

Before the
Federal Communications Commission
Washington, DC

In the Matter of:)	
)	
Modernizing the E-rate Program for Schools and Libraries)	WC Docket No. 13-184
)	
Connect America Fund)	WC Docket No. 10-90

Petition for Waiver
on behalf of
Boulder Valley School District
Samuelson-Glushko Technology Law & Policy Clinic (TLPC)

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May 16, 2016

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Summary

As part of ongoing efforts to bridge the Homework Gap, the Boulder Valley School District (BVSD) respectfully requests a waiver of the cost allocation rule in 47 C.F.R. § 54.504(e) to allow school districts to provide Internet access to students at home using E-rate funded broadband networks when (1) the school has not requested more services than are necessary for on-campus educational purposes; (2) no additional costs will be incurred by the Universal Service Fund (USF); and (3) the majority of at-home use will be during hours in which classes are not in session¹.

As provided in 47 C.F.R. § 1.3, the Commission may waive its rules for good cause. Generally, a waiver is appropriate when (i) special circumstances warrant deviation from the general rule; and (ii) such deviation will serve the public interest. A waiver, as explained below, is necessary to ensure the school district receives its full eligible E-rate discount and that students receive access necessary to participate in class.

The Commission has recognized the Homework Gap as a key piece of the digital divide and encouraged parties both public and private to take steps to bridge this gap. If a housing authority or other entity is willing to pay for the equipment needed to connect a school district's network to students living in low income housing, the school district can provide Internet service to those students at no additional cost to the USF, thereby furthering the Commission's goals in closing the Homework Gap.

The current cost allocation rule discourages schools from pursuing Homework Gap solutions by requiring school districts to forfeit E-rate funds even when a project would incur no additional costs. By granting this waiver request, the Commission will incentivize school districts to participate in projects providing Internet service to students in need. This waiver furthers the Commission's

¹ For example, most use will be after school hours since students are generally not home during the school day. However, a student who is absent due to illness or any other reason, would still have access to the network while at home during the day.

goals for the E-rate program by ensuring that more students have access to Internet connections at home to complete online homework, increasing the efficiency of already existing school bandwidth, and streamlining the application process for E-rate funds—all without any additional costs to the USE.

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Discussion

Located in the foothills of the Rocky Mountains, the Boulder Valley School District (BVSD) stretches from the peaks of the Continental Divide to the suburbs of Denver. BVSD is comprised of 56 schools over 500 square miles, approximately 30,000 students, more than 4000 employees, and serves the Colorado communities of Boulder, Gold Hill, Jamestown, Lafayette, Louisville, Nederland, Superior, Ward, and parts of Broomfield and Erie. Given the diverse socio-economic makeup of BVSD's constituents, BVSD has an interest in seeking this waiver, as it can provide an opportunity to enhance broadband connectivity at home for many of our students currently lacking broadband access.

Also in Boulder, Colorado, Colorado Law's Samuelson-Glushko Technology Law and Policy Clinic (TLPC) offers students an interdisciplinary, hands-on opportunity to develop and execute strategic advocacy initiatives aimed at making an impact on cutting-edge technology policy issues in the public interest. The TLPC strongly believes in bridging the digital divide both locally and nationally. While the requested waiver would have a visible impact in Boulder Valley, the Homework Gap is a nationwide issue, and the granting of our request would benefit many communities that may seek to implement innovative solutions to bridge the digital divide for students.

We request a waiver of the cost allocation rule in 47 C.F.R. § 54.504(e) to allow school districts to provide Internet access to students at home using E-rate subsidized broadband networks in cases where student families do not already have Internet access at home and the service imposes no additional cost to the Universal Service Fund (USF).² Waiver of this rule is appropriate as special circumstances require deviation from the rule and such deviation will serve the public interest.

² Off-campus use is listed as an ineligible service under the FY 2015 and FY 2016 eligible services list (ESL). *See Modernizing the E-rate Program for Schools and Libraries*, Second Report and Order, WC Docket No. 13-184, 30 FCC Rcd. 9923, 9936 (Sep. 11, 2015), ("*2016 Eligible Services List*"), <https://www.fcc.gov/document/fy-2016-e-rate-esl-order>; *Schools and Libraries Universal Support Mechanism, A National Broadband Plan for Our Future*, 29 FCC Rcd. 13404, 13418, *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184 (Oct. 28, 2014), <https://www.fcc.gov/document/wcb-releases-2015-e-rate-eligible-services-list>.

Section I of this request outlines the types of situations where the proposed waiver would allow schools to provide Internet to students in need at no additional cost to the USF. Section II explains how granting the waiver would further the USF program mandate and serve the public interest. Section III notes that the Wireline Competition Bureau (Bureau) may address this request on delegated authority pursuant to 47 C.F.R. § 0.291.³

I. The Commission should waive the E-rate cost allocation rule for school districts to extend self-provisioned network service to homes of students where such an extension would require no additional cost to the USF.

As the Universal Service mechanisms undergo modernization processes and the Commission takes on the task of transitioning networks to Internet Protocol (IP), the fundamental need for connectivity has never been more apparent. Entities public, private, federal, and local, are searching for ways to close the digital divide and ensure universal access to our global online community.

As part of this effort, some school districts have the opportunity to provide Internet access to students residing in affordable housing without requiring any additional E-rate reimbursement. For example, many school districts with self-provisioned networks have expansive fiber networks that connect all schools within the district. Often a school district's fiber network may run near a housing complex that houses some of the school district's low-income students. Many students living in affordable housing live without Internet connections at home and have difficulty completing homework that requires access to online materials.⁴

By partnering with local housing authorities or other entities willing to purchase the equipment needed to connect school districts' networks to affordable housing complexes, districts could

³ All references to the "Commission" refer to the Wireline Competition Bureau on authority delegated by the Commission.

⁴ As of 2014, 7 in 10 teachers assign students homework that requires an Internet connection. *See*, Statement of Commissioner Jessica Rosenworcel, *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, 29 FCC Rcd. 15538, 15634, WC Docket No. 10-90, 13-184, (Dec. 19, 2014) ("Statement of Commissioner Rosenworcel").

provide service to students residing in those complexes with no need for additional E-rate funding. In partnership with local housing authorities, school districts may already have the necessary equipment and maintenance procedures in place to support service to students' homes.

Further, because school districts' networks are designed to ensure that students and teachers have enough capacity during the school day, the school district will necessarily have enough bandwidth to provide Internet service to students living in low-income housing after school hours. Demands on a school district's network dramatically decrease after school hours, leaving excess capacity unused in the evening. Broadband networks do not switch off at the end of the school day, so school networks often lie fallow during non-school hours. Instead of leaving these networks largely unused during non-school hours, schools could use excess bandwidth to provide Internet access to students that need it to complete assignments or work on group projects at home.

However, because the vast majority of these networks have been funded, at least in part, by E-rate, any use of those networks must comply with on-campus requirements. Currently, any off-campus use of E-rate funded services or equipment must be cost-allocated so that no E-rate funds pay for these uses.⁵

Even though extending access as described above would come at no extra cost to the USF, the current cost allocation rule would require a school district to cost-allocate service for the portion of the network that runs to the complex and remove that portion from the district's request for E-rate funding. The school district would incur additional costs in determining what portion of the total service used benefits the students at home, wasting considerable employee time and money. For example, if a school district received \$37,500 annually in E-rate reimbursement for the lit fiber to serve its 30,000 students, 60 of which reside in a public housing unit nearby, the cost of extending service to those 60 students at home after school—the cost that the school would need to allocate

⁵ See *2016 Eligible Services List*, 30 FCC Red at 9936.

from its E-rate funding request provided that all last mile, equipment, and maintenance costs were covered by non-E-rate funds—would be \$37.50.⁶ However, regardless of whether the district extended that service or not, it would require the same amount of service and capacity for its traditional educational purposes. While the addition of programs like this would not cost the USF any more money, allocated costs could be prohibitive to schools.

Even if a school district could determine what portion of its service is allocated to off-campus use, a school district may choose not to serve students at home in fear that if it makes a mistake, it would jeopardize E-rate funding. Even perfect compliance with the cost allocation requirements may raise the risk of Universal Service Administrative Company (the Administrator or USAC) auditing and the resulting additional cost and delay.

These delays can cause serious problems. As most school districts maintain a conservative budget and are reliant on annual E-rate funding, the cost allocation requirement has a prohibitive effect on such potential projects seeking to close the Homework Gap.⁷ The cost allocation rule currently provides an incentive for school districts *not* to make home Internet access available to students who need it most, because doing so could put the district's E-rate funding in jeopardy.

Granting this waiver request will incentivize school districts to provide Internet service to students without Internet access when districts are able to do so at no additional cost, since those districts will not have to cost-allocate the portion of the network that serves these homes from the districts' funding requests. This will prevent school districts from losing E-rate funding and make the current cost allocation rule less burdensome, thereby incentivizing these school districts to provide service to students who desperately need an Internet connection at home.

⁶ 60 students out of 30,000, eligible for access to the network 50% of the time is equal to one percent of its \$37,500 refund.

⁷ The Homework Gap is largely defined as the difference between the number of students who are assigned homework requiring an Internet connection and the number of students who have a reliable Internet connection at their home with which to complete the homework. *See, e.g.*, Statement of Commissioner Rosenworcel, 29 FCC Rcd. at 15634.

II. Waiving the cost allocation rule under these circumstances is consistent with USF program goals.

The Commission has repeatedly recognized that the Homework Gap poses a demonstrable threat to the education of low-income students.⁸ As broadband becomes increasingly vital to students, public and private entities are exploring ways to bridge this gap and ensure that students have the Internet access they need to participate in digital learning. Waiving the cost allocation requirement under scenarios like those mentioned above aligns with the public interest goals of the Commission and the USF.⁹

In the *Second E-rate Modernization Order*, the Commission adopted three goals for the E-rate program:

1. Ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries,
2. Maximizing the cost-effectiveness of spending for E-rate supported purchases, and
3. Making the E-rate application process and other E-rate processes fast, simple and efficient.¹⁰

Projects conducted under this waiver would directly address each of these three goals by ensuring Internet access to low-income students, maximizing the cost-effectiveness of self-provisioned school district fiber networks, and easing the administrative burden on schools when they apply for E-rate funding—all at no additional cost to the USF.

⁸ See “Detroit’s Digital Divide”, FCC Blog, Chairman Tom Wheeler and Commissioner Mignon Clyburn, (Oct. 27, 2015) (“The bottom line is this: If you are not connected to the Internet in 2015, you cannot participate fully in our economy and our democracy. This not only hurts the disconnected. Failure to fully optimize the talents of millions of Americans also hurts our nation.”), <https://www.fcc.gov/blog/detroit-s-digital-divide>; see also Statement of Commissioner Rosenworcel, 29 FCC Rcd. at 15634 (“If you are a student in a household without broadband, just getting homework done is hard. Applying for a scholarship is challenging”).

⁹ See 47 U.S.C. 254(b) (stating that the Commission shall base its policies for the advancement of universal service on the principal that “access to advanced telecommunications and information services should be provided in all regions of the nation,” and that the Commission may consider other principles “appropriate for the protection of the public interest...”).

¹⁰ Summary of the E-rate Modernization Order, <https://www.fcc.gov/page/summary-e-rate-modernization-order>. See generally *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, 29 FCC Rcd. 15538, WC Docket No. 10-90, 13-184, (Dec. 19, 2014) (“*Second E-rate Modernization Order*”).

Granting this request for waiver will encourage school districts to provide broadband services to students in need, thereby increasing computer literacy and school performance for our nation's disadvantaged youth. Ensuring affordable access to support digital learning requires more than just helping schools afford broadband. As Commissioner Clyburn has stated, connectivity is “a three-legged stool where all pieces need to be present for success: broadband at school, broadband in the library and broadband at home. Absent one leg, the stool does not stand.”¹¹ As education moves increasingly into the digital space, Internet access outside the classroom has become vital, and granting this waiver request will make a new tool available to address this goal.

Under the current regime, some self-provisioned capacity goes unused during after-school hours while many students struggle to find Internet access to complete their homework. The school day no longer stops when the final bell rings and, as the Commission has recognized, students without Internet access at home are at a marked disadvantage to those with access.¹² While ensuring the ability of schools and libraries to provide sufficient capacity must be the primary goal of the E-rate program, schools that can provide access to unconnected students at home without detriment to the fund should be allowed and encouraged to do so.

Furthermore, granting this waiver will encourage efficient spending so that E-rate dollars are able to reach more students at no additional cost to the E-rate fund. Though the E-rate cost allocation rules are kept in place to limit over-extension of the fund, in the situations addressed by this waiver they end up inhibiting the most cost-effective use of E-rate funded services and equipment. Self-provisioned networks are not like electric wiring; broadband capacity cannot be switched off like a light to save money. Nor can schools operate with overall lesser capacity, as they

¹¹ Statement of Commissioner Mignon L. Clyburn, *Second E-rate Modernization Order*, 29 FCC Rcd. at 15631; *see also* Statement of Commissioner Rosenworcel, 29 FCC Rcd. at 15634, (“[G]oing forward we need to recognize that expanding opportunity goes beyond the school doors. We can’t forget that in a world where students rely on online resources and digital content in the classroom, they also need access to broadband when they go home”).

¹² *See, e.g.* Statement of Commissioner Jessica Rosenworcel, 29 FCC Rcd. at 15633.

must have sufficient broadband to serve students and teachers during normal school hours. By granting this waiver, the Commission will be able to optimize use of E-rate supported purchases while reaching closer to its goal of universal connectivity.

While the ban on off-campus use aims to limit the fund in important ways, it also limits the efficiency of already provisioned fiber. The Commission's waiver of the cost allocation rule when a network would serve students without Internet connections at home at no additional cost to the USF will enable schools with self-provisioned networks near low-income student housing to optimize their use of E-rate funds and further the Commission's public interest goals. This waiver will convert a disincentive to an incentive to promote the goals of broadband connectivity to all Americans.

Moreover, projects envisioned by this waiver request will maximize the cost-effectiveness of spending by encouraging community participation. During the recent E-rate modernization proceedings, the Commission repeatedly recognized and solicited participation from state, local, and private entities in partnership with USF efforts.¹³ Public housing authorities as well as state and local entities will have incentives to invest in build-out and equipment when assured that regular service for such projects is available. When projects like this are undertaken, these communities will have a greater stake in the efficacy and overall success of E-rate supported networks.¹⁴ Projects under this waiver will encourage cost-effective spending through greater state and local participation at no extra cost to the E-rate fund.

Finally, by waiving the cost allocation rules under such circumstances, the Commission will help streamline the E-rate application process by alleviating unnecessary delays at USAC. Schools and

¹³ See "Detroit's Digital Divide" ("There are multiple barriers to broadband adoption: from cost, to digital literacy to the fact that many Americans do not see the Internet as relevant to their lives. If we ever hope to achieve universal broadband in the United States, we will need a concerted effort from private sector leaders, the public interest community, and government officials at all levels.").

¹⁴ See *Second E-rate Modernization Order* at 29 FCC Rcd. 15538, 15562, para. 59, ("To the extent that another governmental entity pays a portion of the cost of the E-rate supported service, that entity will have an incentive to ensure that the applicant engages in cost effective purchasing").

USAC administrators alike should have a clear understanding that the projects envisioned by this waiver are consistent with E-rate goals. Requiring cost allocation for these projects would be overly burdensome, confusing, and complicated—often prohibitively so—for everyone involved. The administrative costs of such unnecessary allocation and review would far outweigh any modicum of savings that might be gained in these instances. The Commission should grant this waiver request, as it will make the E-rate program less complex, more efficient, and less wasteful.¹⁵

III. The Wireline Competition Bureau may address this waiver request on delegated authority.

47 C.F.R. § 0.291 specifically grants the Chief, Wireline Competition Bureau (the Bureau) delegated authority to perform all Bureau functions, which are codified in § 0.91. Section 0.91(b) states that the Bureau is to “Act on requests for interpretation or waiver of rules.” An issue specific to Wireline matters is only to be decided by the Commission when it presents “novel questions of law, fact or policy which cannot be resolved under outstanding precedents and guidelines.”¹⁶

This Bureau has the delegated authority to address this waiver request, as this request does not present novel questions of law, fact or policy. The Commission can grant waiver of rules where good cause is shown, specifically where special circumstances warrant deviation from the general rule, and such a deviation will serve the public interest.¹⁷

The Commission has previously granted a waiver with respect to § 54.504 where such required conditions were met. In 2001, the Commission granted the State of Alaska waiver from provisions of § 54.504 to allow rural Alaskans use of E-rate funded networks at home where no local access

¹⁵ See, e.g., Statement of Commissioner Michael O’Rielly, *Second E-rate Modernization Order*, at 29 FCC Red. 15538, 15641.

¹⁶ 47 C.F.R. § 0.291(a)(2).

¹⁷ 47 C.F.R. § 1.3. See *Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008) (citing *NE Cellular Tele. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990)).

was available and where such provision would not come at an additional cost to the USF.¹⁸ The Alaska Order allows Alaskan schools and libraries to provide access to residents in need at times where the facilities do not require their full network capacities. The Alaska waiver differed from this request by stipulating that only rural, remote Alaskans could benefit from the services; however, the policy considerations are very similar. The Alaska Order emphasized efficient use of existing Internet resources to serve underserved communities, with a public interest goal of furthering the Commission's efforts to encourage Internet adoption.¹⁹ As our request's special circumstances and public interest policy goals align with those of the Alaska waiver, this waiver is not so novel as to warrant a full Commission vote.

Conclusion

As the Commission has recognized, the Homework Gap poses a demonstrable threat—not just to the lives of American students, but to our economy and society at large. This waiver offers one solution in what must be a multifaceted approach to bridging the Homework Gap. In accordance with the Commission's waiver standard, these projects promote USF goals and maintain costs consistent with current USF funding. For these reasons the Commission should waive 47 C.F.R. 54.504(e) to allow schools and school districts to provide Internet access to students at home in cases where those students do not already have Internet access, and where such service would come at no additional cost to the Universal Service Fund.

Respectfully submitted,

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¹⁸ See *Petition of the State of Alaska for Waiver for the Utilization of Schools and Libraries Internet Point-of-Presence in Rural Remote Alaska Villages Where No Local Access Exists and Request for Declaratory Ruling*, Order, CC Docket No. 96-45, 16 FCC Rcd. 21,511 (Dec. 3, 2001) (Alaska Order).

¹⁹ *Id.* at ¶¶ 9-11.

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