

*Before the*  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matters of	
Schools and Libraries Universal Service Support Mechanism	CC Docket No. 02-6
Connect America Fund	WC Docket No. 10-90
Modernizing the E-rate Program for Schools and Libraries	WC Docket No. 13-184

**COMMENTS OF THE BENTON FOUNDATION**

The Benton Foundation<sup>1</sup> respectfully submits these comments in response to the *Public Notice* by the Wireline Competition Bureau released on September 19, 2016, in WC Docket 13-184.<sup>2</sup> The Commission seeks comment on whether it should clarify and/or waive E-rate rules to allow off-campus use of existing E-rate supported broadband connectivity, in response to a petition filed by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation (MBC) and other petitioners<sup>3</sup> and another petition filed by the Samuelson-Glushko Technology Law & Policy Clinic on

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<sup>1</sup> The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

<sup>2</sup> Wireline Competition Bureau Seeks Comments on Petitions Regarding Off-Campus Use of Existing E-rate Supported Connectivity, Public Notice, WC Docket Nos. 13-184, 10-90 (Sept. 19, 2016).

<sup>3</sup> 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 July 7, 2016), <https://ecfsapi.fcc.gov/file/60002098542.pdf> (Charlotte and Halifax County Petition).

behalf of the Boulder Valley School District.<sup>4</sup> The Benton Foundation urges the Commission to grant both petitions.

The Benton Foundation works to ensure that media and telecommunications serve the public interest and enhance our democracy. Benton pursues this mission by seeking policy solutions that support the values of access, diversity, and equity, and by demonstrating the value of media and telecommunications for improving the quality of life for all. Benton is also a member of the Commission's Consumer Advisory Committee and of the Committee's broadband subcommittee. Benton has long advocated for ubiquitous telecommunications access for all citizens.

The Commission should grant the petitions to advance home broadband connectivity for educational purposes. The petitioners' projects will help the Commission achieve important goals of the E-rate program by helping to bridge the Homework Gap in low-income and underserved communities at no additional cost to the E-rate fund. Furthermore, a broad clarification or waiver of the E-rate rules will enable local schools and school districts to develop innovative localized solutions to bridge the digital divide.

Implementation of the E-rate program pursuant to Section 254(h)(1)(B) requires the Commission to harmonize its actions with the broadest goals of the Communications Act. The basic framework of the Commission's mission is set forth in Section 1 of the Act, 47 U.S.C. §151, which establishes the FCC

[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, . . .<sup>5</sup>

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<sup>4</sup> 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).

<sup>5</sup> 47 U.S.C. §151.

Grant of the petitions will advance those objectives.

**I. The Commission should allow off-campus use of existing E-rate supported broadband connectivity to achieve important program goals at no additional cost.**

Both of the petitioners' projects promote the goal of E-rate: ensuring affordable access to high-speed broadband to support digital learning in schools. In the Charlotte and Halifax County Petition, the petitioners propose to use TV White Space (TVWS) technology to enable students to connect to their schools' broadband Internet access service at home.<sup>6</sup> The pilot project will serve approximately 3,500 students who currently lack broadband access at home<sup>7</sup> and allow them to "collaborate, complete homework assignments, enhance their digital literacy, and otherwise leverage the educational benefits of on-premises E-rate funded connectivity outside of school hours."<sup>8</sup> The availability of broadband connectivity at home could further increase educational opportunities for students in these counties where the college graduation rates remain at half the national average.<sup>9</sup> Similarly, the Boulder Valley Petition envisions a project where a housing authority or other entity would pay for the necessary equipment to extend a school district's broadband access service to students at home.<sup>10</sup> As a result, students will be able to complete their homework online and participate in digital learning.<sup>11</sup> Therefore, both projects further the E-rate program's goal of bridging the digital divide by making high-speed broadband connectivity more affordable to schools and their students.

Expanding broadband Internet access at home is, indeed, critical to close the "Homework Gap" – one of the greatest hurdles to success faced by students in low-income or underserved communities. In today's digital learning environment, 7 out of

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<sup>6</sup> Charlotte and Halifax County Petition at 2-3.

<sup>7</sup> *Id.* at 7.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> *See id.* at 10.

<sup>10</sup> Boulder Valley Petition at 2.

<sup>11</sup> *See id.* at 5-6.

10 teachers assign homework that requires broadband access.<sup>12</sup> Students without broadband at home are thus severely disadvantaged in completing routine assignments. These students stand by schools' wireless hot spots to download study guides on smartphones or resort to school buses or fast-food restaurants with free wi-fi to complete their homework.<sup>13</sup> The lack of connectivity also prevents students from applying for scholarships and jobs.<sup>14</sup> Approximately 5 million households with school-age children lack high-speed Internet access at home and fall into the Homework Gap.<sup>15</sup> In the words of Commissioner Rosenworcel, the Homework Gap is "the cruelest part of the new digital divide."<sup>16</sup> Thus, extending E-rate funded broadband connectivity to students' homes could be a step toward bridging the Homework Gap and the digital divide.

Moreover, petitioners' projects advance these important E-rate program goals at no additional cost to the E-rate fund. The pilot program proposed in the Charlotte and Halifax County Petition will not impose any additional cost on the E-rate fund.<sup>17</sup> Financial support will come from Microsoft to purchase the necessary equipment for TVWS technology.<sup>18</sup> The project described in the Boulder Valley Petition also incurs no additional cost to the E-rate fund, as additional necessary equipment will be purchased by housing authorities or other entities.<sup>19</sup> Schools will already have sufficient

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<sup>12</sup> Jessica Rosenworcel, FCC, Commissioner, Statement of FCC Commissioner Jessica Rosenworcel on Pew Research Center Homework Gap Findings (Apr. 20, 2015), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-333103A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-333103A1.pdf) (Rosenworcel Statement).

<sup>13</sup> Cecilia Kang, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, The New York Times (Feb. 22, 2016), [http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?\\_r=0](http://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html?_r=0).

<sup>14</sup> Rosenworcel Statement; *see id.* (citing James P. Steyer, chief executive of Common Sense Media, "[Broadband] is essential for school and future job opportunity").

<sup>15</sup> John B. Horrigan, *The Numbers Behind the Broadband 'Homework Gap'*, Pew Research Center (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap>.

<sup>16</sup> Rosenworcel Statement.

<sup>17</sup> Charlotte and Halifax County Petition at 13.

<sup>18</sup> *Id.*

<sup>19</sup> Boulder Valley Petition at 2.

bandwidth to provide broadband access to students at their homes and this would not interfere with the schools' own use of the services because the students would be using networks that are unused after school hours. Given that no additional cost is required of the E-rate fund, the Commission should allow students to access and use their schools' existing E-rate supported broadband Internet service at home through the petitioners' proposed projects.

**II. The Commission should grant broad clarification or waiver of E-rate rules to facilitate innovative localized solutions to bridge the digital divide.**

In general, greater flexibility in the E-rate program enables schools to develop programs that best serve local needs. For instance, to allow schools to share their facilities with the community during times when classes are not in session, the Commission previously waived the requirement that schools certify E-rate funded services would be used only for educational purposes.<sup>20</sup> Following this waiver, the state of West Virginia was able to begin offering evening technology training lab classes to the community using E-rate funded broadband Internet access.<sup>21</sup> Providing educational opportunities to the community is important to West Virginia, which recognizes education of adults as part of its schools' mission to educate all and believes "adult literacy is critical in that it develops these individuals to become productive members of society."<sup>22</sup> This outcome encouraged the Commission to permanently revise its rules to require schools to certify that E-rate funded services would be used *primarily* for educational purposes, rather than *solely* for educational purposes.<sup>23</sup> Allowing E-rate

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<sup>20</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6; GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, ¶21 (2010).

<sup>21</sup> *Id.* at ¶23; see Charlotte and Halifax County Petition at 6.

<sup>22</sup> Initial Comments of the West Virginia State Department of Education NPB Public Notice #15 at 6; see *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rule Making, 25 FCC Rcd 1740, ¶7, n.21 (2010).

<sup>23</sup> See *Schools and Libraries Universal Service Support Mechanism* at ¶22; see also Charlotte and Halifax County Petition at 6.

recipients the flexibility to use E-rate funds to support home broadband connectivity – as long as the use does not interfere with regular school use and operation – would similarly enable schools to develop programs that meet the needs of their communities.

Localized E-rate implementation is consistent with other federal efforts to address the digital divide in a localized way. The Broadband Opportunity Council, created in response to President Obama’s Presidential Memorandum “Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training,” recommended in its Report that federal agencies should empower communities with tools and resources to promote meaningful use of broadband connectivity.<sup>24</sup> The Report recognizes that anchor institutions such as schools and libraries can “play an important role in broadband policy and expanding access to underserved communities.”<sup>25</sup> Many federal agencies, including the Commission, run programs that focus on the needs of local communities. For example, the Commission’s Rural Health Care Telecommunications Program, part of its universal service health care programs, provides funding for telecommunications services to rural health care providers to ensure that they do not pay more than urban health care providers.<sup>26</sup> The Department of Agriculture administers the Community Connect Grant program, which provides funds to projects that provide broadband services on a community-oriented connectivity basis to underserved, low-income, and rural areas.<sup>27</sup> The Department of Housing and Urban Development’s pilot program called ConnectHome fosters partnership among stakeholders to expand broadband

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<sup>24</sup> Broadband Opportunity Council Report and Recommendations: Pursuant to the Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training, Broadband Opportunity Council at 15-17 (Aug. 20, 2015), [https://www.whitehouse.gov/sites/default/files/broadband\\_opportunity\\_council\\_report\\_final.pdf](https://www.whitehouse.gov/sites/default/files/broadband_opportunity_council_report_final.pdf).

<sup>25</sup> *Id.* at 15.

<sup>26</sup> The FCC’s Universal Service Rural Health Care Programs, FCC, <https://www.fcc.gov/consumers/guides/fcc-s-universal-service-rural-health-care-programs>

<sup>27</sup> Community Connect Grants, USDA Rural Development, <http://www.rd.usda.gov/programs-services/community-connect-grants>; 7 C.F.R. §1739.1.

access in low-income communities through locally-tailored solutions.<sup>28</sup> When programs can be implemented in a localized manner, communities are more likely to take advantage of these programs to address needs specific to their communities.

A localized approach also promotes creative solutions that can be replicated by other schools and expanded nationally. As the Charlotte and Halifax County petitioners note, “a successful pilot case of this technology can be expected to serve as the blueprint for a solution to the student connectivity gap for students across the United States.”<sup>29</sup> The Boulder Valley Petition similarly asserts that a waiver of E-rate rules would “benefit many communities that seek to implement innovative solutions to bridge the digital divide for students.”<sup>30</sup> Because the current E-rate rules are unclear on what types of off-premises uses qualify for educational purposes, schools and school districts are currently reluctant to extend broadband Internet services to students’ homes and consequently risk losing E-rate funding for failure to abide by the Commission’s rules. Moreover, allocating the cost of off-campus use could be too burdensome for schools with limited resources, many of which are located in low-income or rural area. Therefore, a broad clarification or waiver of E-rate rules would incentivize these schools to either replicate successful pilot programs or develop new programs to provide students with off-campus access to broadband connectivity. Furthermore, as petitioners in the Charlotte and Halifax County Petition suggest, the pilot project can provide empirical data to study “the effectiveness of this technological approach to expanding the E-rate program’s capabilities and identify opportunities for improvement.”<sup>31</sup>

Where, as here, flexibility results in no additional cost to the E-rate fund, the benefits of flexibility clearly outweigh any potential harms. Programs such as those outlined in the two petitions before the Commission increase E-rate efficiency by advancing E-rate goals at no additional cost.

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<sup>28</sup> ConnectHome, HUD, <http://connecthome.hud.gov/pilot>.

<sup>29</sup> Charlotte and Halifax County Petition at 7.

<sup>30</sup> Boulder Valley Petition at 1.

<sup>31</sup> Charlotte and Halifax County Petition at 18-19.

## Conclusion

For the above reasons, the Commission should grant both petitions and allow E-rate supported broadband connectivity to be accessed by students at home for educational purposes.

Respectfully submitted,

/s/

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\* These comments were researched and drafted primarily by Hayoung Park, a law student in the Institute for Public Representation Communications & Technology Clinic.