate program to meet current broadband capacity demands while planning for the future needs of schools and public libraries. Specifically, the Commission seeks additional input via the FNPRM in four areas, including: 1) data regarding the gap between schools’ and libraries’ current connectivity and specific connectivity targets recently adopted; 2) specific information on how much funding is needed to bridge those gaps; 3) further comment on the per-student and per-square foot budgets adopted for internal connections for funding years 2015 and 2016; and, 4) comment on the sufficiency of the significant funding freed up by the reforms already adopted – and the extent to which focusing the program on broadband frees sufficient funding to meet long term connectivity and capacity needs.

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, including students.

Following the Commission’s July 11, 2014 approval to modernize the E-rate program, a final Report and Order (“E-rate Order” or “Order”) was published and included the FNPRM. The NEA is delighted the Commission seeks further comment to address the funding needs of the E-rate Program. In addition, the NEA applauds the Commission for implementing changes to the program via the Order including: allocating \$2 billion in freed up funds to be dispersed to

¹ See *Modernizing the E-rate Program for Schools and Libraries Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 14-99, (July 23, 2014) (“E-rate Order”) (“FNPRM”)

beneficiaries in FY2015 and FY2016; incorporating potential cost-saving purchasing measures and other program processes; and, ensuring *priority* for Priority 1 Internal Connections – for which the Commission has relabeled “Category 1 (C1) – was protected in the Order. The NEA is pleased to offer the following comments in response to the request for additional input related to funding of the E-rate program.

E-rate Fund Must Be Permanently Increased to Ensure Capacity Targets Are Met

A sufficiently-funded E-rate program is essential to meeting the goals and targets set forth by the Commission. The program has been instrumental in providing the bridge across the digital divide for countless students by providing them access to the internet and the opportunity to develop the skills needed to compete in the digital age. In fact, the program has been so successful that it has helped ensure that nearly all our nation’s classrooms are connected to the Internet. The Commission also noted that “High-speed broadband, to and within schools, connects students to cutting-edge learning tools...preparing them to compete in the global economy.”²

The NEA has long believed that additional, sustained investment in the E-rate program is required to bolster the broadband infrastructure of our nation’s schools. Without high-capacity broadband connectivity and sufficient capacity that can support multi-user school environments, educators and students will not be able to engage in enhanced learning, distance education, use existing learning applications, nor respond to the increasing shift to internet-dependent methods of assessment. The fact is, even with the recent approval of measures intended to foster cost savings to be implemented in funding year 2015, demand for E-rate program support continues to outpace funds available for distribution from the Universal Service Fund. Demand for funds has exceeded the original 1998 cap of \$2.25 billion in every year since the beginning of the program.

The NEA applauds the Commission for its recent adoption of measures to maximize the cost-effectiveness of spending for E-rate supported purchases by adopting transparency measures to encourage sharing of cost and connectivity data, encouraging (but not requiring) consortia purchasing, and engaging providers to offer the lowest corresponding price to E-rate

² E-rate Order, WC 13-184, 2.

beneficiaries. In addition, the NEA is delighted with many of the Commission's measures to help make the E-rate application process and other E-rate processes faster, simpler and more efficient.

The NEA has articulated in past comments filed with the Commission that applicant demand is a relevant factor and data point that highlights the gross underfunding of the program. In FY2012, program requests reached an all-time high of \$5.2 billion, roughly double the amount available. In addition, the NEA believes applicant demand does accurately account for true demand as much anecdotal evidence strongly suggests: 1) that several schools have either stopped applying for E-rate discounts because program funds are insufficient to fulfill any Priority 2 (P2) or Category 2 (C2) internal connections requests; or 2) schools have simply not taken on the E-rate program application process because of its level of complexity and technical knowledge required. Nonetheless, the documented demand of \$5.2 billion is not surprising as the E-rate program has barely been increased above the original FY1998 funding level of \$2.25 billion. Even with the modest, one percent inflationary adjustment to the E-rate starting in FY2010, the program's current annual funding level was only at about \$2.43 billion for FY2013. In fact, the E-rate program has not been caught up to the level it should be at today if an annual inflationary adjustment had been applied at the beginning of the program. In essence, the E-rate program's support to schools and libraries has hovered near the value reflected in 1998 dollars.

The NEA commends the Commission for working to identify cost-saving measures to attempt to stretch limited E-rate dollars further. While it is too soon to understand the impact of the potentially cost-saving measures implemented by the Order for FY2015 and FY2016, the NEA believes it is difficult to conceive of a scenario where cost-savings alone would "right-size" the E-rate fund. The NEA appreciates the attempt to rely upon data, however the simple truth is there is much data that will not be available, or even predictable with any degree of certainty, for some time. The NEA does believe that the program's history of beneficiary applicant demand outpacing funds available since the outset of the E-rate is a relevant factor to be considered. In fact, program demand – or the inability to quantify what is believed to be suppressed demand – is a good example. 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. Of course, unsurprisingly, that trend continues.

The NEA highlighted a timely example of the integration of technology in schools in our filing on September 16, 2013, in response to the Commission’s E-rate Public Notice (PN). The NEA referenced the upcoming implementation of the Common Core standards and the subsequent shift to higher level assessments that include a significant online component.³ Starting with the 2013-2014 academic year, schools began the transition to conducting student testing online through the piloting of the PAARC and Better Balanced assessments. This transition exponentially increased demand for internet capacity in schools. This shift is not a stand-alone occurrence – schools and school districts are integrating more digital resources which will only continue to drive the demand for bandwidth. 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 sequester on education budgets, the need for the E-rate program support to provide sustainable, on-going access to high-capacity broadband is vital.

The NEA reiterates its recommendation that the E-rate program cap be permanently doubled and funded, with continued annual inflationary adjustments. The NEA believes the time is now for the Commission to address the long-overdue issue of adjusting E-rate funding. A permanent doubling of the E-rate cap would increase support for bolstering broadband capacity while also positioning the program to help support long-term sustained broadband connectivity, ensuring capacity needs are met. To do less than double the E-rate funding cap would be short-sighted and the Commission would miss this prime opportunity. The NEA firmly believes that if the Commission undertakes the same level of determination it did when making recent policy changes, it can successfully double the E-rate funding cap.

Data regarding gap between schools’ current connectivity and targets

The NEA has long requested additional data be collected on the E-rate Program and be made available to the public and program participants. Published during an open call for comments per the FNPRM, the Commission released a staff report that seemingly draws upon data that was collected and not shared with the beneficiary community.⁴ Without sufficient data, or at least access to the most up-to-date data the Commission possesses, we find yet another

³ The Common Core standards are a state developed set of common standards that are being adopted in almost all of the states that include new assessments with a significant online component.

⁴ See *FCC Wireline Competition Bureau & Office of Strategic Planning And Policy Staff Report*, August 12, 2014, (WC Docket No 13-184).

request for data from beneficiaries frustrating and insincere. In addition, the NEA believes that while several of the Commission's program changes to realize cost-saving measures are worthwhile, there continues to be a significant underestimation of the funds required to reach *and sustain* school connectivity capacity targets.

Sufficiency of significant funding freed up by the reforms already adopted

The NEA believes that along with an underestimation of funds required to ensure our schools have sufficient broadband capacity, there is also an overestimation of the saving that will be realized by reforms adopted in the recent Order. Notwithstanding, it behooves us to point out that the impact of the changes made to the E-rate program will take years, not months, to produce results and data to inform decision-making. At a time when demand for E-rate program funds is roughly double, it is difficult to imagine how one would legitimately argue the E-rate program is not well overdue for a permanent funding increase.

The NEA raises objection to the Commission's recent elimination of Voice over IP (VoIP) as an eligible service for discount. Most surprising to beneficiaries was the Commission's decision to eliminate VoIP as an eligible service from the program. VoIP is voice communication over the Internet. Given the Commission's emphasis on focusing E-rate program modifications to make the program broadband-based, we are perplexed and disappointed that VoIP has been eliminated from E-rate discount eligibility. The E-rate program has always been a program that allowed for local decision-making – recognizing that beneficiaries know best their unique environs and needs. The Commission's surprise decision to eliminate VoIP erodes local decision-making and leaves beneficiaries in a tough position – as they now are left to quickly figure out how to fund VoIP services without having anticipated or budgeted for losing it because it is broadband-based. The NEA recommends that the Commission reinstitute VoIP to the program's eligible services list.

Further comment on per-student budgets for internal connections for 2015 and 2016

In our reply comments from November 8, 2013, submitted in response to the Commission's Public Notice, the NEA cautioned against several policy changes under consideration by Commission. One such program change the NEA strongly cautioned against was moving to a per-student funding allocation for schools (and per-square foot for libraries) to distribute E-rate funds. However, the Order implements such a change by directing \$2 billion in

existing freed up E-rate funds to be allocated to C2 internal connections limited to Wi-Fi only, on a pre-discount per-student basis of \$150. Applicants are required to come up with a minimum 15 percent funding match or greater, depending on need.

The NEA was greatly disappointed with this change per the Order. In our reply comments we firmly stated that we believe it is imperative to the program's core principle of *equitably* distributing discounts on advanced telecommunications and Internet services to applicants *based on need* are not eroded. We also stated and believe that implementing artificial formulas by articulating a "floor" (e.g. \$9200 for applicants classified as rural") or a ceiling (i.e. maximum \$127.50 per student, post-maximum discount) *does not* champion treating applicants in an equitable manner. In addition, the artificial per-capita dollar amounts instituted by the Commission for C2 do *not* adequately take into account the vast variability of costs for beneficiaries, especially those beneficiaries in rural or geographically isolated areas. It is a fact that fewer students result in higher per-pupil costs. The one-size-fits-all funding floor of \$9200 for C2 for rural applicants demonstrates a lack of recognition in the variation of costs across the rural locales in the country (e.g. costs in the rural northeast versus costs in vastly geographically isolated rural areas in the west, etc.). To be clear, the NEA opposes the implementation of a per-pupil formula for the distribution of funds for C2 internal connections and for all E-rate funds generally.

In fact, the NEA strongly disagrees with the Commission's claim in the Order that a per-pupil allocation is a way to, "provide more equitable funding for broadband in schools and libraries."⁵ Implementing artificial formulas does not treat applicants in an equitable manner. Spreading discounts "more evenly" across applicants is a move in the direction toward *equal* funding – not *equitable* funding. The NEA wishes to remind the Commission of a key hallmark of the E-rate program – which is to provide discounts to schools and libraries with the greatest need. The E-rate program should not become mini-block grants awarded to any applicant for which funds are distributed equally. Applicants with the greatest need, based on concentration of poverty among other metrics, would ultimately lose out. The greatest fear to likely become a reality, should the Commission continue to promote equality over equity, is our nation's neediest schools and libraries will not receive enough discounts to maintain connectivity to the Internet,

⁵ *E-rate Order*, WC 13-184, 76.

let alone ensure sufficient high-speed broadband capacity. And, the schools with the least need or no need at all will “cash in” by applying for discounts. In other words, spreading more funding to increase the number of schools and students served by the E-rate program is critical. The critical question is does doing so meet the needs of those schools and their students? Too little discount funding for everyone, regardless of need, was not the intent of the program and should not be its future. Raising the funding cap on the E-rate is the most logical and equitable solution to providing more schools and students with the sufficient broadband capacity needed for 21st century teaching and learning.

Although the Commission changed “Priority” to “Category” per the E-rate Order, the NEA strongly believes a hallmark of the program is its prioritization of Priority 1/Category 1, as was intended by the program’s architects when it was enacted by law in 1996. In this vein, the NEA is delighted the Commission had the foresight to protect P1/C1 and ensure that all applicant demand for discounts to support ongoing connectivity and capacity to schools will be met before funds are allocated to PII/CII internal connections. Commissioner Rosenworcel articulated this point well when she wrote in her statement in response to the Order,

Over the next two years, we will test out a new way to distributing funding for internal connections to support Wi-Fi connectivity in classrooms and libraries....However, I am mindful that any efforts to make Wi-Fi more broadly available cannot come at the expense of E-rate funding that keeps schools and libraries connected to basic broadband. So I thank my colleagues for agreeing with me that all requests for connectivity to schools and libraries under Priority 1 or Category 1 will be honored before Wi-Fi funding is made available. This is important.⁶

The NEA strongly recommends the Commission continue to uphold this policy moving forward.

The NEA would like to take this opportunity to highlight that Wi-Fi in the classroom is only as good as the school’s external connection is to the Internet. If a school lacks funding to subscribe to sufficient broadband capacity or support internal Wi-Fi, the Commission’s test

⁶ See *Statement of Commissioner Jessica Rosenworcel Approving in Part, Concurring in Part*, WC Docket No. 14-99, (July 23, 2014), pg. 168.

earmarking internal connections funding for Wi-Fi will not help those schools. In essence, the Commission has opted to earmark funding for schools that already have sufficient broadband capacity and will benefit from Wi-Fi investment – i.e. a classic case of giving more to the “haves” while leaving those “without” behind. In addition, the distribution of funds via a per-pupil formula does not solve the overarching challenge facing the E-rate – which is lack of sufficient funding. For the last two years, for, FY2013 and FY2014, the Universal Service Administrative Company (USAC) - Schools and Libraries Program has committed E-rate funding to Priority 1 because the Commission opted to roll forward (i.e. rollover) funds for those two years. This decision resulting in no funding for P2 requests for two years. This approach achieved two objectives: 1) it created a greater sense of urgency to push or “sell” a grand plan to devote \$5 billion over five years to internal connections Wi-Fi; and, 2) by holding funds the Commission was able to amass the “freed up” existing E-rate funds for a \$2 billion investment in the two-year Wi-Fi test implemented in the Order. The NEA has referred to this approach as “rearranging the deck chairs” because these actions do not actually address the underlying challenge to the program – which is a systemic lack of permanent funding.

The NEA is nonetheless grateful for additional funding to beneficiaries. However, we do wish to express concern that a one-time infusion of funds earmarked for Wi-Fi does not solve, nor alleviate in any significant way, the on-going inability of the E-rate program to meet applicant demand. Therefore, the NEA strongly advocates for allowing the two-year test to run its course and a per-pupil allocation for schools and a per-square foot allocation for libraries *not* be made a permanent change to the program. In addition, if the Commission takes it upon itself to make a permanent funding increase to the E-rate program, that increase should not be earmarked or bifurcated between C1 and C2, or applied to any additional categories or demonstration (pilot) projects.

Technology, Beneficiary and Provider Neutrality are Cornerstones of E-rate

The NEA offers the following comments on the importance of maintaining program neutrality – of technology, beneficiaries and providers – to uphold the legislative intent of the program, protect and promote equity, and to ensure the neediest applicants receive E-rate discounts, especially in rural areas. For the purpose of these comments, the NEA will use the example of demonstration or pilot projects to demonstrate why the E-rate program should remain

neutral. The NEA assumes that demonstration or pilot projects proposed in the Commission's NPRM and PN are still under consideration.

The NEA is already on record stating that no matter how meritorious, pilot projects result in skimming funds from an already underfunded E-rate program. The NEA believes that a pilot project is a set-aside, a special interest carve-out from program funds. In addition, *any available funding* – including additional permanent funds resulting from a funding cap increase – *should be directed to alleviating unmet E-rate applicant demand* and not to funding pilot projects. The E-rate program's statutory purpose is to provide telecommunications and advanced Internet services to eligible schools and public libraries.

Over the years, the NEA, along with other beneficiary members, worked to ensure the program was not pilfered for unintended uses. Devices (e.g. tablets, laptops, etc.), training, technical assistance, consulting or pilot projects – all fall well beyond the statutory intent of the program and purview of the Commission. Of continued concern to the NEA is the potential for E-rate funds to be made eligible to fund fiber-specific capital construction pilot projects. The NEA is concerned that consideration is being given to temporarily or permanently allocating E-rate funds (i.e. creating another category within the E-rate program), for pilot projects, especially a pilot or pilots for fiber construction.

E-rate funding for fiber construction pilot projects raises specific concerns for the NEA including: violating the E-rate program's neutrality stance – technology and beneficiary neutrality; and, falling well outside the purview of the program. In addition, the NEA is concerned that preference may be given to one type of beneficiary (over another) for fiber pilots. If one type of E-rate beneficiary sought one-time funds to support a fiber pilot, the NEA would view such a project as not only beyond the scope of the E-rate Program, but also akin to a grant.

The NEA is already on record in comments filed in response to the PN stating the already oversubscribed E-rate Program would be further strained if E-rate beneficiaries sought E-rate support for costly last-mile fiber-specific construction pilot projects. In addition, carving out a set-aside within the program to fund fiber construction pilots disadvantages those applicants for which fiber may not be the best, most economical, or even viable available for their locale – most likely those in rural or geographically isolated areas. Also, awarding specific grants for fiber construction (or for any other purpose) via the E-rate program would create a handful of

“winners” while all other applicants would lose out. Of great concern to the NEA is how the Commission would determine, for example, which rural schools and libraries to invest in fiber construction while all other rural applicants would be left behind. The fact is schools and libraries seek E-rate discounts for ongoing, recurring connectivity costs and support for internal connections, in line with the statutory intent of the program. The NEA strongly recommends the Commission *not* fundamentally change the purpose of the E-rate program by allocating E-rate funds for pilot project grants such as for fiber construction.

The NEA also raises objection to the Commission distinguishing among types of E-rate program applicants (public schools, private schools, rural schools and libraries, public libraries, etc.). Distinguishing among types of applicants – for example, carving out a separate funding stream for public libraries – serves to tip the scale of equity against all types of applicants. A beneficiary-specific E-rate program award would require the Commission to discriminate among applicants to award E-rate funds. This method is not only inequitable (not based on need), it would be a significant diversion from the inclusive purpose of the E-rate Program, as established and championed by Senators Rockefeller and Snowe, along with Senators Exxon and Kerrey, as part of the U.S. Telecommunications Act of 1996. The NEA purports it would be outside the purview of the Commission to determine one type of E-rate beneficiary as more meritorious than another.

With regard to providers, the NEA wishes to reiterate the need for continued E-rate program neutrality in this arena also. The NEA believes the E-rate Program should not arbitrarily route procurement of broadband services to any specific “type” of provider over another – such as a research and education (R&E) network, a rural commercial telecommunications provider, or an established national commercial telecommunications provider, among others. The determination for where services are to be procured should continue to be based on local need and competitive bidding processes already in place. The NEA advocates for maintaining technology neutrality with regard to service providers and is opposed to the Commission advocating for or rewarding or encouraging E-rate Program applicants from selecting (or limiting selection) among providers based on provider type.

E-rate program neutrality for technology, beneficiary and provider adheres to the program’s long heralded position of neutrality. As articulated in past comments filed with the

Commission, the NEA believes that maintaining a technology and provider-neutral stance with regard to services to E-rate beneficiaries champions local decision-making. The NEA strongly believes that local decision-making should continue to be a key tenet of the program – ensuring beneficiaries can efficiently and cost-effectively procure the services that meet their specific needs – especially those in rural and geographically isolated areas.

Conclusion

In conclusion, 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 changes to the program via the recent Order, especially those that alleviate administrative burdens for applicants and beneficiaries, not all the changes made in the name of “modernizing” were helpful or equitable. 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 strongly encourages the Commission to focus a potential draft Order on permanently increasing the E-rate program’s annual funding. The NEA also believes that on the heels of the most significant policy changes implemented in the history of the E-rate program, any additional policy changes made to the program would be premature. Right-sizing the E-rate program’s funding to provide schools and libraries the discounts they need to meet the Commission’s broadband capacity targets is paramount.

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. The NEA strongly recommends that the E-Rate Program cap be doubled and funded, with continued annual inflationary adjustments.

Respectfully submitted,

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