

*Before the*  
Federal Communications Commission  
Washington, DC 20554

In the Matter of

Modernizing the E-rate Program for Schools  
and Libraries

WC Dkt. 13-184

Connect America Fund A National  
Broadband Plan for Our Future High-Cost  
Universal Service Support

WC Dkt. 10-90

Schools and Libraries Universal Service  
Support

CC Dkt. 02-6

COMMENTS OF NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE,  
NEW AMERICA'S EDUCATION POLICY PROGRAM, CENTER FOR RURAL STRATEGIES,  
NATIONAL HISPANIC MEDIA COALITION, PUBLIC KNOWLEDGE, X-LAB, AND  
UNITED CHURCH OF CHRIST, OC INC.

December 5, 2016

## INTRODUCTION

New America's Open Technology Institute, New America's Education Policy Program, Center for Rural Strategies, National Hispanic Media Coalition, Public Knowledge, X-Lab, and United Church of Christ OC Inc. (the "Public Interest Organizations" or "PIOs"), submit these reply comments in response to the Federal Communications Commission's ("FCC") Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-rate Supported Connectivity*, seeking comment on petitions filed by (1) the Boulder Valley School District and (2) Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom (collectively the "Petitions" or "Petitioners").<sup>1</sup>

- I. The Communications Act does not prevent schools and libraries from extending their networks beyond their physical borders.

The PIOs agree with commenters that state nothing in the statute precludes the Commission from approving these Petitions. The internet access services described in the Petitions leverage Wi-Fi on TV band frequencies to extend the reach of the wireline services delivered to the school building. Once extended, students may use the network at their homes as though they were on campus. As the Dynamic Spectrum Alliance correctly states in its comments, "[t]he use of TV White Spaces in these instances is the conceptual equivalent of expanded WiFi coverage, extending the reach of the wireline internet

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<sup>1</sup> Public Notice, DA 16-1051 (Sept. 19, 2016).

connection that is delivered to the school through the E-rate program and made available only to students and only for educational purposes.”<sup>2</sup> Nothing in the statute constrains the reach of the internet access service delivered to the school provided it is used for educational purposes otherwise allowable under the statute.

Some commenters in opposition to the Petitions argue the statute prevents the Commission from undertaking the actions requested by Petitioners. These arguments should be rejected. First, a small minority of commenters argue that the word “to” in 47 U.S.C. §254(h)(1)(B) limits the ultimate physical reach of E-rate-supported services.<sup>3</sup> The statute says “[a]ll telecommunications carriers serving a geographic area shall...provide such services *to* elementary schools, secondary schools, and libraries for educational purposes” at discounted rates.<sup>4</sup> US Telecom Association (“USTA”) claims that the Petitions would “extend USF-subsidized services to the general community, rather than ‘to’ the schools and libraries themselves.”<sup>5</sup> However, this argument conforms neither to the statutory language nor the Petitioners’ proposed use of TV White Space technology. Upon a proper reading of the statute, it is *telecommunications carriers* that must provide the subsidized services *to the school* in the first instance, but otherwise the language places no physical limitation on the school’s network. In both Petitions, the respective internet providers will continue providing the subsidized services to the school, and the school

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<sup>2</sup> Dynamic Spectrum Alliance (“DSA”) Comments at 3.

<sup>3</sup> See USTA Comments at 3-5; ITTA Comments at 2; NTCA Comments at 7-10.

<sup>4</sup> 47 U.S.C. §254(h)(1)(B) (emphasis added).

<sup>5</sup> USTA Comments at 4.

will distribute its connection throughout the school and to students in neighboring housing developments (using Wi-Fi and TV White Spaces), which fully comports with the statute. Moreover, contrary to USTA’s assertion that the school’s network will allow for “general community” use, the Petitioners will ensure only students can use the network off-campus.<sup>6</sup>

Second, a few commenters also claim that the statutory “educational purposes” requirement is necessarily tied to the “place of instruction.”<sup>7</sup> These arguments, too, should be rejected. The term “educational purposes” was not defined by the statute, leaving interpretation of the phrase to the FCC, which has defined it as “activities that are integral, immediate, and proximate to the education of students.”<sup>8</sup> Moreover, the Commission’s rule does not prohibit off-campus use; it merely establishes a presumption that activities on school property satisfy the statute.<sup>9</sup> In 2003, while stating that “educational purposes” is typically tied to a “place of instruction,” the Commission also acknowledged that certain off-campus uses could meet the definition.<sup>10</sup> Over many years, the Commission has relaxed this requirement as schools began to take advantage of

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<sup>6</sup> See Microsoft Petition at 10. Boulder will likely implement a similar system.

<sup>7</sup> NTCA Comments at 7-10; see USTA Comments at 5-6.

<sup>8</sup> 47 C.F.R. §54.500.

<sup>9</sup> *Id.*

<sup>10</sup> *Schools and Libraries Universal Service Support Mechanism, Second Report and Order and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 9202, ¶19 (2003). While ITTA argues that the list of acceptable off-campus uses focused narrowly on use “by employees of the school,” (ITTA Comments at 11), the list provided by the FCC was clearly inclusive, as it said “[t]he following are *examples* [of] off-site activities that would be integral, immediate, and proximate to the education of students.” *Id.* ¶19, n.28.

excess capacity and make more efficient use of their networks.<sup>11</sup> And even if the Commission were to enforce its “place of instruction” language without flexibility (which it should not do), both learning and instruction unquestionably take place at students’ homes.<sup>12</sup>

In fact, Congress has explicitly stated that the E-rate program should take into account evolving technologies.<sup>13</sup> The statute states “[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically...taking into account advances in telecommunications and information technologies and services.”<sup>14</sup> Schools have access to advanced internet distribution technologies, such as Wi-Fi and TV White Spaces, and should be able to take advantage of them and provide services to their students and staff for educational purposes, even if that means providing off-campus access. This type of innovation should be encouraged by the FCC because the statute says so and because it represents a new way to connect the disconnected.

Therefore, granting the Petitions would not violate the statute.

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<sup>11</sup> See Public Notice at 2-3 (explaining that the FCC now allows off-hours use of school networks and ran a pilot program for off-campus use called EDU 2011).

<sup>12</sup> See, e.g., Amy Zimmer, *‘Flipped Learning’ Lets Kids Do Homework at School and See Lessons at Home*, DNA Info (Jan. 27, 2014), <https://www.dnainfo.com/new-york/20140127/udson-square/teachers-flipping-classrooms-with-homework-at-school-lessons-at-home>.

<sup>13</sup> See DSA Comments at 3, n.3.

<sup>14</sup> 47 U.S.C. §254(c)(1).

- II. The Wireline Competition Bureau has the authority to grant these waivers and issue interpretive guidance.

The Bureau has delegated authority to “[a]ct on requests for interpretation or waiver of rules.”<sup>15</sup> It does not have authority to decide issues that “present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.”<sup>16</sup> Some commenters argue that the Bureau lacks authority to decide these Petitions because they raise novel questions of law, fact, and policy.<sup>17</sup> The Bureau, on the contrary, has the authority to decide these Petitions.

How to treat off-campus use of E-rate-funded networks is not novel. The issue has been dealt with before in the Eligible Services List (“ESL”), which states that, as a general matter, off-campus use of an E-rate-supported network is not eligible for reimbursement and must be cost-allocated.<sup>18</sup> Where the Bureau has previously found that off-campus use should be cost allocated, it naturally has the authority to waive that requirement in specific circumstances, to further clarify the scope of the requirement, or to remove the requirement altogether.<sup>19</sup> It cannot be that an issue addressed head-on for many years is somehow novel when a waiver or clarification of that rule is requested.

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<sup>15</sup> 47 C.F.R. §0.91(b)

<sup>16</sup> 47 C.F.R. §0.291(a)(2).

<sup>17</sup> USTA Comments at 7.

<sup>18</sup> 2017 Eligible Services Order, Appendix C at 7, [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1023A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1023A1.pdf).

<sup>19</sup> See 47 C.F.R. §54.5021(d) (granting the Wireline Competition Bureau authority over the Eligible Services List); 2017 Eligible Services Order at ¶2, [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1023A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1023A1.pdf) (“the Commission delegated responsibility to the Wireline Competition Bureau to update the ESL annually,

A few commenters underplay the importance and relevance of the *Alaska Order*.<sup>20</sup>

In the *Alaska Order*, the Commission allowed E-rate-funded networks to be used by nearby residents with certain restrictions in place. Commenters try to argue that the *Alaska Order*'s age and its imposition of conditions matters to the question of novelty.<sup>21</sup> Neither does. In the *Alaska Order*, the full Commission addressed the issue of off-campus use of E-rate-funded networks. Additionally, the Petitioners here are not requesting permission to extend access to the school's network for general use, but only for educational purposes. To keep returning these questions to the full Commission defeats the purpose of delegated authority, which is for the Bureau to decide issues based on precedent.

The Petitions also do not propose a “fundamental rethinking of the E-rate program” as some argue.<sup>22</sup> Even a broad ruling establishing that off-campus use is compensable would not constitute comprehensive reform as off-campus use would still be subject to the overall funding cap and would have to meet the goals of the E-rate program. For instance, the household should lack internet access, the connection should have to be used by a student for educational purposes, and the off-campus use should not interfere with the on-campus use. But the Petitions here ask for narrow relief in the form of a waiver of a

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as necessary”). See also OTI *et al.* Comments at 10-11 (advocating for removing the exemption entirely).

<sup>20</sup> NTCA Comments at 11-13; ITTA Comments at 15-16; USTA Comments at 20-22.

<sup>21</sup> ITTA Comments at 15 (“Boulder Valley Petitioners rely on a 15-year-old [limited] waiver granted by the Commission to the State of Alaska.”).

<sup>22</sup> NTCA Comments at 11; see USTA Comments at 15.

specific rule or a declaration that similarly-situated schools can experiment with similar programs, both actions the Bureau has authority to undertake. The Petitions do not present a fundamental rethinking of the E-rate program.

For similar reasons, commenters' attempts to frame this issue as school use versus "purely residential" use is unpersuasive.<sup>23</sup> These Petitions do not envision unfettered internet access that one would receive through a traditional internet connection (for instance, a CAF-funded network). On the contrary, these would be specifically limited connections in the ways described above. In fact, as noted at the outset of the section above, the Petitioners here propose only to use a new Wi-Fi technology that permits an extension of access to the school's wireline network to locations off-campus where students can use it in the same manner they access it via Wi-Fi on campus.

Thus, the Bureau has authority to decide these Petitions.

III. The E-rate program should provide support where students lack internet access.

Some commenters argued that the "homework gap is best addressed through" other USF programs, such as Lifeline and the High Cost Fund.<sup>24</sup> On the contrary, the programs can work together to provide maximum coverage to areas lacking connectivity. Where education is concerned, schools should be able to extend their E-rate-funded networks to address the homework gap.

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<sup>23</sup> USTA Comments at 7; NTCA Comments at 8.

<sup>24</sup> USTA Comments at 18-20; NTCA Comments at 5-7; ITTA Comments at 4-10.



Addressing the homework gap through the E-rate program comports with the program's goals, and it is absurd to argue otherwise. Where students lack internet access at home, but their school could provide internet access for educational purposes to help ensure those students do well in school, E-rate should play a role. The E-rate program's "bedrock" principle is that E-rate services must be used for educational purposes.<sup>25</sup> Narrowing the homework gap fits squarely within the educational purposes requirement. Schools should be encouraged to extend their networks when they notice that their students lack home internet access.<sup>26</sup>

Further, the High Cost Fund has not fully solved the rural internet access problem. As NTCA stated in its comments, "there remain rural areas of the nation where geography, topography, or a lack of a business case limit the availability of high quality broadband to residences, those with students among them."<sup>27</sup> To argue that E-rate-funded networks should not be extended on the (potentially false) hope that a High Cost Fund recipient will build in that area is short-sighted and robs school children of the chance to succeed academically.

Regardless of the High Cost Fund's footprint or whether certain areas are cost-effective for broadband buildout, local school administrators are in the best position to

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<sup>25</sup> USTA Comments at 5.

<sup>26</sup> The benefits of extending the networks were enumerated at length in prior comments. See, e.g., OTI *et al.* Comments at 3-9. The FCC itself has recognized the benefits of extending E-rate-supported networks off-campus. *Schools and Libraries Universal Service Support Mechanism, Sixth Report and Order*, 25 FCC Rcd 18762, ¶¶41-43 (2010).

<sup>27</sup> NTCA Comments at 6.

make these decisions about the success of different programs, and to determine which solutions will best address which problems.<sup>28</sup> It is inappropriate for trade associations to use generalized statistics regarding internet service in Boulder at-large to accuse the Boulder school district of misleading the Commission, especially because the feasibility study cited appears not to discuss the housing developments Boulder claims it will target.<sup>29</sup>

Even where both E-rate and High Cost networks exist in the same geographic area, each supported network provides different types of service, and households may prefer one over the other. Networks built under the High Cost Fund are generally unfiltered and open, but still require a monthly subscription fee paid by the end-user. E-rate networks, on the other hand, are provided for free to the end-user but are limited to educational purposes and are subject to specific statutory and regulatory requirements for filtering. A household may be able to afford a subscription to a High Cost network, and that household would receive unfiltered internet access. But for those families that are priced out of that option, they could still avail themselves of the free, limited, E-rate-supported option. These Petitions allow those students an option to connect.

The FCC should be open to an E-rate-based solution to the homework gap, and should not let the mere existence of another USF program foreclose those opportunities.

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<sup>28</sup> Boulder Valley School District Comments at 2-4.

<sup>29</sup> See USTA Comments at 7-8.

## CONCLUSION

For the above reasons, the Petitions should be granted and the Commission should grant broader relief to allow similarly-situated schools to undertake similar programs to close the homework gap and bridge the digital divide.

Respectfully submitted,

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