

**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 THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTelecom) submits these reply comments in response to the Public Notice (Notice)¹ issued by the Wireline Competition Bureau (Bureau) of the Federal Communications Commission (Commission). Multiple parties filed comments on the two petitions (collectively, “the Petitions”) identified in the Notice: one filed by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation and others (Microsoft Petition),² and the other filed by Boulder Valley School District (BVSD) and the Samuelson-Glushko Technology Law & Policy Clinic (BVSD Petition)³ (the filing parties are referred to collectively as, “the Petitioners”).

¹ Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-Rate Supported Connectivity*, DA 16-1051 (September 19, 2016) (*Notice*).

² See, 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 (submitted June 7, 2016) (*Microsoft Petition*).

³ See, Petition for Waiver on behalf of Boulder Valley School District Samuelson-Glushko Technology Law & Policy Clinic (TLPC), WC Docket No. 13-184, WC Docket No. 10-90 (submitted May 16, 2016) (*BVSD Petition*).

The Petitions seek to extend E-Rate subsidized broadband networks and services into residential areas for the express goal of helping to close the “homework gap.” As noted by others in this proceeding, while closing the homework gap is a laudable goal, grant of the Petitions represents an inappropriate and inefficient use of the universal service fund (USF) that would jeopardize the integrity of the E-Rate program and the sustainability of the E-Rate fund. The Petitions should either be denied, or only considered by the full Commission in a formal rulemaking proceeding.

I. The Record Underscores the Significant Concerns Surrounding the Policy Implications Raised in the Petitions.

The record in this proceeding echoes the substantial concerns raised by USTelecom. In its initial comments, USTelecom identified a number of concerns with the Petitions, including that they exceed the statutory authority for the E-Rate program, conflict with the express purpose of other USF programs, could potentially put in jeopardy the sustainability of the E-Rate fund, and raise a host of problematic oversight issues, including those related the Children’s Internet Protection Act (CIPA).

A. The Petitions Violate the Statutory Requirements Governing the use of E-Rate Funds.

The record also demonstrates that the Petitions challenge the statutory requirement that E-Rate supported services are to be provided “to” schools and libraries, and must be used for an “educational purpose.” As noted by numerous commenters, any waiver grant allowing schools and libraries to extend USF-subsidized services to residential areas, rather than “to” the schools and libraries themselves, would violate the statute and would unlawfully expand the scope of the program that is expressly limited under the statute solely to services provided “to elementary schools, secondary schools, and libraries.”

ITTA, for example, discusses at length the “educational purpose” requirement under the statute, and notes how grant of the waivers would make it difficult to “monitor compliance with the E-rate program’s bedrock ‘educational purpose’ requirements outside of the physical environment of a school or library.”⁴ NTCA addresses similar points, noting that “there is no indication that the use of E-rate supported facilities for the requested purposes would be limited to the use of Internet access solely for educational purposes.”⁵ USTelecom agrees that the structure and legislative history of Section 254 of the Communications Act, as amended, (“the Act”) “makes clear that the E-rate program was designed to provide discounts for telecommunications services provided *to school classrooms and libraries* for educational purposes and that geographically limiting use of E-rate support was a deliberate policy choice codified to foster a more effective overall telecommunications universal service policy.”⁶

B. The Record Demonstrates that Grant of the Waivers Would Significantly Frustrate the Universal Service Statutory Scheme

Multiple parties agreed with USTelecom that the Petitioners are proposing to use E-Rate funds to solve challenges better suited to other USF programs, such as Lifeline and the Connect America Fund (CAF).⁷ Using discrete USF programs at cross-purposes is an inefficient use of limited funds, and will only undermine the viability of all USF programs, including E-Rate. As noted by ITTA, “use of E-rate funding to achieve both E-rate and high-cost program/CAF goals,

⁴ See, Comments of ITTA, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, pp. 10 – 11 (submitted November 3, 2016) (*ITTA Comments*).

⁵ See, Comments of NTCA, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, pp. 8 – 9 (submitted November 3, 2016) (*NTCA Comments*).

⁶ See, Comments of WTA, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 5 (submitted November 3, 2016) (*WTA Comments*) (emphasis in original).

⁷ See, Comments of the United States Telecom Association, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, pp. 18 – 20 (submitted November 3, 2016) (*USTelecom Comments*). See e.g., *ITTA Comments*, pp. 4 – 10; *NTCA Comments*, pp. 3 – 7.

or E-rate and Lifeline goals, would compromise the explicitness of high-cost support and the specificity and predictability of the program would be undermined.”⁸

NTCA observed that grant of the Petitions would “blur, if not obliterate, the distinction between” various USF programs such as the CAF and E-Rate.⁹ It further noted that these “individual but interconnected programs target support in a manner that can and should be complementary in achieving broader universal service objectives.”¹⁰ NTCA appropriately observed that “careful coordination is essential to ensure they achieve their objectives in concert, rather than competing and conflicting with one another in the deployment of redundant networks,” or working at odds with other USF programs such as Lifeline.¹¹ In a similar manner, ITTA noted that “using E-rate supported services to accomplish high-cost program/CAF goals threatens to undermine the specificity, predictability, and explicitness of USF support.”¹²

Multiple commenters supporting the Petitions expressly acknowledge that the homework gap results from either broadband affordability or broadband access issues, which are best addressed through the Lifeline and CAF programs, respectively. For example, one commenter noted that “disproportionately, the students returning to unconnected homes are from low-income households, particularly black and Hispanic households.”¹³ Similarly, the New America Foundation argues that extending school networks “beyond the walls of the institution will lower

⁸ *ITTA Comments*, p. 7.

⁹ *NTCA Comments*, p. 2.

¹⁰ *Id.*, p. 6.

¹¹ *Id.*

¹² *ITTA Comments*, p. 7.

¹³ *See*, Comments of EveryoneOn, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 3 (submitted November 3, 2016).

the cost of connectivity for low-income students,”¹⁴ which is the statutory purpose of the Lifeline program. Given that commenters have repeatedly identified affordability and accessibility issues as key challenges in bridging the homework gap, the Commission should use appropriate USF programs to address such gaps in a more efficient manner.

C. The Record Demonstrates that Grant of the Petitions Would Adversely Impact the Sustainability of the E-Rate Program

The record also underscores the significant concerns about the sustainability of the E-Rate fund if the Petitions were granted. Grant of the Petitions would substantially expand the footprint of E-Rate eligible services, thereby placing unprecedented strain on the E-Rate capped fund. Despite statements by the Petitioners claiming that their proposals would have no impact on the E-Rate fund, USTelecom and others, most notably the Schools Hospitals and Library Broadband Coalition (SHLB) and the American Library Association,¹⁵ noted in the comments cycle the potential that these proposals – which seek to provide services outside school premises without the need for cost allocation – would in fact impact the fund by expanding demand for capacity to serve the now expanded needs of eligible entities. The record provides ample evidence that such warnings for caution are merited.

Indeed, many commenters filing in support of the Petition state their shared desire to expand E-Rate subsidized facilities into residential communities. These include comments from

¹⁴ See, Comments of the New America’s Open Technology Institute, et. al, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 3 (submitted November 3, 2016).

¹⁵ See e.g., Comments of the American Library Association, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184 (submitted November 3, 2016) (*ALA Comments*) (opposing any waiver of the cost allocation rule, and discussing the importance of gathering sufficient data to ensure that no E-Rate funds are used); see also, Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, et. al., CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 2 (submitted November 3, 2016) (*SHLB Coalition Comments*) (stating that “the integrity of the E-Rate program must be preserved, and the FCC must be cautious not to open the door to additional purposes that stray from the core mission of the E-rate program.”).

some of the largest school districts in the country, including New York City and Miami-Dade County, as well as the Detroit Public Schools. In its comments, the New York City Department of Education encourages the Commission to issue a declaratory ruling to waive its cost-allocation rule “for similar efforts,”¹⁶ while Miami-Dade Public Schools supports the use of “E-Rate subsidized broadband networks to be accessed by students from their homes.”¹⁷

In addition to these larger school districts, many other smaller and mid-sized school express support for the Petitions, and suggest that such proposals should be widely implemented.¹⁸ Indeed, the Steamboat Springs School District goes even further in suggesting that the BVSD Petition “did not go far enough,” and “should not be restricted to just low-income students, but *any* student of Boulder Valley School District.”¹⁹ The precedent established by any grant of the Petitions would significantly strain the sustainability of the E-Rate fund.

Consistent with the comments of USTelecom, several other commenters acknowledged that the proposals contained in the Petitions raised significant E-Rate sustainability concerns. For example, the SHLB Coalition stated that “the integrity of the E-Rate program must be preserved, and the FCC must be cautious not to open the door to additional purposes that stray

¹⁶ See, Comments of the New York City Department of Education, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 2 (submitted November 3, 2016) (*NYCDOE Comments*).

¹⁷ See, Comments of Miami-Dade County Public Schools, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 1 (submitted November 3, 2016). See also, Comments of Detroit Public Schools, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 1 (submitted October 21, 2016).

¹⁸ See e.g., Comments of the Sacramento City Unified School District, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, (submitted November 2, 2016); Comments of Placer Union High School District, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, (submitted November 3, 2016); Comments of Widefield School District 3, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184.

¹⁹ See, Comments of Steamboat Springs School District RE-2, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 1 (*Steamboat Springs Comments*).

from the core mission of the E-rate program.”²⁰ The SHLB Coalition further stated that the Commission must be careful with respect to “safeguarding the integrity of the E-rate program and ensure that it remains true to its core purpose.”²¹

Similarly, the American Library Association (ALA) – offering only “qualified support”²² for the Petitions – recommended “narrow approval”²³ subject to the conditions that any waiver grant be limited to each of the Petitions (*i.e.*, not a blanket waiver), and that “no E-Rate funding be used.”²⁴ Moreover, the ALA rejected any waiver of the cost allocation rules, and instead proposed a requirement that the Petitioners and “all parties involved . . . keep meticulous records on the costs for all facets of the project and report such costs to the Commission as part of a comprehensive project evaluation.”²⁵

Responding to this potential for increased capacity demand, SECA calls for a temporary-only grant waiver of the Petitions that would, among other things, limit off-campus use of E-Rate funded capacity to after school hours only.²⁶ In proposing such a caveat, SECA presumably believes that such a measure would limit the possibility that outside school users would compete with on-school-premise capacity demand during the day and, in so doing, incent schools to

²⁰ See, *SHLB Coalition Comments*, p. 2.

²¹ *Id.*, p. 12.

²² *ALA Comments*, p. 2.

²³ *Id.*, p. 4.

²⁴ *Id.*, p. 2.

²⁵ *Id.*, p. 3.

²⁶ Comments of the State E-Rate Coordinators’ Alliance, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 2 (submitted November 2, 2016) (*SECA Comments*) (suggesting that “the number of students given after-hour access to school Internet facilities must be limited in order to meet the explicit assumption in both petitions that such use would not increase a school’s E-rate costs.”).

increase their demand for broadband capacity in order to meet these additional residential capacity needs.

In short, contrary to the unsubstantiated assertions of the Petitioners and several commenters in this proceeding, the proposals contained in the Petitions do not have “zero” costs to the E-Rate fund.²⁷ Indeed, waiving the E-Rate funds cost allocation rules would prevent the Commission from determining whether such proposals are truly ‘no cost’ as many commenters assert. For this reason alone, it would be irresponsible for the Bureau to grant waiver to this Petitions on delegated authority. Reforms such as these could potentially destabilize the E-Rate fund, and therefore merit full Commission review.

D. The Record Demonstrates that the Petitions Have Failed to Adequately Demonstrate Compliance with CIPA Obligations.

USTelecom previously discussed at length the multiple challenges that each of the Petitions raise with respect to the requirements under the CIPA.²⁸ Other commenters expressed similar concerns regarding the CIPA-compliance issues raised by the Petitions, including the State E-Rate Coordinators’ Alliance (SECA). While SECA supported both Petitions, it also noted that CIPA compliance issues are “not really addressed in either petition,” but that they must nevertheless be considered.²⁹ SECA further notes that issues such as CIPA are an “important aspect” of both Petitions and that the role of the schools in administering such

²⁷ See, *Steamboat Springs Comments*, p. 1. See also, Comments of the Benton Foundation, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 4 (submitted November 3, 2016) (stating that the goals of the Petitions can be attained “at no additional cost to the E-Rate Fund.”); see also, Comments of Voice on the Net Coalition, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 4 (submitted November 3, 2016) (arguing that grant of the Petitions would “extract more benefit from E-Rate subsidized connections . . . without adding another dollar to the size of the fund.”).

²⁸ See, *USTelecom Comments*, pp. 11 – 14.

²⁹ *SECA Comments*, p. 3.

compliance must be considered. However, neither the Petitioners nor commenters filing in their support provide any specifics on how such administration of CIPA compliance would be accomplished given the residential settings envisioned. Any failure by schools and libraries to comply with the obligations of CIPA could inadvertently place them at risk of violating federal law and jeopardizing their E-Rate funding.

In its comments, WTA – The Rural Broadband Alliance noted that “given that the Internet safety policies in the [CIPA] address content considered to be harmful to minors, such filtering will do little to prevent widespread use of E-rate-funded Internet for non-education purposes such as watching Netflix, online gaming, or other web browsing to application usage unrelated to educational endeavors.”³⁰ Similar to the comments of USTelecom, ITTA also noted the complete absence of CIPA compliance concerns in the BVSD Petition.³¹

Most of the commenters filing in support of the Petitions did not even acknowledge any of the challenges and concerns associated with ensuring CIPA compliance. Of the limited number of commenters supporting the Petitions that did acknowledge compliance concerns,³² the challenges associated with CIPA were given only minimal treatment. For example, while the comments from the Steamboat Springs School District simply state that the Petitions would be “subject to the same restrictions and filters that they have during the day,”³³ it provides no specifics on how the obligations under CIPA would be realized.

³⁰ *WTA Comments*, p. 11.

³¹ *ITTA Comments*, pp. 12 – 13 (noting that with respect to the BVSD Petition, “[n]owhere does it mention CIPA compliance.”). *Id.*, p. 13.

³² See e.g., *Steamboat Springs Comments*, p. 1; Comments of Final Mile Communications, Inc., CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 1 (emphasis added) (*Final Mile Comments*) (stating only that the “school environment ensures that proper network security protocols and web filtering are in effect to achieve the intended purpose.”).

³³ *Steamboat Springs Comments*, p. 1.

Final Mile Communications, Inc. (Final Mile) equated previous Commission decisions allowing use of E-Rate funded facilities during non-school hours to the proposals contained in the Petitions. In doing so, Final Mile states that the “*school environment ensures* that proper network security protocols and web filtering are in effect to achieve the intended purpose.”³⁴ However, this ignores the fact that the CIPA-compliance issues raised in the Petitions are outside of the “school environment,” and must be satisfied in purely residential settings.

While Final Mile and others seek to address these concerns through conditions requiring the “same security protocols off-campus as required on-campus,”³⁵ USTelecom and others discussed why such security protocols would be unworkable in the residential settings envisioned by the Petitioners.³⁶ Similarly, the comments filed by Voqal on Behalf of Mobile Citizen acknowledge that “without the types of monitoring that can be assured on school premises by teachers and administrators, students accessing the Internet at home could conceivably access programming that . . . wouldn’t meet the strict educational purposes of E-rate.”³⁷

II. Commenters Correctly Note That the Petitions Raise Novel Questions of Law, Facts and Policy That Can Only be Addressed by the Full Commission.

USTelecom also agrees with several of the commenters who maintain that because the Petitions raise a host of novel questions of law, fact and policy they should only be fully addressed by the Commission through a formal rulemaking proceeding. An issue specific to Wireline matters must be decided by the full Commission when it presents “novel questions of

³⁴ See, *Final Mile Comments*, p. 1 (emphasis added).

³⁵ *Id.*, p. 2.

³⁶ See e.g., *USTelecom Comments*, pp. 11 – 14. See also, *WTA Comments*, p. 11; *ITTA Comments*, pp. 12 – 13.

³⁷ See, Comments of Voqal, CC Docket No. 02-6; WC Docket No. 10-90; WC Docket No. 13-184, p. 9.

law, fact or policy which cannot be resolved under outstanding precedents and guidelines.”³⁸

Multiple parties correctly note that the Petitions are well outside the Bureau’s jurisdiction since such waiver requests may be addressed on delegated authority only under limited instances.³⁹ As noted by commenters, neither of the Petitions meets this standard and the petitions can therefore be addressed only by the full Commission.

Indeed, as noted by several commenters,⁴⁰ the Microsoft Petition emphasizes the “uncertainty about the Commission’s E-rate rules,”⁴¹ while also stating that much of the uncertainty springs from the “novelty of TVWS technology.”⁴² The Microsoft Petition further notes that the FCC’s Eligible Services List “simply does not contemplate this scenario.”⁴³ As such, both Petitions must be addressed by the Commission.

USTelecom agrees with the multiple commenters who noted that the Petitions fall well outside the Bureau’s delegated authority. As noted by NTCA, the Petitions contemplate a use of E-Rate supported services and facilities that are “simply without precedent in the two decade history of the program.”⁴⁴ USTelecom shares the view that one “cannot reasonably argue that such a fundamental rethinking of the E-Rate program is not a ‘novel question of fact, law, or policy’ that should be undertaken by the full Commission via a formal rulemaking process.”⁴⁵ In addition, several other commenters also provided extensive analysis as to how the Petitions are

³⁸ 47 C.F.R. § 0.291(a)(2).

³⁹ See, *WTA Comments*, pp 6 – 13; *ITTA Comments*, pp. 13 – 16; *NTCA Comments*, pp. 10 – 13.

⁴⁰ See e.g., *WTA Comments*, p. 7 (noting the observation in the *Microsoft Petition* that the eligible service list “‘simply does not contemplate’ a scenario in which a Category One Internet access service is extended for off-campus use by students.”).

⁴¹ *Microsoft Petition*, p. 3.

⁴² *Id.*, p. 16.

⁴³ *Id.*

⁴⁴ *NTCA Comments*, p. 11.

⁴⁵ *Id.*

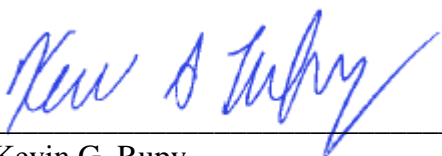
easily distinguished from earlier decisions, including one for the State of Alaska.⁴⁶ Given the record established in this proceeding, the Petitions should only be considered by the full Commission in a rulemaking proceeding.

III. Conclusion

The record in this proceeding clearly demonstrates that the Petitions raise a host of legal, procedural and policy implications that must be addressed by the Commission before moving forward. Given the substantial uncertainty surrounding these issues, and their significant importance, the Commission should not move forward until the challenges they raise are fully addressed. Failure to do so would put the integrity and sustainability of the E-Rate program in jeopardy.

Respectfully submitted,

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⁴⁶ See e.g., *USTelecom Comments*, pp. 20 – 22; *WTA Comments*, pp. 7 – 9; *ITTA Comments*, pp. 15 – 16.