

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

REPLY COMMENTS OF THE BENTON FOUNDATION

The Benton Foundation¹ respectfully submits these reply comments in response to the *Public Notice* by the Wireline Competition Bureau released on September 19, 2016, in WC Docket 13-184.² The Benton Foundation urges the Commission to grant both petitions and permit the use of E-rate supported broadband connectivity by students at home for educational purposes.

Summary

In its initial comments, Benton focused on the benefits that would follow from allowing off-campus use of E-rate supported connectivity for educational purposes. Specifically, Benton noted that the petitioners' pilot projects will help the Commission achieve important goals of the E-rate program by helping to bridge the homework gap

¹ 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.

² 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).

in low-income and underserved communities at no additional cost to the E-rate fund.³ Benton also called for a broad clarification or waiver of the E-rate rules that will enable local schools and school districts to develop innovative localized solutions to bridge the digital divide.⁴

The initial comments filed in this proceeding demonstrate that the majority of the commenters agree with Benton that granting the petitions would further the overall goals and objectives of the E-rate program. Allowing off-campus use would expand the benefits of existing infrastructure at no additional cost to the E-rate program. Waiver of the cost-allocation rule would also ease the burden on schools that want to implement local programs that extend E-rate connectivity to students' homes. Overall, flexibility in the E-rate rules can promote local innovative solutions to bridge the homework gap.

Granting the petitions would not only be consistent with the Wireline Competition Bureau's statutory authority, but would also be supported by precedent. The Bureau has the authority to grant these waivers because the petitions do not raise any novel question of fact, law, or policy. Also, Section 254 of the Telecommunications Act of 1996 does not limit the geographical reach of E-rate supported connectivity as long as it is used for educational purposes. In fact, the statute encourages the E-rate program to consider advances in technologies in providing access to telecommunications and information services. Contrary to the suggestion of some commenters, the Commission's *Alaska Order* is an applicable precedent and the E-rate Deployed Ubiquitously ("EDU") 2011 Pilot Program further supports off-campus use of school connectivity for digital learning.

Furthermore, the petitions would further the Universal Service Fund ("USF") goal of providing access to communications services for all Americans. Allowing off-campus use of school networks would enable the E-rate program to coordinate with other USF programs, such as the Lifeline program, in making affordable broadband

³ Comments of the Benton Foundation, WC Docket No. 13-184, at 3-5 (filed Nov. 3, 2016)

⁴ *Id.* at 5-7.

available to end users. Given that the pilot projects proposed by the petitioners are designed to allow students to use broadband connectivity at home for school work, granting the petitions would not overlap with other USF programs.

Finally, appropriate safeguards can ensure that E-rate supported connectivity would be used only by students for educational purposes at home and comply with the Children’s Internet Protection Act (“CIPA”). Such safeguards would require off-campus use to comply with the same filtering and Internet Safety Policies, including CIPA-compliant policies, that schools apply to on-campus use of E-rate connectivity. The Commission can also monitor the pilot projects to ensure that students use the Internet for educational purposes in their homes. The Commission should not deny the petitions simply because there might be a potential for misuse; the benefits of allowing off-campus use of E-rate supported connectivity, most notably the opportunity to bridge the homework gap at no additional cost, outweigh any potential misuse by students.

Argument

I. Allowing off-campus use of E-rate supported broadband connectivity enables digital learning at home and creates opportunities to bridge the homework gap at no additional cost to the E-rate program.

The majority of the commenters agree that the petitioners’ programs provide creative solutions to bridge the homework gap and the digital divide for students who lack broadband access at home.⁵ As many commenters note, granting the petitions will allow flexibility in the E-rate rules and promote local innovative solutions, which is

⁵ *E.g.*, Comments of Boulder Valley School District and Samuelson-Glushko Technology Law & Policy Clinic, WC Docket No. 13-184, at 2-3 (filed Nov. 3, 2016) [hereinafter Comments of BVSD]; Comments of New America’s Open Technology Institute et al., WC Docket No. 13-184, at 4 (filed Nov. 3, 2016) [hereinafter Comments of OTI]; Comments of the New York City Department of Education, WC Docket No. 13-184, at 1 (filed Nov. 3, 2016) [hereinafter Comments of NYC DOE]; Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition et al., WC Docket No. 13-184, at 5 (filed Nov. 3, 2016).

desirable because local school administrators are in the best position to understand and devise solutions tailored to the unique needs of their communities.⁶ Furthermore, most commenters agree that allowing off-campus use of E-rate supported connectivity would ease the burden on rural, urban, and financially challenged schools that lack the resources to comply with the cost-allocation rule but nevertheless want to implement local programs to extend broadband access to their students' homes.⁷ Because the petitioners propose pilot projects that would extend E-rate supported connectivity to students' homes at no additional cost to the E-rate fund, the Commission would be able to expand the benefits of existing infrastructure without any financial burden by granting the petitions.⁸ Therefore, the Commission should grant the petitions to further the overall goals and objectives of the E-rate program and move a step closer towards bridging the homework gap.

II. Granting the petitions is consistent with the Bureau's statutory authority, and is supported by precedent.

The Bureau has the statutory authority to grant the petitions. As some of the commenters correctly point out,⁹ the Bureau is prohibited from "act[ing] on any applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines."¹⁰ These petitions,

⁶ Comments of BVSD at 2-3; Comments of California County Superintendents Educational Services Association, WC Docket No. 13-184, at 1 (filed Nov. 3, 2016).

⁷ Comments of BVSD at 4; Comments of NYC DOE at 2; Comments of Sprint Corporation, WC Docket No. 13-184, at 3 (filed Nov. 3, 2016).

⁸ *E.g.*, Comments of NYC DOE at 3; Comments of OTI at 3; Comments of Common Sense Kids Action, WC Docket No. 13-184, at 8 (filed Nov. 3, 2016) [hereinafter Comments of Common Sense].

⁹ Comments of NTCA – The Rural Broadband Association, WC Docket No. 13-184, at 10-11 (filed Nov. 3, 2016) [hereinafter Comments of NTCA]; Comments of United States Telecom Association, WC Docket No. 13-184, at 7 (filed Nov. 3, 2016) [hereinafter Comments of USTA]; Comments of WTA – Advocates for Rural Broadband, WC Docket No. 13-184, at 7 (filed Nov. 3, 2016) [hereinafter Comments of WTA].

¹⁰ 47 C.F.R. § 0.291(a)(2).

however, do not raise novel questions of fact, law, or policy, and can therefore be granted by the Bureau acting under precedent.

The petitions do not raise any novel question of fact that needs to be addressed by the full Commission. The United States Telecom Association (“USTA”) argues otherwise, disputing the factual circumstances underlying the Boulder Valley Petition based on USTA’s speculation that the Housing and Urban Development residences are “likely served by a broad range of broadband providers.”¹¹ However, USTA offers no support for this “likelihood.” Indeed, the Boulder City Report cited by USTA itself to show that Boulder’s residents have access to broadband services does not affirmatively establish that all of the communities in the Boulder Valley School District mentioned in the Boulder Valley Petition have sufficient broadband access for students to use at home.

NTCA – The Rural Broadband Association (“NTCA”) makes similarly unfounded claims that the petitioners have not satisfactorily demonstrated that no additional cost will be incurred to the E-rate fund.¹² The petitions clearly explain how the programs at issue will avoid additional costs to the E-rate fund. The Charlotte and Halifax County Petition states that “[Mid-Atlantic Broadband Communities Corporation] will not charge or increase the price of internet access to the Participating Schools to account for the extra usage” and that “Microsoft will provide the financial support for the specialized equipment.”¹³ The Boulder Valley Petition states that the cost will be borne by “local housing authorities or other entities willing to purchase the

¹¹ Comments of USTA at 7-8.

¹² Comments of NTCA at 9.

¹³ 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, at 13 (filed July 7, 2016), <https://ecfsapi.fcc.gov/file/60002098542.pdf> [hereinafter Charlotte and Halifax County Petition].

equipment needed to connect school districts' networks to affordable housing complexes."¹⁴

Moreover, the petitioners' requests for clarification of "educational purpose" or a waiver of the cost-allocation rule do not raise a novel question of law or policy. Critics claim that allowing off-campus use would constitute a reconsideration of the law and "a fundamental rethinking of the E-rate program" because the Commission has previously clarified the definition of "educational purpose" by explaining that it is tied to "a place of instruction," which is not "a residential setting."¹⁵ However, as discussed in detail below, the Commission has previously granted a waiver allowing off-campus use of E-rate supported connectivity in communities without broadband access.¹⁶ Because this issue was already addressed in the *Alaska Order*, it is no longer a novel question of law or policy. Therefore, it is unnecessary for the full Commission to address the petitioners' requests.

The proposals are also consistent with Section 254 of the Telecommunications Act of 1996. Benton agrees with Dynamic Spectrum Alliance that "[n]othing in the statute prevents the Commission from granting these petitions."¹⁷ The statute does not limit the geographic reach of E-rate supported services as long as they are used for educational purposes.¹⁸ In fact, the statute encourages the program to take into consideration advances in telecommunications and information technologies and

¹⁴ Petition for Waiver of Samuelson-Glushko Technology Law & Policy Clinic on Behalf of Boulder Valley School District, WC Docket Nos. 13-184, 10-90, at 6 (filed May 16, 2016), <https://ecfsapi.fcc.gov/file/60001843683.pdf> [hereinafter Boulder Valley Petition]

¹⁵ See, e.g., Comments of NTCA at 8, 11.

¹⁶ Order, *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*, CC Docket No. 96-45, 16 FCC Rcd. 21511 (Dec. 3, 2001) [hereinafter Alaska Order].

¹⁷ Comments of Dynamic Spectrum Alliance, WC Docket No. 13-184, at 3 (filed Nov. 3, 2016).

¹⁸ *Id.*

services.¹⁹ Both petitions do just this by proposing to use technology or equipment to extend existing E-rate supported services to students' homes so that students can complete their homework.

Furthermore, the Commission's waiver in the *Alaska Order*²⁰ is an applicable precedent in allowing off-campus use of E-rate connectivity, contrary to the suggestion of some commenters.²¹ The Commission explained in the *Alaska Order* that a waiver of the Commission's rule is appropriate "only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."²² As Common Sense Kids Action points out, the rural, low-income communities of Charlotte and Halifax counties and Boulder Valley School District present special circumstances, where school children have minimal or no broadband access at home, thus warranting deviation from the Commission's rule.²³ Allowing off-campus use for these communities would serve the public interest because "it is in the public interest to take steps to utilize the excess services obtained through the schools and libraries mechanism" and waiver would be "consistent with the Commission's efforts to encourage access to advanced telecommunications and information services," as the Commission reasoned in granting Alaska's waiver.²⁴ Therefore, the Commission's reasoning in the *Alaska Order* fully supports granting the current petitions, which essentially ask for a similar permission to utilize excess, unused E-rate services, but are more consistent with the goal of the E-rate program because they seek to provide affordable broadband access for students' digital learning at home.

¹⁹ *Id.*; 47 U.S.C. 254(c)(1); *see also* Report and Order and Further Notice of Proposed Rulemaking, *Modernizing the E-rate Program for Schools and Libraries*, 29 FCC Rcd. 8870, WC Docket No. 13-184, at ¶69 (July 23, 2014).

²⁰ *Alaska Order*.

²¹ *See, e.g.*, Comments of NTCA at 11-12; Comments of USTA at 21; Comments of WTA at 7-8.

²² *Alaska Order* at ¶9.

²³ Comments of Common Sense at 5-8; *see also* *Alaska Order* at ¶10.

²⁴ *See* *Alaska Order* at ¶11.

Additionally, the Commission's EDU 2011 Pilot Program, which provided funding for innovative off-premise wireless projects, supports off-campus use of school connectivity for digital learning. Some commenters argue that the EDU 2011 Pilot Program is distinguishable from the petitions currently before the Commission because in the EDU 2011 Pilot Program, funding was authorized under the expectation that the pilot programs will provide mobile Internet connectivity for limited purposes, such as downloading digital textbooks.²⁵ In contrast, claim some commenters, the petitioners' projects will provide unbounded Internet access to residential settings.²⁶ The Commission should dismiss this concern out of hand because the petitions do not envision such a scenario. Both petitions seek to enable students without home connectivity to use their schools' E-rate supported services to complete basic school work at home. The EDU 2011 Pilot Program was launched as part of the Commission's efforts to modernize the E-rate program and provided an opportunity "to test the merits and challenges of supporting off-premise wireless connectivity for mobile learning and research."²⁷ Like the EDU 2011 Pilot Program's projects, the petitioners' pilot projects will enable the Commission to further modernize the E-rate program and examine the effect of allowing off-campus broadband connectivity for digital learning.

III. Granting the petitions would enable the E-rate program to coordinate with other USF programs in making affordable broadband available to end users.

The Commission strives to ensure that all Americans have affordable access to communications service through its four programs supported by the Universal Service Fund. The Telecommunications Act of 1996 adopted principles to guide universal service policy, such as promoting the availability of quality services at just, reasonable,

²⁵ Comments of NTCA at 9; Comments of WTA at 7-8.

²⁶ Comments of NTCA at 9; Comments of WTA at 7-8.

²⁷ Public Notice, *Wireline Competition Bureau Announces Selected Applications for the E-rate Deployed Ubiquitously (EDU) 2011 Wireless Pilot Program*, WC Docket No. 10-222, at ¶¶1-2 (Mar. 9, 2011).

and affordable rates for all consumers, including those in low-income, rural, insular, and high cost areas.²⁸ Granting the petitions will enable the E-rate program to further advance these principles and compliment other USF programs, such as the Connect America Fund (“CAF”) or the Lifeline program.

Critics argue that allowing off-campus use of E-rate supported connectivity would cause overlap and duplicate existing USF programs that are more appropriate or specifically designed to address the issue of affordable broadband connectivity at home.²⁹ For example, ITTA – The Voice of Mid-Size Communications Companies (“ITTA”) argues that the petitions will undermine the specificity, predictability, and explicitness of USF support by using E-rate funds or supported services to achieve CAF or Lifeline program goals.³⁰ NTCA emphasizes that “careful coordination [among individual USF programs] is essential to ensure they achieve their objectives in concert, rather competing and conflicting with one another.”³¹ Benton agrees with NTCA’s call for coordination among USF programs, and believes that granting the petitions will allow such coordination to achieve the goal of making high quality and affordable broadband available to all end users. As the New York City Department of Education notes, granting the petitions will in fact promote the goals of the USF principle that all Americans have access to communications service.³²

Granting the petitions to extend E-rate supported connectivity to students’ homes would not duplicate existing USF programs. Contrary to the suggestion of some commenters,³³ the petitioners’ pilot projects are designed to make broadband connectivity available and affordable for students so that they can complete their

²⁸ Universal Service, FCC, <https://www.fcc.gov/general/universal-service> [hereinafter Universal Service].

²⁹ Comments of WTA at 10.

³⁰ Comments of ITTA – The Voice of Mid-Size Communications Companies, WC Docket No. 13-184, at 6-7 (filed Nov. 3, 2016) [hereinafter Comments of ITTA].

³¹ Comments of NTCA at 6.

³² Comments of NYC DOE at 1.

³³ See Comments of USTA at 19; Comments of WTA at 9-10.

homework from their homes.³⁴ Unlike CAF, which provides service to residents of high-cost areas, or Lifeline, which assists low-income customers to afford telephone and broadband services,³⁵ the pilot projects do not aim to make broadband available and affordable for all residents of low-income or underserved populations. Rather, the petitions are specifically asking the Commission to allow students who already use E-rate funded connectivity at school to continue using the Internet at their homes for educational purposes. As New America’s Open Technology Institute (“OTI”) notes, “[e]xtending school networks may even relieve some of the pressure on the Lifeline program.”³⁶ For example, households that considered applying for the Lifeline program to allow their children to do schoolwork at home could instead rely on E-rate supported Internet access.³⁷ Similarly, families that experience the benefits of Internet access for education through E-rate might decide to connect through Lifeline or similar programs for broader access.³⁸ Therefore, allowing off-campus use of E-rate supported connectivity for educational purposes would advance USF goals and complement other USF programs.

IV. Appropriate safeguards can ensure that E-rate supported services would be used only for educational purposes at home and comply with CIPA.

Critics argue that the petitions do not provide any safeguards to ensure that E-rate funded services will be used only for educational purposes by students in their homes. They criticize the petitions for not providing any mechanism to monitor or ensure that the use of E-rate supported connectivity will be limited to educational purposes, thereby making it “likely impossible to determine whether service extended to a residential setting via the methods proposed by the Petitions is used solely for

³⁴ Charlotte and Halifax County Petition at 2; Boulder Valley Petition at 2-3.

³⁵ Universal Service.

³⁶ Comments of OTI at 6.

³⁷ *See id.*

³⁸ *Id.*

educational purposes.”³⁹ ITTA further criticizes the petitions for failing to provide any safeguard against school districts that may over-provision E-rate funded services in response to increased demand.⁴⁰ However, the petitions do address safeguards and the potential for misuse, and initial comments demonstrate various safeguards to address these concerns.

The Charlotte and Halifax County Petition recognizes “the possibility of students using E-rate funded internet for non-educational purposes” and proposes a pilot project that would minimize such potential misuse by extending Internet access only to households with specialized TVWS access points and requiring authentication by students.⁴¹ Furthermore, students at home will be required to comply with the filtering and Internet Safety Policies that schools apply to Internet use on school grounds.⁴² As OTI notes, “[t]here are technical ways to ensure that networks and broadband services continue to be used primarily for educational purposes and by students,” such as limiting the potential uses of the Internet or requiring unique credentials.⁴³

Off-campus use of E-rate connectivity will also comply with the Children’s Internet Protection Act, which requires, among other obligations, schools using E-rate supported connectivity to use technology protection measures that guard minors against inappropriate content. Contrary to USTA’s criticism that the petitions do not address how the pilot projects would comply with CIPA,⁴⁴ the Charlotte and Halifax County Petition notes that home connectivity will comply with CIPA-compliant policies as part of the filtering and Internet Safety Policies extended to off-campus use.⁴⁵

³⁹ Comments of NTCA at 10; Comments of ITTA at 13; Comments of USTA at 6.

⁴⁰ Comments of ITTA at 13.

⁴¹ Boulder Valley Petition at 10.

⁴² *Id.*

⁴³ Comments of OTI at 9-10.

⁴⁴ Comments of USTA at 12.

⁴⁵ Boulder Valley Petition at 10.

Comments filed by school districts also assure that off-campus connectivity will comply with CIPA.⁴⁶

Moreover, monitoring mechanisms can safeguard against misuse of E-rate connectivity. OTI calls for the Commission to monitor the petitioners' projects "to ensure there are no unforeseen issues or consequences."⁴⁷ Benton agrees that the Commission's oversight of the pilot projects will provide an additional layer of safeguard against the use of E-rate connectivity for non-educational purposes. Any monitoring of the pilot projects should not impose an excessive burden on the Commission, and as long as it is administratively and financially feasible to monitor the projects, much of the concern raised by the critics would be eliminated.

As with any program, there is potential for misuse, even with the safeguards discussed by petitioners and commenters. However, Benton agrees with Voqal that denial of the petitions "due to such concerns would be shortsighted."⁴⁸ Voqal correctly points out that "[t]o deny those students who would access the Internet to complete homework assignments, complete research and participate in other school programs in order to prevent potential misuse, even when such access would add no additional cost to the E-rate program, would be a huge missed opportunity to close the homework gap"⁴⁹ Therefore, the Commission should allow off-campus use of E-rate supported connectivity for educational purposes and take another step forward in bridging the homework gap.

⁴⁶ Comments of Pharr-San Juan-Alamo ISD, WC Docket No. 13-184, at 5 (filed Nov. 3, 2016); Comments of Sharyland ISD, WC Docket No. 13-184, at 4 (filed Nov. 3, 2016).

⁴⁷ Comments of OTI at 10.

⁴⁸ See Comments of Voqal on Behalf of Mobile Citizen, WC Docket No. 13-184, at 8 (filed Nov. 3, 2016).

⁴⁹ *Id.*

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,

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