

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: Chief, Wireline Competition Bureau

**REPLY COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby replies to certain of the Comments filed in the above-captioned proceeding<sup>1</sup> by recommending criteria the Commission should adopt in a declaratory ruling to provide guidance to school districts that request waiver of Section 54.504(e) of the Commission’s Rules. WISPA believes that this “checklist” approach will provide school districts with clear guidance on the contents of acceptable waiver requests that will help bridge identifiable and documented “homework gaps” without undermining other federal support programs or discouraging private investment.

**Introduction**

The record in this proceeding demonstrates sharp disagreement on whether the Commission should grant the Petitions. On one hand, supporters stated that extending E-rate subsidized networks to off-campus locations “will help to address the homework gap, will

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<sup>1</sup> 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 (filed June 7, 2016) (“Virginia Petition”); and Petition for Waiver on behalf of Boulder Valley School District, WC Docket Nos. 13-184 and 10-90 (filed May 16, 2016) (“BVSD Petition”) (collectively, “Petitions”). WISPA filed Comments addressing points presented in the Petitions. See Comments of WISPA, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“WISPA Comments”).

simplify program administration, and will not add to the USF cost burden.”<sup>2</sup> Consumer groups similarly noted that “extending E-rate-funded networks to nearby low-income households will help lower the cost of connectivity for low-income communities, bridge the digital divide, and overcome the homework gap.”<sup>3</sup> Funds of Learning, LLC characterized the Petitioners’ request as “a logical, long overdue extension of the E-rate program’s 2010 Community Use rules.”<sup>4</sup> Several school districts also supported the Petitions.<sup>5</sup>

On the other hand, opponents raised procedural and substantive concerns about the Petitions. The United States Telecom Association observed that using E-rate support for off-campus locations could conflict with the goals of other federal programs, stating that “[b]y utilizing E-rate funds to address affordability needs better addressed through the Lifeline program, and accessibility needs better addressed by the CAF program, the Commission would be unnecessarily straining its already limited USF resources by using them in situations for which they are not designed.”<sup>6</sup> Both USTelecom and ITTA expressed concern that the Petitions

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<sup>2</sup> Comments of Sprint Corporation, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) at 2 (“Sprint Comments”).

<sup>3</sup> Comments of New America’s Open Technology Institute, *et al.*, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“New America Comments”) at 4. *See also* Comments of the Benton Foundation, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“[e]xpanding broadband Internet access at home is, indeed, critical to close the ‘Homework Gap’”); Comments of the Dynamic Spectrum Alliance, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) at 5 (“petitions offer a way forward to reduce the homework gap”).

<sup>4</sup> Comments of Funds for Learning, LLC, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) at 1.

<sup>5</sup> *See, e.g.*, Comments of Poudre School District, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“Poudre School Comments”); Comments of Sacramento Educational Cable Consortium, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016); Comments of Sharyland Independent School District, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“Sharyland Comments”); Comments of Placer Union High School District, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016); Comments of Mary Ronan, Cincinnati City School District Superintendent, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016); Comments of Steamboat Springs School District Re-2, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 2, 2016); Comments of Sacramento City Unified School District, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 2, 2016).

<sup>6</sup> Comments of United States Telecom Association, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“USTelecom Comments”) at 2-3. *See also* Comments of ITTA – The Voice of Mid-Size Communications Companies, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184

presented a risk that the connectivity would be used for non-educational purposes, and that the Petitions did not provide adequate “safeguards.”<sup>7</sup> USTelecom also expressed concern over the possibility that E-rate funds could be used to “create an increased risk that, in order to satisfy other community demands, eligible schools and libraries will purchase more services than they need to support on-campus activities.”<sup>8</sup>

WISPA generally supported the objectives underlying the Petitions, but stated that “the Bureau should make clear in a declaratory ruling that individual school districts can request waiver if they thoroughly explain the need for E-rate subsidized fixed broadband in a given area and demonstrate the lack of any affordable Internet access.”<sup>9</sup> Similarly, the American Library Association (“ALA”) recommended that, instead of the blanket waiver sought in the BVSD Petition, petitioners “be required to undertake a thorough evaluation of the project . . . [to] give the Commission the information it needs to make an informed decision on whether to extend a waiver to this type of connectivity to other applicants.”<sup>10</sup>

In the discussion below, WISPA expands on its proposal to establish conditions that would warrant approval for an E-rate recipient to use E-rate support to provide broadband service to off-campus locations. The proposal recommends specific criteria that the Commission (preferably) or the Bureau would adopt in a declaratory ruling. These criteria are intended to

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(filed Nov. 3, 2016) (“ITTA Comments”) at 7 (“[t]he use of E-rate funding to achieve both E-rate and high-cost program/CAF goals, or E-rate and Lifeline goals, would compromise the explicitness of high-cost support and specificity and predictability of the program would be undermined”); Comments of NTCA The Rural Broadband Association, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“NTCA Comments”) at 2 (“at least in areas where High-Cost USF support enables deployment and ongoing operation of existing networks, grant of the Petitions would blur, if not obliterate, the distinction between the High-Cost and E-rate programs”); Comments of WTA – Advocates for Rural Broadband, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“WTA Comments”) at 3 (“will encourage overbuilding of networks supported by” CAF).

<sup>7</sup> USTelecom Comments at 9; ITTA Comments at 13.

<sup>8</sup> USTelecom Comments at 16.

<sup>9</sup> WISPA Comments at 3.

<sup>10</sup> Comments of the American Library Association, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“ALA Comments”) at 3. ALA also advocated for “a more structured approach” to address the Petitions. *Id.* at 4.

build on the factual statements made in the Virginia Petition, ensure the viability of the Lifeline and CAF programs, encourage private investment in broadband networks, and address questions and concerns presented in initial Comments.<sup>11</sup>

### **Discussion**

The following checklist summarizes WISPA’s recommendations on the minimum requirements that an E-rate recipient should meet in order to be eligible for a waiver of Section 54.504(e) to use E-rate support to provide broadband service to off-campus locations. The checklist would be made transparent through adoption of a declaratory ruling. Subsequently filed waiver requests would be subject to individual, case-by-case processing, and the Commission would have discretion to invite public comment.

- ✓ The waiver request must be filed by a school or library that has received E-rate support “for educational purposes.”<sup>12</sup>
- ✓ The waiver request must not increase the cost to the Universal Service Fund (“USF”), and recipients would be subject to accounting rules and audits.<sup>13</sup>
- ✓ The Commission must not approve any waiver request that would result in a given location receiving support from more than one USF program.<sup>14</sup>

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<sup>11</sup> WISPA takes no position on whether the Commission, either on its accord or by the Bureau on delegated authority, has authority to waive Section 54.504(e), or whether the existing waiver requests comply with the Administrative Procedure Act (“APA”) or the Regulatory Flexibility Act (“RFA”). *See* USTelecom Comments at 3-6 (waiver is not authorized because E-rate support would not be used to provide services “to” schools and libraries for “educational purposes” in accordance with the statutory requirements); WTA Comments at 3-7; NTCA Comments at 10-13 (APA requires a full Commission vote); ITTA Comments at 14 (RFA requires an Initial Regulatory Flexibility Analysis, which the Commission did not include in this proceeding). *Compare to* BVSD Petition at 8 (Commission has ancillary authority); Comments of Schools, Health & Libraries Broadband Coalition, *et. al*, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) at 9-13 (Commission has authority either through the 2010 E-rate Sixth Report and Order or as a use permitted as “ancillary” to eligible services).

<sup>12</sup> 47 U.S.C. § 254 (h)(1)(B) (“all telecommunications carriers serving a geographic area shall ... provide such services to elementary schools, secondary schools, and libraries for educational purposes”). *See* Virginia Petition at 3; Sprint Comments at 3; Poudre School Comments at 1; Comments of Voqal on Behalf of Mobile Citizen, CC Docket No. 02-6, WC Docket No. 10-90 and WC Docket No. 13-184 (filed Nov. 3, 2016) (“Voqal Comments”) at 3.

<sup>13</sup> *See* Virginia Petition at 13; BVSD Petition at 2-3.

<sup>14</sup> *See* NTCA Comments at 6-7; WTA Comments at 9-10; ITTA Comments at 5-8; USTelecom Comments at 2, 18-19.

- Off-campus locations must not otherwise be “served”<sup>15</sup> by commercial fixed (i.e., not mobile) broadband of at least 4 Mbps downstream/1 Mbps upstream, 150 MB/month data usage cap and 100 ms of latency at “reasonably comparable” price, as initially determined by CAF criteria and definitions<sup>16</sup> and a list of “unserved” areas (based on Form 477). Any location determined to be served by one or more commercial provider, whether subsidized or unsubsidized, would be ineligible for E-rate supported broadband service at off-campus locations.
- Consumers accepting Lifeline support for broadband would not be eligible to be served by E-rate support at their homes.<sup>17</sup>
- ✓ Off-campus locations may not be located beyond limits of the requesting school district.
- ✓ E-rate broadband service must comply with CIPA for off-campus locations.<sup>18</sup>
- ✓ E-rate broadband use must be limited to educational purposes.<sup>19</sup> Schools must authenticate and monitor for compliance,<sup>20</sup> and a majority of the use must be after regular school hours.<sup>21</sup>
  - If the school district self-provisions broadband, such schools would not be permitted to monetize, commercialize, resell or cost-recover by offering broadband service to off-campus locations and/or to the public on a commercial basis. Commercial partners would be permitted to engage in such commercial activities and may, for instance, offer unserved off-campus locations the option of an “educational broadband service” or a “commercial broadband service.”
  - The Commission should adopt safeguards against “gold plating.”<sup>22</sup>

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<sup>15</sup> The Commission has previously stated that “a census block would be considered ‘served’ if a provider could show three elements: (1) the provider actually offers voice and broadband service in the census block, (2) the provider has physical assets in or adjacent to the census block, and (3) the provider currently has or previously had voice or broadband customers in the census block.” *Connect America Fund, et al.*, Memorandum Opinion and Order, FCC 15-148, WC Docket Nos. 10-90 and 14-93 (rel. Nov. 5, 2015) at 2, *citing Public Notice*, “Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process,” 29 FCC Rcd 7505, 7507-08 (WCB 2014).

WISPA suggests that the same criteria that applies at the census block level can be applied to school district areas.  
<sup>16</sup> *See, e.g., Connect America Fund, et al.*, 28 FCC Rcd 15060 (2013) (establishing minimum performance criteria for CAF recipients).

<sup>17</sup> *See* USTelecom Comments at 19 (emphasizing Lifeline’s role in assisting families and E-rate’s role in assisting schools and libraries); ITTA Comments at 7.

<sup>18</sup> *See* ITTA Comments at 12-13 (emphasizing CIPA compliance); USTelecom Comments at 11; Virginia Petition, Decl. of Superintendent Dr. Merle P. Herndon, Decl. of Superintendent Nancy Leonard (certifying that both schools already comply with CIPA on campus per E-rate rules); Voqal Comments at 7; New America Comments at 9; Sharyland Comments at 4.

<sup>19</sup> *See* Sprint Comments at 3; Poudre School Comments at 1; Voqal Comments at 3; Virginia Petition at 3.

<sup>20</sup> *See* New America Comments at 9 (stating technical requirements ensure networks are only used for educational purposes); ALA Comments at 1-3 (advocating for meticulous record-keeping, more structure in oversight and evaluation, and no blanket waivers).

<sup>21</sup> *See* BVSD Petition at 3 (stating the majority of use would be after school hours have ended).

<sup>22</sup> *See* USTelecom Comments at 15-16; WTA Comments at 3; BVSD Petition at i (stating that the school has not requested more service than necessary for on-campus educational purposes).

- ✓ Waiver grantees would be required to make annual filings with the Commission certifying compliance with the waiver standards and that the unserved locations are not then being served by a commercial broadband provider.

There are a number of benefits associated with this checklist. First, it permits E-rate support to be used for off-campus locations that are truly unserved, which achieves a basic objective sought in the Petitions. Second, the checklist ensures that such extension would be cost-neutral to the E-rate program and would not compromise other USF programs such as Lifeline and CAF. Third, waivers would be considered on a case-by-case basis in light of specific circumstances present in specific school districts. The Commission would not entertain blanket waiver requests, which could lead to unserved locations being supported by more than one program. Fourth, by requiring filtering, the E-rate supported broadband would not offer the full benefits of commercial broadband Internet access and would therefore not discourage the investment in and deployment of broadband by private interests. Fifth, the WISPA proposal would prevent E-rate supported competition to private investment by ensuring that schools would be prohibited from monetizing, commercializing, reselling or cost-recovering by offering broadband service to off-campus locations and/or to the public on a commercial basis. E-rate supported broadband would be limited to those off-campus locations situated within the school district boundaries.

The Commission should adopt these criteria in a declaratory ruling.<sup>23</sup> A declaratory ruling would provide transparency and clear guidance to school districts and the public on the elements required for a waiver to be considered.

If implemented properly after case-by-case consideration, allowing E-rate support to be used for off-campus broadband can help bridge the “homework gap.” However, safeguards and

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<sup>23</sup> See WTA Comments at 3-7; NTCA Comments at 10-13.

conditions must be adopted so that other USF programs and private investment are not undermined. The standard reflected in the recommended criteria above attempt to resolve the differences among supporters of the Petitions and opponents that have raised legitimate concerns.

### **Conclusion**

The Commission should adopt a declaratory ruling that incorporates the above criteria as prerequisites to obtaining the relief requested in the Petitions, and other filings that school districts may make in the future to provide E-rate supported broadband service to off-campus locations.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

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By: */s/ Alex Phillips*, President  
*/s/ Mark Radabaugh*, FCC Committee Chair

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