

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter 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 CENTURYLINK**

**Introduction**

The Commission received a wide range of comments in response to the Bureau’s Public Notice<sup>1</sup> about the unusual petitions of Microsoft, et al. (Microsoft) and Boulder Valley School District (BVSD).<sup>2</sup> The two petitions ask the Commission to extend E-rate into residential areas by allowing use of E-rate funded bandwidth to serve households. The rationale for this dramatic policy change is helping close the “homework gap” for low-income or rural households. The comments, however, provide a record that shows the petitions should not be granted.

CenturyLink has the highest respect for BVSD – one of the nation’s most innovative districts -- and it truly appreciates the goals of Charlotte and Halifax Counties in seeking to advance broadband availability to their rural households. CenturyLink shares their concern about the homework gap. Despite good intentions, however, the petitions to use E-rate funded bandwidth

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<sup>1</sup> Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-campus Use of Existing E-rate Supported Connectivity*, DA 16-1051 (Sept. 19, 2016).

<sup>2</sup> Joint Petition for Clarification or, in the Alternative, Waiver of Microsoft Corp., Mid-Atlantic Broadband Communities Corp., Charlotte County Public Schools, Halifax County Public Schools, GCR Co., and Kinex Telecom, WC Docket No. 13-184 (June 7, 2016) (Microsoft Petition); *Petition for Waiver on Behalf of Boulder Valley School District, Samuelson-Glushko Technology Law and Policy Clinic* (May 16, 2016) (BVSD Petition).

without cost allocation would be inconsistent with the statute, raise too many problems, create too many distortions, and create too many risks for the E-rate program. The petitions also cannot be granted by the Bureau on delegated authority, but need review and rulemaking by the full commission.

**I. THE PETITIONS' REQUESTS ARE BEYOND THE COMMISSION'S STATUTORY AUTHORITY.**

Several parties noted that use of E-rate funded network capacity or services for residential end-users is beyond the scope of the Commission's statutory authority. Section 254(h)(1)(B) of the Act provides that "schools and libraries" are to receive "discounts" for "telecommunications services."<sup>3</sup> Although Congress left implementation details to the Commission, the statute makes clear that "E-rate supported services are to be provided 'to' schools and libraries" and solely "for 'educational purposes.'"<sup>4</sup> Although Microsoft claims that "geographic restriction" is "not explicitly imposed by statute,"<sup>5</sup> the structure and the legislative history of Section 254 both show that "geographically limiting use of E-rate support" – in fact "was a deliberate policy choice" meant to ensure "a more effective overall telecommunications universal service policy." Accordingly, both the Act and the Commission's own rules "prohibit off campus use of E-rate supported network capacity without cost allocation."<sup>6</sup>

Allowing applicants to provide E-rate subsidized service to residential areas – to any uses other than "to" the eligible "elementary schools, secondary schools, and libraries" themselves – would actually violate the statute, including Section 254(e)'s mandate that universal service support

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<sup>3</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>4</sup> U.S. Telecom at 3.

<sup>5</sup> Microsoft Petition at 6.

<sup>6</sup> WTA at 3, 5.

be “explicit.”<sup>7</sup> It is difficult if not infeasible for the Commission or USAC to “monitor compliance with the E-rate program’s bedrock ‘educational purpose’ requirements,”<sup>8</sup> and neither of petitions suggests any way that they would monitor, let alone ensure, that use of their service is for “educational purposes.”<sup>9</sup>

The petitioners cite the *Sixth Report and Order*’s narrow provision that allowed schools to open their libraries for community use after-hours.<sup>10</sup> But the analogy to the relief these petitions seek is faulty. That exception was never controversial -- and for good reasons. Limited community use in a school library, under the supervision of school library staff, is not inconsistent with “educational purposes.” School libraries already serve functions very similar to community libraries. And any community use of school library facilities still involved provision of service “to” the school. It did not involve provision of service to third parties at locations other than the school campus.<sup>11</sup>

## **II. GRANTING THE PETITIONS WOULD BE INCONSISTENT WITH THE STATUTE’S UNIVERSAL SERVICE SYSTEM.**

In reforming and expanding Universal Service in the landmark Telecommunications Act of 1996, Congress created a statutory system with distinct programs. To help promote advanced services to schools and libraries, it directed the Commission to create the Schools and Libraries program to provide discounts for services to qualifying institutions for their educational purposes. To address affordability, it directed the Commission to utilize the Low-Income Fund to help low-income households be connected. In 2016, the Commission recently modernized that USF program

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<sup>7</sup> ITTA at 10-13.

<sup>8</sup> ITTA at 10-11.

<sup>9</sup> NTCA at 8-9.

<sup>10</sup> *Sixth Report & Order, Schools and Libraries Universal Service Support Mechanism*, 25 FCC Rcd 18762 (2010).

<sup>11</sup> USTelecom at 4.

to support broadband service for low-income households.<sup>12</sup> To address availability in rural, high-cost and insular areas, the statute directed the commission to develop the High Cost program to support the provision of service. The Commission recently modernized that program through the Connect America Fund, which helps ensure broadband network deployment, expansion, and upgrades in areas that otherwise would be uneconomic for investment.<sup>13</sup>

Using USF programs at “cross-purposes” is “an inefficient use of limited funds,”<sup>14</sup> and it “would compromise the explicitness of high-cost support” required by the statute.<sup>15</sup> It would also have USF programs “competing and conflicting with one another in the deployment of redundant networks” or “working at odds with other USF programs such as Lifeline.”<sup>16</sup> Although many commenters would welcome extending school networks “beyond the walls of the institution”<sup>17</sup> in order to help address affordability or availability, the Commission should maintain its practice of adhering to the statute and using the appropriate USF programs for their specific purposes.

Indeed, consistent with the statutory system, the Commission has refused prior requests to use one universal service program to support the goals of another.<sup>18</sup> It is among the reasons the E-rate program is limited to the schools and libraries qualified under Section 254’s specific definitions<sup>19</sup> and why the Commission’s rules require cost-allocation even within their own

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<sup>12</sup> Third Report & Order, Further Report & Order, and Order on Reconsideration, *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd 3962 (2016) (subsequent history omitted).

<sup>13</sup> Report & Order and Further Notice of Proposed Rulemaking, *Connect America Fund*, 26 FCC Rcd 17663 (2011), *aff’d sub nom In re: FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014).

<sup>14</sup> USTelecom at 5.

<sup>15</sup> ITTA at 7.

<sup>16</sup> NTCA at 6.

<sup>17</sup> *E.g.*, New America Foundation at 3.

<sup>18</sup> ITTA at 5-6.

<sup>19</sup> The statute limited USF support to K-12 and public libraries. Community colleges and higher education institutions were excluded, as are heavily-endowed private K-12 schools and restricted access libraries.

operations. The petitions would “frustrate” that statutory system, by conflating the E-rate program with Lifeline and High Cost programs.

### **III. CENTURYLINK IS COMMITTED TO THE COMMUNITIES IT SERVES.**

CenturyLink has a demonstrated commitment to its communities, and it is helping bridge the homework gap.

**Affordability.** CenturyLink offers discounted broadband service to help Lifeline-eligible households get online. CenturyLink’s *Internet Basics* program offers several speeds for low-income families (whether or not they have student-age children), with basic service starting just under \$10 per month and with a discounted device available. Other providers also have discount programs to help with the homework gap without burdening E-rate – including AT&T, Comcast, Sprint, and Verizon, among others.

**Availability.** In rural areas, CenturyLink is investing heavily to ensure robust broadband service is available to rural communities. In addition to investing over hundreds of millions annually in expanding and upgrading its broadband network, CenturyLink made the industry’s largest commitment to invest in Connect America Fund-eligible census blocks – with network and service commitments that will deliver minimum 10/1 Mbps service to rural hundreds of thousands of households in more than thirty states. Those include parts of Charlotte and Halifax Counties in Virginia, where rural households will be seeing the impact of that investment.

CenturyLink recognizes that everyone is eager to realize the benefits of new broadband investment in their communities, but deployment cannot be completed everywhere overnight. Nevertheless, buildout is proceeding and will be completed within several years.

#### **IV. THE PETITIONS RAISE CONCERNS ABOUT CIPA COMPLIANCE.**

By statute, Congress expressly conditioned E-rate support on compliance with the Children’s Internet Protection Act.<sup>20</sup> Several parties highlighted policy concerns about the petitions. SECA supported the petitions in principle, but even it cautioned that the petitioners had “not really addressed” CIPA compliance issues.<sup>21</sup>

Indeed, neither the petitioners nor any supporting commenters offered any specifics on how CIPA compliance would be handled when providing service to the residential customers, despite the fact that failure to comply would put those schools at risk of losing E-rate funding.<sup>22</sup> And as WTA noted, even CIPA’s Internet safety policies do nothing to ensure the E-rate funded service is not used “for non-education purposes such as watching Netflix, online gaming, or other web browsing to application usage unrelated to educational endeavors.”<sup>23</sup>

#### **V. ALLOWING OFF-CAMPUS USE OF E-RATE FUNDED BANDWIDTH WOULD UNDERMINE PROGRAM INTEGRITY AND SUSTAINABILITY.**

The record also identified widespread concerns about the impact of a grant of the petitions on the sustainability of the E-rate fund. The petitions would vastly increase the scope of E-rate supported services, creating a new and growing burden on the limited fund. With USF collections declining, it is doubtful that the E-rate program can continue to meet its primary goals for high capacity connectivity set by the Commission with the encouragement of President Obama, let alone the vastly broadened scope of service the petitions and many commenters envision .

After all, the Microsoft petition touts itself as just the first step in E-rate supported service bandwidth to “millions” of households nationwide. Many parties filing in support of the petitions

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<sup>20</sup> 47 U.S.C. § 254(h)(5)(B)(ii). *See also* §§ 254(h)(5)(B)(i) and 254(h)(5)(D).

<sup>21</sup> SECA at 3.

<sup>22</sup> *See* ITTA at 12-13; USTelecom at 3.

<sup>23</sup> WTA at 3.

signaled their intent to follow its example by expanding E-rate subsidized services to households in their communities. Among them were some of the nation’s biggest school districts and some state education boards. Miami-Dade County advocated “E-Rate subsidized broadband networks” to homes, and New York City DOE encouraged the Commission to provide a declaratory ruling eliminating cost allocation rules for any projects “similar” to the petitioners’ to enable “uses of E-rate funded services ... far beyond the classroom” and not limited to “students.” Steamboat Springs School District -- an affluent but out-of-the-way community -- argued that the permitted use should not be limited to “low income” households or student families.<sup>24</sup>

Despite claims that the petitioners’ projects would add no costs to E-rate, many parties were concerned the petitions would threaten the “sustainability” of the E-rate fund. SHLB warned the Commission against “additional purposes that stray from the program’s core mission” and said it must “safeguard[] the integrity of the E-rate program.”<sup>25</sup> The American Library Association was similarly uneasy. It could offer only “qualified support” for the petitions, suggesting that a grant be limited solely to the individual petitions – no blanket waiver or declaratory ruling – and subject to strict, “narrow” conditions that “no E-Rate funding” be used. Indeed, it said the Commission must deny the requested waiver of cost allocation and require detailed cost-reporting “on the costs for all facets of the project.”<sup>26</sup> SETDA “strongly supported the goals of the” petitioners, but it also cautioned that the Commission would need to apply careful “conditions to protect the E-rate program.”<sup>27</sup> T-Mobile said a “mobile broadband solution” would be “more effective” than the petitions. Sprint wanted any waiver also extended to commercial wireless carriers, but even it warned that “E-rate-supported network” use must be “only for educational purposes by the student,”

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<sup>24</sup> Miami-Dade at 1; NYC DOE at 1, 2; Steamboat Springs at 1.

<sup>25</sup> SHLB at 12.

<sup>26</sup> ALA at 2.

<sup>27</sup> SETDA at 1.

and only for student “households that otherwise lack broadband access.”<sup>28</sup> Neither wireless company, however, explained how the USF could fund the demand without either compromising its core mission or limit use to students’ educational work.

With or without cost allocation, it is unrealistic to expect that use of E-rate funded bandwidth to serve households would not inflate the program’s costs, both directly and indirectly, given the sheer size of E-rate. In FY2016, there were roughly 25,000 E-rate applicants, with E-rate subsidized service and facilities at roughly 140,000 school and library sites, receiving \$4.9 billion in supported services – an amount that will grow as their bandwidth demands continue to rise.<sup>29</sup>

The potential impact on the program should be a real concern. Funds for Learning supported the petitions, even while noting that most public housing residents actually live within walking distance of an E-rate funded school or library.<sup>30</sup> It concluded that 94% of public housing residents (2 million people) are within one mile of an E-rate funded school or library, 76% are within half a mile, and 46% are within one quarter of a mile. While Funds for Learning suggested this data supports “expanding community use rules” to serve households directly, in fact it shows the how quickly this potential expansion of E-rate would become unmanageable and unsustainable. SECA noted, with some understandable unease, that the BVSD petition could involve roughly 20% of the district’s students, and that the Microsoft petition could involve 3,500 of 7,500 students in the districts – or 45%.<sup>31</sup> The New York City DOE – on behalf of its “1.1 million students and their families” – envisions the petitions allowing “all Schools and Libraries Universal Service Support mechanism participants [offering] such services to their respective communities.”<sup>32</sup> USTelecom

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<sup>28</sup> T-Mobile at 9-10; Sprint at 2-3.

<sup>29</sup> Figures derived from USAC data are in Funds For Learning’s *2016 E-rate Trends Report*.

<sup>30</sup> Fund For Learning at 2-3.

<sup>31</sup> SECA at 2-3.

<sup>32</sup> NY DOE at 2.



explains that the petitions surely understate the potential impact on the fund.<sup>33</sup> Meanwhile, the petitioners offer no safeguards to the program.<sup>34</sup>

The petitions would add yet another dimension of complexity and inevitably increase program costs. Purchasing bandwidth for school use and simultaneously operating or supporting a residential network – whether managed by a school district, a municipality, a nonprofit, or a company – would almost invariably influence procurement decisions that would lead to over-provisioning and higher costs. It would inevitably distort competitive decisions about providers and cost-effectiveness by tying school or library service to residential service networks that have different needs and priorities. It would invite waste, fraud and abuse. It would lead to higher costs for the program overall, even among the most well-intentioned of participants.

The E-rate fund is not unlimited, and the Commission should ensure its focus remains squarely on service “to” schools for “educational purposes.”<sup>35</sup>

## **VI. THE PETITIONS ARE BEYOND THE BUREAU’S JURISDICTION UNDER DELEGATED AUTHORITY.**

Several parties explained that the petitions cannot lawfully be granted by the Bureau under delegated authority.<sup>36</sup> Under the Commission’s rules, “novel questions of law, fact or policy” must be decided by the full Commission through notice and comment rulemaking.<sup>37</sup>

The petitioners pointed to the *Sixth Report and Order*’s ruling that allowing members of the community to use E-rate funded services was permissible within the rules of the program.<sup>38</sup> That

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<sup>33</sup> USTelecom at 14-15.

<sup>34</sup> ITTA at 10-13.

<sup>35</sup> Moreover, the program is already far too complex and administratively difficult. The Commission should not be adding a complex new dimension to the program.

<sup>36</sup> ITTA at 13-16; NTCA at 10-13; WTA at 7.

<sup>37</sup> 47 C.F.R. §0.291(a)(2).

precedent is insufficient grounds for the Bureau to assume authority to grant the petitions. No one contended that community use of school library facilities conflicted with statutory requirements. As explained above, it was both consistent with service “to” schools and for “educational purposes.” Moreover, that usage genuinely would have no impact on program costs. It also would not have impacted service design, provisioning, or procurement decision-making – or CIPA compliance.

In contrast, several parties explained that the petitions sharply differ from this and other prior waiver decisions, such as the exceptionally limited waiver for remote schooling in Alaska, where no service was available and access even to school facilities was impractical.<sup>39</sup> And the petitions would not – and be their descriptions, could not -- be restricted to student or educational use, unlike the “walled garden” use in the EDU2011 Pilot Program.<sup>40</sup>

The petitions are “without precedent” in the E-rate program’s twenty year history. They involve a “fundamental” change in approach that “unquestionably is a ‘novel question of fact, law or policy.’”<sup>41</sup> Any Bureau grant of the petitions, even on a limited or trial basis, would be in error.

## **Conclusion**

CenturyLink is trying to help address the homework gap, and it welcomes the opportunity to discuss innovative ideas with communities across the country.

Within the last few years, the Commission has made landmark progress in helping narrow the homework gap through modernization of the Lifeline program for low-income households and

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<sup>38</sup> Sixth Report & Order, *Schools and Libraries Universal Service Support Mechanism*, 25 FCC Rcd 18762 (2010).

<sup>39</sup> See ITTA at 15-16; USTelecom at 20-22; WTA at 7-9 (discussing Order, *Petition of State of Alaska for Waiver of 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*, 16 FCC Rcd 21511 (2001)).

<sup>40</sup> WTA at 8.

<sup>41</sup> NTCA at 11.

implementation of the Connect America Fund program for rural and high-cost areas. It should not blur the distinction between universal service programs by granting petitions such as these.

Respectfully submitted,

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