



PUBLIC NOTICE

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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON PETITIONS REGARDING OFF-CAMPUS USE OF EXISTING E-RATE SUPPORTED CONNECTIVITY

CC Docket No. 02-6; WC Docket 10-90; WC Docket No. 13-184

Comment Date: November 3, 2016

Reply Comment Date: December 5, 2016

With this Public Notice, the Wireline Competition Bureau (WCB) seeks comment on two petitions, one filed by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation (MBC) and other petitioners,¹ and the other filed by the Samuelson-Glushko Technology Law & Policy Clinic on behalf of the Boulder Valley School District. The petitions request that the Commission allow E-rate subsidized broadband networks to be accessed by students at home for educational purposes, without an obligation on the E-rate applicant to cost allocate the portion of the traffic attributable to off-campus use.²

The Communications Act requires telecommunications providers to offer discounts to eligible schools and libraries for educational purposes.³ To implement this provision, as part of creating the E-rate program, in the *Universal Service First Report and Order*, the Commission required schools and libraries seeking E-rate support to certify that, among other things, requested services would be used solely for “educational purposes.”⁴ The Commission explained that the certification requirements were intended to encourage accountability on the part of schools and libraries.⁵ Subsequently, the Commission clarified the meaning of “educational purposes” as “activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons.”⁶

¹ The Microsoft Corporation and MBC petitioners also include Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom.

² The E-rate program is more formally known as the Schools and Libraries Universal Service Support program.

³ 47 U.S.C. § 254(h)(1)(B).

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997) (*Universal Service First Report and Order*). This requirement was originally codified in section 54.504(b)(2)(ii) of the Commission’s rules. See 47 CFR § 54.504(b)(2)(ii) (1998). The Commission later codified the requirement that applicants must also certify on their FCC Form 471 that services obtained through discounts from the E-rate program would be used solely for educational purposes. See *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808, 15831, para. 68 (2004).

⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9076, para. 570.

⁶ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, paras. 17-18 (2003) (*Schools and Libraries Second Report and Order*); 47 CFR § 54.500(b). In the E-rate-applicable portions of the Communications Act,

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In 2010, the Commission revised the E-rate rules to allow schools to open their facilities, when classes are not in session, to the general public to utilize services and facilities supported by E-rate.⁷ In doing so, the Commission recognized that such use would “expand the benefits of using E-rate funds” and that it was “in the public interest to allow greater use of government-supported services and facilities during those times [when schools are out of session], particularly because that enhanced access comes at no additional cost to the E-rate program.”⁸ Additionally, the Commission found that community use rules were “consistent with the overarching goals of universal service to promote access to telecommunications and information services...”⁹ As part of adopting the community use rules, the Commission required that E-rate supported services “must, in the first instance, be used for educational purposes, and students, educators, and other school personnel shall always get priority in the use of these resources.”¹⁰ Additionally, the Commission stressed that “[a]ny community use of the services purchased under the E-rate program must be incidental and not increase overall costs to the E-rate program.”¹¹

The Commission’s E-rate rules now require schools to certify, among other things, that “services the school, library, or consortium purchases at discounts will be used primarily for educational purposes.”¹² Services and facilities funded by E-rate for uses that are not primarily for educational purposes are not eligible for E-rate support, and off-campus use must be cost allocated out of applicant funding requests.¹³

However, the Commission has recognized the importance of broadband connections off-campus for students and library patrons. For instance, in 2010, the Commission established the Learning On-The-Go (also known as E-rate Deployed Ubiquitously (EDU) 2011) pilot program to investigate the merits and challenges of wireless off-premises connectivity services for mobile learning devices.¹⁴ The pilot

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supported services are services “to elementary schools, secondary schools, and libraries for educational purposes,” and advanced services are “to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries.” 47 U.S.C. §§ 254(h)(1)(B) and (h)(2)(A) (emphasis added). See also *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9209, para. 20 (affirming that the Commission’s clarification regarding educational purposes “is consistent with statutory mandates that the purpose for which support is provided be for educational purposes in a place of instruction.”) (emphasis added).

⁷ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18774, para. 22 (2010) (*Schools and Libraries Sixth Report and Order*).

⁸ *Id.* at 18775, para. 23.

⁹ *Id.* at 18775, para. 23; see also 47 U.S.C. 254(b).

¹⁰ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18775, para. 25.

¹¹ *Id.* at 18775, para. 24.

¹² 47 CFR 54.504(a)(1)(v).

¹³ 47 CFR § 54.504(e). The cost allocation rule requires that “[i]f a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between the eligible and ineligible components” and that “[t]he delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service.” 47 CFR § 54.504(e)(1). The E-rate Eligible Services List specifically requires that off-campus use be cost allocated out of a funding request. See, e.g., *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9936 (WCB 2015). See also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11398, para. 321 (2013).

¹⁴ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18783-87, paras. 41-50.

dedicated approximately \$9 million for funding year 2011 to 20 initiatives ranging from off-campus access to e-textbooks for students; to connectivity for netbooks for students living in remote, isolated areas; and to access to flexible, online education programs for home-bound students unable to attend classes because of medical challenges.¹⁵

We now seek comment on two petitions that seek to allow schools and school districts to leverage existing E-rate supported services to allow Internet traffic originating at students' homes to be directed to and carried over E-rate supported networks without creating an obligation on the applicant to cost allocate out the portion of the traffic attributable to off-campus use.

In the petition filed by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom,¹⁶ petitioners seek clarification that if they use TV White Spaces ("TVWS") technology to extend an eligible school's E-rate-covered Internet access service to the homes of students in and around those schools for educational purposes, they do not have to cost allocate out of their requests for E-rate support the traffic that originates off-campus. In the alternative, petitioners seek a waiver of the Commission's rules to permit them to implement a pilot project as described in the petition.¹⁷

The petitioners propose to use TVWS technology to extend the broadband access of 18 schools in rural Charlotte County and Halifax County public school districts to the homes of eligible students who live in those districts.¹⁸ According to petitioners, because the participating school districts are so remote, it is costly for broadband providers to serve these communities, and as a result, nearly half of the students do not have access to the Internet at home.¹⁹ They claim that the cost of implementing the TVWS connections between students' homes and schools in the school districts, including all related equipment, will not require E-rate funding.²⁰ Additionally, in order to comply with E-rate's Children's Internet Protection Act requirements and produce controls for non-educational use, students will have specialized TVWS last-mile access points that will be provided with outside funding. MBC has also agreed to not increase charges for the non-metered use of the E-rate discounted bandwidth. Thus, petitioners are not seeking E-rate support for the TVWS technology. However, petitioners request that the Commission issue a declaratory ruling clarifying that the "[participating schools'] E-rate funded internet access service may be used in conjunction with their project" and that their proposal does not violate the Commission's E-rate rules.²¹

¹⁵ *E-rate Deployed Ubiquitously 2011 Pilot Program*, WC Docket No. 10-222, Order, 26 FCC Rcd 9526 (WCB 2011).

¹⁶ Joint Petition for Clarification or, in the alternative, Waiver of Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom, WC Docket No. 13-184 (filed Jul 7, 2016), <https://ecfsapi.fcc.gov/file/60002098542.pdf> (Charlotte and Halifax County Petition).

¹⁷ Charlotte and Halifax County Petition at i.

¹⁸ *Id.* at 2.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 7 & n.14. The petitioners estimate the initial capital budget for this project to be \$1.1 to \$1.4 million, depending on final design and coverage areas. Funds for the project are provided through state grants and contributions from project partners. The Virginia Tobacco Commission is providing \$500,000 in funding with Microsoft and MBC providing the remaining needed funds and in-kind contributions. *Id.*

²¹ *Id.* at 14, 16.

In the alternative, petitioners seek a waiver of the Commission’s E-rate rules to the extent necessary.²² Petitioners argue that “uncertainty about the Commission’s E-rate rules makes schools wary of deploying new technologies to extend the reach of supported services.”²³ Petitioners also assert that “much of this uncertainty springs from the novelty of TVWS technology which, technically, extends an on-premises internet connection through wireless connectivity rather than requiring a student to obtain such a connection via a cellular network.”²⁴ In support of their waiver request, petitioners argue that their proposed pilot project will “provide an opportunity for empirical analysis of the effects on students’ educational performance and experience derived from improvements in home broadband availability,” and will “allow the Commission to examine whether such a program could and should be expanded beyond the limited geography described [in the petition].”²⁵

In the petition for waiver filed by Samuelson-Glushko Technology Law & Policy Clinic on behalf of Boulder Valley School District (Boulder Valley),²⁶ the petitioner seeks a waiver of the cost allocation rule in order to allow students at neighboring housing authorities to get Internet access through Boulder Valley’s E-rate subsidized, self-provisioned fiber network after school hours, without Boulder Valley having to cost allocate for the amount of service attributable to off-campus use.²⁷ According to the petition, local housing authorities or other entities would pay the cost of connecting the affordable housing complexes to Boulder Valley’s network. The Boulder Valley Petition takes the position that the E-rate supported network and Internet access costs for after-hours use are minimal and arguably immaterial because providing access to the district’s broadband network after-hours will not incur an additional charge.²⁸ They explain that because the school district’s network is designed to ensure that students and teachers have enough bandwidth during school hours, there will be enough bandwidth after-hours to meet students’ needs without incurring additional cost.²⁹

Boulder Valley also argues that granting such a waiver will further the goals of 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 [universal service fund].”³⁰

We seek comment on these and any other issues raised by the above-referenced petitions.

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

²² *Id.* at 14, 16.

²³ *Id.* at i & 3.

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4.

²⁶ Petition for Waiver of Samuelson-Glushko Technology Law & Policy Clinic on Behalf of Boulder Valley School District, WC Docket Nos. 13-184, 10-90 (filed May 16, 2016), <https://ecfsapi.fcc.gov/file/60001843683.pdf> (Boulder Valley Petition).

²⁷ Boulder Valley Petition at 3.

²⁸ *Id.*

²⁹ *Id.* at 4.

³⁰ *Id.* at ii.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
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This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.³¹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Wireline Competition Bureau, Federal Communications Commission, (202) 418-7400 (voice) or cara.voth@fcc.gov.

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³¹ 47 CFR §§ 1.1200 *et seq.*