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## Summary

The E-rate program has been instrumental in ensuring that schools and libraries have access to modern communications networks that enable students, teachers, parents, and others to take advantage of the educational benefits and other opportunities available in the digital age. The Commission should build on the success of the E-rate program by adopting proposals that would streamline and maximize the cost effectiveness of the program while promoting affordable access for schools and libraries to 21st century communications services that support digital learning.

It is not necessary for the Commission to undertake a comprehensive restructure of the E-rate program. Indeed, the Commission should steer clear of implementing changes that would be counterproductive to its goals, and instead focus its efforts on modifications proposed in the *NPRM* that would streamline, increase transparency, and preserve the financial integrity of the program.

The Commission proposes several options for streamlining the program's administration, such as speeding up the review of applications and issuance of commitment decisions, increasing the transparency of the application process, moving to electronic filing of required forms and correspondence, and allowing E-rate applicants to receive disbursements directly from USAC rather than going through their E-rate service provider. ITTA supports these proposals.

The Commission also proposes several changes that would undermine its stated goals. For instance, Commission proposals to increase E-rate certification, audit, document retention, and disclosure requirements would create unnecessary administrative burdens for ITTA members and other longstanding E-rate participants without helping to deter waste, fraud, and abuse in the program. Commission proposals that would expand the E-rate budget by increasing spending

with respect to dark fiber or more generally could jeopardize other important Commission policy goals relating to broadband deployment and adoption. Certain proposals, such as providing E-rate support for wireless hotspots, would be inconsistent with the educational purposes of the E-rate program. Other proposals, such as establishing price benchmarks or utilizing the CAF Phase II cost model or the National Broadband Map for the E-rate program, would not be useful or appropriate. ITTA does not support these proposals.

ITTA also encourages the Commission, as it considers ways to modernize the E-rate program, not to undermine the existing program on which schools and libraries have come to rely by discontinuing support for voice services or limiting support to voice service that is bundled with broadband. While it makes sense to phase out E-rate support for services for which there is no demand, schools and libraries will continue to rely on “plain old telephone service” (“POTS”) for the foreseeable future as the industry transitions to an all-IP world. Given that this transition is occurring naturally in response to marketplace forces, the Commission should not interfere. Should the Commission nevertheless determine to phase out support for POTS, it must ensure a reasonable time period for such a transition.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 ) WC Docket No. 13-184  
**Modernizing the E-Rate Program for** )  
**Schools and Libraries** )

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS  
ALLIANCE**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in response to the Commission’s July 23, 2013 Notice of Proposed Rulemaking (“*NPRM*”) seeking comment on reforming the E-rate program to facilitate access to high-capacity broadband connections for schools and libraries while streamlining and ensuring the financial integrity of the program.<sup>1</sup>

**I. THE SUCCESS OF THE E-RATE PROGRAM RENDERS AN EXTENSIVE  
OVERHAUL OF THE PROGRAM UNNECESSARY**

Over the past fifteen years, the E-rate program has revolutionized access to modern communications networks and played a crucial role in expanding broadband services to schools and libraries throughout the nation. The financial support provided by this program has delivered invaluable educational opportunities for students, teachers, and members of the community by ensuring access to the connectivity necessary for their participation in the digital world. As the program has continued to grow, so have improvements in the educational experience as well as the prospect for a bright and successful economic future for those who have been able to reap the benefits of the program. The challenge the Commission now faces is

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<sup>1</sup> *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, WC Docket No. 13-184, FCC 13-100 (rel. July 23, 2013) (“*NPRM*”).

how to modernize the program to ensure our nation's students and communities have access to high-speed broadband connections while ensuring that the program remains fiscally responsible.

ITTA welcomes the opportunity to provide input as the Commission considers ways to meet these objectives. Increasing bandwidth to our schools and libraries is critical because it provides the tools that are essential to the country's future success. It will enable students to have access to a quality education regardless of school size or where they live and it will ensure that individuals have access to the resources necessary to apply for jobs and learn new skills. By harnessing technology in connection with their educational and career goals, students and members of the community can compete in the global economy.

Due in large part to the E-rate program, ITTA member companies currently offer speeds of 100 Mbps, and in some cases 1 Gbps, to hundreds of schools and libraries throughout the nation, many of which are located in rural areas where access to modern technology is needed most. Modern communications networks allow ITTA members and other providers to offer a whole suite of services that further the educational purposes of the E-rate program, including web hosting, electronic mail services, interactive content, distance learning applications, and other cutting-edge learning tools. ITTA believes that the Commission should build on the success of the E-rate program by adopting proposals that would streamline and maximize the cost effectiveness of the program while promoting affordable access for schools and libraries to 21<sup>st</sup> century communications services that support digital learning.

To accomplish these goals, it is not necessary for the Commission to conduct a comprehensive restructure of the program. In fact, the Commission should take care not to implement changes that would increase administrative burdens, undermine cost savings, or be inconsistent with the purpose of the program. Rather, the Commission can and should adopt

modest changes to make the program more efficient, cost effective, and transparent as it focuses on providing schools and libraries with high-capacity broadband connections necessary for the digital age.

## **II. ITTA SUPPORTS ADOPTION OF MODIFICATIONS THAT WOULD STREAMLINE AND REDUCE ADMINISTRATIVE BURDENS ASSOCIATED WITH THE E-RATE PROGRAM**

While the success of the E-rate program obviates the need for a comprehensive overhaul, the Commission can and should make certain modifications that are consistent with its goal of streamlining administration of the program to make it more efficient and transparent. As the Commission acknowledges, one of the flaws of the current program is that the application and disbursement processes are unnecessarily time-consuming, burdensome, and complex.<sup>2</sup> The Commission proposes several options for streamlining the program's administration, such as speeding up the review of applications and issuance of commitment decisions,<sup>3</sup> increasing the transparency of the application process,<sup>4</sup> moving to electronic filing of required forms and correspondence,<sup>5</sup> and allowing E-rate applicants to receive disbursements directly from USAC rather than going through their E-rate service provider.<sup>6</sup> ITTA supports Commission adoption of these proposals.

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<sup>2</sup> *Id.* at ¶ 224.

<sup>3</sup> *Id.* at ¶ 233.

<sup>4</sup> *Id.* at ¶ 232.

<sup>5</sup> *Id.* at ¶ 227.

<sup>6</sup> *Id.* at ¶¶ 259-62.



**A. The Commission Should Adopt Deadlines and Other Measures to Reduce Funding Delays and Increase Transparency in the E-Rate Application Process**

The Commission seeks comment on ways to reduce the time it takes USAC to review applications for E-rate support in order to more quickly release funding commitment decisions.<sup>7</sup> One of the most helpful changes the Commission could adopt to speed up the E-rate application process would be to establish deadlines for USAC to review applications and issue funding decisions.<sup>8</sup>

While it is imperative for USAC to verify that only eligible entities receive funding for eligible services and that other important safeguards are met, the time-consuming nature of USAC's review process often prevents applicants from deploying eligible services until late in the funding year. Establishing reasonable timeframes in which USAC should complete application processing and make funding determinations would further the educational benefits associated with the E-rate program by ensuring that schools and libraries are able to provide valuable educational tools on a more timely basis.

It also would enhance operation of the program for USAC to communicate more information about the status of E-rate applications during the various steps of the review process.<sup>9</sup> The lack of transparency associated with current administration of the program often forces applicants to make purchasing and other decisions with imperfect information about the status of their applications or their prospects for receiving E-rate funding. Making more detailed

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<sup>7</sup> *See id.* at ¶ 233.

<sup>8</sup> ITTA recognizes that part of the delay in processing E-rate applications occurs because USAC must obtain additional information or documentation from the applicant to support the application. Any deadline for USAC to complete a specific processing task or reach a decision regarding funding commitments should be tolled during the period in which USAC is waiting for the applicant to supply data or materials necessary for USAC to evaluate the application.

<sup>9</sup> *See NPRM* at ¶ 232.

status update information available to affected parties while an application is pending would give applicants a better understanding of the status of their funding requests so they can make decisions accordingly.

**B. The Commission Should Require Electronic Filing of All E-Rate Applications and Correspondence to Promote Operational Efficiencies and Cost Savings**

To enable USAC to process applications more quickly and efficiently, the Commission proposes to require electronic filing of all E-rate applications and correspondence.<sup>10</sup> ITTA agrees with this proposal and believes that the Commission also should direct USAC to find ways to make its website more user friendly as part of this process. USAC's current online system for filing applications and finding information about the E-rate program is cumbersome and difficult to navigate. Requiring electronic filing and notifications and instructing USAC to consider ways to make its website easier to use would help address these shortcomings.

While these changes could result in increased short-term costs in administration of the E-rate program due to the need for technology upgrades, among other things, administrative costs would be reduced in the long term through improved efficiency of submitting and processing applications. With electronic filing and correspondence, USAC would no longer have to manually enter data from paper filings and there would be fewer errors on forms and other documentation submitted by applicants. Implementing changes that would make USAC's website more user friendly by making it easier to file necessary documentation and find helpful information about the E-rate program would reduce the administrative burdens of the E-rate program for all participants and potentially lessen the need for applicants to rely on guidance from outside consultants.

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<sup>10</sup> *Id.* at ¶ 227.

USAC also should explore ways to automate some of the steps associated with its review process.<sup>11</sup> Automating certain tasks, in addition to the electronic filing and website changes described above, would provide operational efficiencies in the E-rate program while enhancing the customer experience. Most importantly, any cost savings gained by taking these steps would free up funding to be used by schools and libraries to bring the benefits of modern technology to the education process.

### **C. The Commission Should Require Applicants to Receive E-Rate Disbursements Directly from USAC**

The Commission also proposes to maximize administrative efficiency of the E-rate disbursement process by allowing applicants to receive E-rate disbursements directly from USAC.<sup>12</sup> ITTA encourages the Commission to adopt a requirement that applicants receive funding directly from USAC. This change would simplify administration of the program by eliminating the service provider's role as the middleman in the reimbursement process.

Remitting E-rate support payments to service providers under the current system requires coordination between the applicant and service provider in order for the applicant to receive payment. Rather than providing for "administrative ease," this approach adds an extra step and unnecessary complexity and delay to the disbursement process.<sup>13</sup> When an E-rate applicant pays the service provider in full for services, the applicant should be able to seek reimbursement directly from USAC.<sup>14</sup>

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<sup>11</sup> *See id.* at ¶ 229.

<sup>12</sup> *Id.* at ¶¶ 259-62.

<sup>13</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶586 (1997).

<sup>14</sup> When the applicant pays only the discounted cost of the services to the service provider, however, the service provider needs to file the appropriate form with USAC to receive payment.

Not only would this change streamline and improve the efficiency of the program, it also would be consistent with the Commission’s authority under sections 4(i) and 254(h)(2)(A) to provide support outside the express framework of section 254(h)(1)(B).<sup>15</sup> The only statutory requirement with respect to E-rate reimbursement is that the service provider be “made whole.”<sup>16</sup> Thus, modifying the reimbursement process to require E-rate applicants to be reimbursed directly by USAC after paying the service provider in full is entirely within the Commission’s authority.

### **III. THE COMMISSION SHOULD REFRAIN FROM ADOPTING PROPOSALS THAT WOULD UNDERMINE ITS GOALS OF EFFICIENCY, COST SAVINGS, AND ACCESS TO MODERN TECHNOLOGY**

While ITTA supports the Commission’s efforts to ensure that our nation’s classrooms and libraries have the technology to meet the educational needs of students and enhance their learning experience, we are concerned that some of the proposals set forth in the *NPRM* would undermine this objective. For instance, Commission proposals to increase E-rate certification,<sup>17</sup> audit,<sup>18</sup> document retention,<sup>19</sup> and disclosure requirements<sup>20</sup> would create unnecessary administrative burdens for participants without helping to deter waste, fraud, and abuse in the E-rate program. Commission proposals that would expand the E-rate budget by increasing

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<sup>15</sup> See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 443-44 (1999) (finding that the Commission has broad discretion under 47 U.S.C. §§ 4(i) and 254 in designing the E-rate program).

<sup>16</sup> See *NPRM* at ¶ 262.

<sup>17</sup> *Id.* at ¶¶ 299-306, 309-11.

<sup>18</sup> *Id.* at ¶ 315.

<sup>19</sup> *Id.* at ¶¶ 295-97.

<sup>20</sup> *Id.* at ¶¶ 191-95.

spending on dark fiber<sup>21</sup> or more generally<sup>22</sup> could jeopardize other important Commission policy goals relating to broadband deployment and adoption. Certain proposals, such as providing E-rate support for wireless hotspots, would be inconsistent with the educational purposes of the E-rate program.<sup>23</sup> Finally, certain proposals, such as establishing price benchmarks<sup>24</sup> or utilizing the CAF Phase II cost model<sup>25</sup> or the National Broadband Map<sup>26</sup> for the E-rate program, would not be useful or appropriate. ITTA urges the Commission not to adopt these proposals, as discussed in more detail below.

**A. Certain Commission Proposals Would Increase Administrative Burdens Associated with the Program**

**1. Existing Certification Requirements Are Sufficient to Deter Waste, Fraud, and Abuse in the E-Rate Program**

The Commission is proposing to amend its rules to require an officer to sign certain forms for purposes of certifying compliance with the requirements of the E-rate program.<sup>27</sup> These amendments would create unnecessary burdens for service providers when existing certification requirements are sufficient to guard against waste, fraud, and abuse in the E-rate program.

The current rules allow an “authorized person” to provide the certification.<sup>28</sup> This approach makes sense because it allows E-rate participants to task the employee with first-hand

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<sup>21</sup> *Id.* at ¶¶ 71-72.

<sup>22</sup> *Id.* at ¶¶ 172-73.

<sup>23</sup> *Id.* at ¶ 319.

<sup>24</sup> *Id.* at ¶ 89.

<sup>25</sup> *Id.* at ¶ 169.

<sup>26</sup> *Id.* at ¶ 37.

<sup>27</sup> *Id.* at ¶¶ 299-306.

<sup>28</sup> *See id.* at ¶ 300.

knowledge and familiarity with the E-rate program and its rules with responsibility for attesting to the company's compliance with such requirements.

The Commission suggests that limiting such authority to corporate officers “will help ensure that the certification reflects the service provider’s commitment to understand and comply with the E-rate program rules and requirements.”<sup>29</sup> Rarely will this assertion prove true, however, particularly with respect to a larger company that has hundreds (if not thousands) of employees and provides service in multiple states. In general, it is unrealistic to expect that officers would be familiar with a program that is not part of their day-to-day responsibilities within the organization. The better alternative is for the Commission to rely on the certification of the individual the company believes is the appropriate and knowledgeable representative.

Given that existing certification requirements are adequate to ensure compliance with the Commission’s E-rate rules, it is unnecessary for the Commission to adopt additional certification requirements. Indeed, the Commission should consider ways to streamline its current certification requirements, given its objectives of reducing the complexity, costs, and burdens associated with administering the program.

To that end, the Commission need not adopt a requirement for service providers to certify their compliance with the Lowest Corresponding Price (“LCP”) rule or with state and local procurement laws.<sup>30</sup> The record does not indicate that there is any systemic abuse of the LCP requirement by service providers that would justify the need for such a certification. Moreover, as explained below, price information is readily available to E-rate applicants and service

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<sup>29</sup> *Id.* at ¶ 302.

<sup>30</sup> *Id.* at ¶¶ 309-11.

providers in state master contracts and E-rate contracts awarded through competitive bidding or based on public tariffs and service schedules.

Indeed, ITTA believes that the LCP rule can be eliminated as unnecessary for purposes of ensuring that service providers charge cost effective prices for E-rate services.<sup>31</sup> Given the competitive state of the communications marketplace, service providers must consistently deliver the lowest corresponding price in order to secure contracts to provide E-rate services. ITTA also notes that the intent of the rule has been achieved despite some ambiguity as to its interpretation and notwithstanding Commission inaction on a petition seeking verification that certain industry practices that have now been in place for more than a decade are consistent with the rule.<sup>32</sup>

Certifications of compliance with respect to state and local procurement laws are likewise unnecessary. The Commission is not in a position to know or enforce such laws and should leave this responsibility with state and local authorities.

## **2. The Commission Should Refrain from Adopting A Blanket Requirement for Independent Audits**

Recently, the Commission adopted a rule requiring Lifeline providers that draw at least \$5 million from the Lifeline program on an annual basis to hire an independent auditor to assess the provider's overall compliance with the program's requirements.<sup>33</sup> The Commission seeks

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<sup>31</sup> *See id.* at ¶ 309.

<sup>32</sup> *See* Petition by United States Telecom Association and CTIA – The Wireless Association® for Declaratory Ruling Clarifying Certain Aspects of the “Lowest Corresponding Price” Obligation of the Schools and Libraries Universal Service Program, WC Docket No. 02-6 (filed Mar. 19, 2010).

<sup>33</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, ¶¶ 291-97 (2012). The rule was codified at 47 C.F.R. § 54.420.

comment on whether it should adopt a similar requirement for E-rate applicants or service providers.<sup>34</sup>

ITTA acknowledges that a greater level of oversight may be needed in certain circumstances – *e.g.*, for new E-rate participants or those that may have a record of significant violations of the Commission’s rules. However, such a requirement should not apply across-the-board to E-rate participants. The circumstances leading the Commission to institute the independent audit requirement in the Lifeline context – *i.e.*, dramatic growth in the program coupled with evidence of broad noncompliance and abuse, particularly among new providers of Lifeline service – are not applicable with respect to the E-rate program. Thus, adoption of a similar requirement in the E-rate context is unwarranted at this time.

### **3. Expanding Document Retention Requirements Is Unnecessary**

The Commission proposed in the *NPRM* to extend the E-rate document retention requirements from five to ten years.<sup>35</sup> Under the current rules, service providers must retain relevant documentation for five years following the last day of delivery of services.<sup>36</sup> ITTA maintains that the current document retention requirement is sufficient to prevent waste, fraud, and abuse in the E-rate program.

The costs associated with doubling the time period and amount of documentation service providers must maintain is not outweighed by the purported benefits the Commission articulates for imposing this requirement. The Commission argues that the ten-year document retention period is necessary because the federal False Claims Act and some state laws may have statutes

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<sup>34</sup> *NPRM* at ¶ 315.

<sup>35</sup> *Id.* at ¶¶ 295-97.

<sup>36</sup> 47 C.F.R. § 54.516(a)(1).



of limitations longer than five years.<sup>37</sup> However, such laws are rarely invoked in investigating claims of potential wrongdoing by E-rate applicants or service providers. Given the costs of retaining records, both in terms of data storage and required personnel, mandating compliance with this requirement based on the remote chance that such a claim might be filed is not justified.

That said, the Commission does have authority to require a “hold” on documents upon providing notice that it is commencing an investigation of an E-rate program applicant or provider.<sup>38</sup> However, the hold should be limited to documents related to the investigation to reduce the burdens on E-rate participants while ensuring that the Commission and USAC have access to all relevant information.

#### **4. The Commission Should Not Compile a Database of E-Rate Price Information or Require Public Disclosure of Bid Responses**

The Commission seeks comment on how to provide more transparency of pricing and spending with respect to E-rate services and suggests that such data should be compiled in a single, public database.<sup>39</sup> There appears to be little justification for the Commission or USAC to undertake such a Herculean task when the states already provide this function for E-rate applicants. Indeed, state master contracts are one of the most important sources of pricing information for E-rate applicants, and oversight of information sharing with respect to E-rate costs is best left in the capable hands of state and local authorities.

In addition, the purchase price for E-rate contracts that are awarded through the competitive bidding process are disclosed following the award, and the purchase price for contracts not subject to competitive bidding are disclosed publicly in tariffs or service schedules.

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<sup>37</sup> *NPRM* at ¶ 296.

<sup>38</sup> *See id.* at ¶ 297.

<sup>39</sup> *See id.* at ¶ 191-94.

As such, price information is already accessible to E-rate applicants, and compiling it in a central database would not be particularly beneficial when the unique circumstances associated with each contract prevent an apples-to-apples comparison. Such contracts are typically tailored specifically to the needs of the applicant, which vary from state to state and school district to school district, and take into account various factors such as geography, population density, and the financial resources of the school or library seeking bids.

One particularly disturbing aspect of the *NPRM* is the Commission's proposal to require public disclosure of bid responses in situations where the bidder is not ultimately awarded the contract.<sup>40</sup> Bid information submitted in response to an RFP is confidential and commercially sensitive, and its disclosure could violate state and federal procurement laws. Moreover, disclosure of unsuccessful bids may discourage service providers from submitting their best bids or from participating in the bidding process altogether, completely undermining the competitive bidding process. Given these considerations, the Commission should not require bidders to disclose bid responses as proposed in the *NPRM*.

## **B. Certain Commission Proposals Would Be Challenging to Implement Without Expanding the Budget for the E-Rate Program**

### **1. The Commission Cannot Increase Funding for the E-Rate Program If It Would Undermine Other Important Policy Objectives**

The Commission seeks comment on whether and how E-rate funding should be increased, and whether an increase is necessary to reach program goals and ensure high-capacity broadband connections.<sup>41</sup> As the Commission examines ways to modernize the E-rate program to meet the future needs of schools and libraries, it should remain cognizant of the impact

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<sup>40</sup> *Id.* at ¶ 195.

<sup>41</sup> *Id.* at ¶¶ 172-73.

changes in the program could have on other important universal service programs. While increasing broadband speeds and access to cutting-edge educational tools for schools and libraries is a laudable goal, it should not come at the expense of important policy objectives being met through other universal service programs. Allocation of any additional funding to the E-rate program must not undermine other important initiatives, including those that provide more general support for broadband deployment, such as the high-cost fund.

The Commission has devoted a tremendous amount of resources to reforming the high-cost fund to facilitate universal broadband availability to homes and businesses throughout the United States, particularly in rural and insular areas that lack such access today. To the extent the Commission determines that it is necessary to expand the E-rate program, it is critical that this choice not undercut the broader broadband policy goals the Commission seeks to achieve through implementation of the Connect America Fund.

To the extent that the need to expand E-rate funding cannot be reconciled with the importance of preserving the financial integrity of other universal service programs, the Commission must answer calls by ITTA and others to address long overdue reform of the universal service contribution mechanism, which could result in a greater amount of funding being made available for all worthy programs.<sup>42</sup>

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<sup>42</sup> See Comments of ITTA, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012); Reply Comments of ITTA, WC Docket No. 06-122, GN Docket No. 09-51 (filed Aug. 3, 2012).

## **2. The Commission Should Not Further Expand E-Rate Support for Dark Fiber**

In the *Sixth Report and Order*, the Commission added dark fiber to the list of services eligible for E-rate support.<sup>43</sup> Currently, the lease of both lit and dark fiber constitutes a priority one service under the E-rate program. Unlike with lit fiber, however, the costs of the modulating electronics necessary to light dark fiber and special construction charges for leased dark fiber are not funded as part of the priority one service. The Commission now proposes to eliminate this disparity by providing priority one support for these costs.<sup>44</sup> ITTA does not support this proposal.

As a threshold matter, ITTA believes that dark fiber should not have been added to the eligible services list because it is not cost effective or efficient and it undermines broadband investment by taking away traffic from broadband providers' actual or potential last mile facilities, frustrating their ability to utilize schools and libraries as anchor tenants for extension of broadband service to surrounding communities.

While the costs to deploy fiber vary greatly based on geography, topology, population density, and other factors, as a general rule, it is more cost effective for providers to utilize their own fiber to provide eligible services than for schools to tie up resources in dark fiber leases. Because service providers operate in a competitive market, they consistently provide a more efficient and cost effective value proposition in comparison to dark fiber leases. Often, applicants securing dark fiber end up with more capacity than they need, or may improperly warehouse spare capacity for possible future use, which is more costly than obtaining service

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<sup>43</sup> *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, ¶¶ 9-19 (2010) (“*Schools and Libraries Sixth Report and Order*”).

<sup>44</sup> *NPRM* at ¶¶ 71-72.

from an experienced provider that can operate more reliably and efficiently. Given these concerns, the Commission should not further expand E-rate support for dark fiber by making the costs of the modulating electronics necessary to light leased dark fiber or special construction charges for leased dark fiber eligible for priority one treatment.

### **C. The Commission’s Proposal to Provide E-Rate Support for Wireless Hotspots Would Run Counter to the Purpose of the E-Rate Program**

The Commission seeks input on a proposal to permit utilization of E-rate funds for wireless hotspots.<sup>45</sup> ITTA advises against adoption of this proposal because it would undermine the purpose of the E-rate program.

Congress established the E-rate program to provide support to schools and libraries primarily for “educational purposes.”<sup>46</sup> Congress did not intend for E-rate funding to be used for non-educational pursuits by the broader community. In limited circumstances, schools and libraries may open their facilities for the general public to access services supported by E-rate funds, but only when classes are not in session.<sup>47</sup> The Commission concluded that use of supported facilities was permissible in this situation because the services were not being utilized by students or faculty after hours and allowing the general public access during this time would not add an incremental burden to the E-rate program. The aforementioned proposal would conflict with these findings.

Given the proliferation of Wi-Fi-capable devices, the Commission would be opening the door to widespread use of public resources for non-educational purposes with no way to police

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<sup>45</sup> *Id.* at ¶ 319.

<sup>46</sup> *See Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 17 (2003). *See also* 47 U.S.C. §254(h)(1)(B); 47 C.F.R. § 54.500(b).

<sup>47</sup> *Schools and Libraries Sixth Report and Order* at ¶¶ 20-27.

such conduct. Moreover, extending E-rate support to wireless hotspots would spread the already limited E-rate fund too thin. Unlike after hours use by the public of eligible services on school or library premises, utilization of E-rate funding for Wi-Fi hotspots would substantially burden the E-rate program because it would require deployment of additional facilities and equipment.

Wi-Fi hotspots also have the potential to interfere with usage by students during school hours due to bandwidth and capacity constraints. As the Commission clarified in the *Sixth Report and Order*, student use must have “priority” over other uses of supported services.<sup>48</sup> With Wi-Fi hotspots, there is no way to ensure that students will have “priority” in accessing such service when it is needed. For these reasons, the Commission should not permit utilization of E-rate funds for wireless community hotspots as suggested in the *NPRM*.

#### **D. Certain Commission Proposals Would Not be Useful or Appropriate**

##### **1. The Commission Should Not Establish Per-Megabit Price Benchmarks in Implementing the E-Rate Program**

While ITTA understands the need for the Commission to ensure that E-rate costs decrease sufficiently over time to achieve its broadband availability goals for our nation’s educational institutions, it is not necessary to phase in maximum per-megabit eligibility prices, or set program-wide per-megabit price guidelines or targets to reach this objective.<sup>49</sup> As technology improves and service providers continue to introduce innovative services, the costs per-megabit experience natural attrition. In other words, the competitive marketplace will discipline the price of bandwidth such that the Commission does not need to step in.

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<sup>48</sup> *Id.* at ¶ 12.

<sup>49</sup> *See NPRM* at ¶ 89.

## **2. The Commission Should Not Rely on the CAF Phase II Cost Model to Determine Deployment Costs**

The Commission seeks comment on whether it should consider using or modifying the CAF Phase II cost model to assist in determining the cost of providing fiber-based broadband to E-rate applicants in relevant geographic areas.<sup>50</sup> ITTA submits that reliance on the CAF Phase II cost model would not be useful in connection with administering the E-rate program.

School and library administrators are in the best position to determine their service requirements, which will in turn dictate the cost of obtaining those services depending on the options available from the service provider. The Commission should not second guess what costs are appropriate for a specific school or library in a specific area by comparison to a model-derived benchmark because those costs will vary depending on the applicant's particular bandwidth and technology needs and financial resources, as well as the various other factors that go into determining the cost of deploying service in that location.

There are nearly 100,000 public schools,<sup>51</sup> more than 33,000 private schools,<sup>52</sup> and almost 9,000 public libraries in the U.S.,<sup>53</sup> each differing in size, available services, location, population, topography, and a multitude of other characteristics. It would be infeasible for any cost model to be able to account for all of the variables that go into pricing services to schools

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<sup>50</sup> *Id.* at ¶ 169.

<sup>51</sup> U.S. Department of Education, National Center for Education Statistics, *Digest of Education Statistics, 2011* (NCES 2012-001), Table 5, available at: [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_005.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_005.asp).

<sup>52</sup> *Id.*

<sup>53</sup> Institute of Museums and Library Services, *Public Libraries in the United States Survey: Fiscal Year 2010* (Jan. 2010) at 1, available at: <http://www.ala.org/tools/libfactsheets/alalibraryfactsheet01>.

and libraries given the diversity and vast universe of E-rate applicants. Thus, the Commission should reject this approach.

### **3. The National Broadband Map Is Not Appropriate for Measuring Broadband Availability**

The Commission seeks comment on whether the National Broadband Map (“NBM”) could be used to identify where broadband services, particularly high-capacity broadband facilities, are available.<sup>54</sup> As ITTA has pointed out on numerous occasions, the NBM is an imperfect tool for measuring broadband availability.<sup>55</sup> The NBM would be especially inappropriate for determining where broadband services or facilities are available to schools and libraries.

First, the map is designed to show the availability of mass market retail services, not services or facilities that provide broadband capability to educational institutions. Second, because service providers are continually expanding and upgrading their networks, the data contained in the map is perpetually out of date. Third, the NBM cannot speak to the willingness of a service provider to supply high-capacity broadband service to a particular school or library if bids are sought. While it may not make economic sense for a provider to invest in broadband infrastructure in certain rural or insular areas that are sparsely populated, the economies of scale that can be achieved by deploying broadband service to an entire school district may justify the construction of new facilities, the upgrade of existing broadband facilities, or the extension of network from adjacent areas to make such service available. In light of the shortcomings of the

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<sup>54</sup> *NPRM* at ¶ 37.

<sup>55</sup> *See, e.g.*, Reply Comments of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al.* (filed Mar. 4, 2013); ITTA Comments in Support of CenturyLink Petition for Waiver, WC Docket Nos. 10-90, *et al.* (filed July 12, 2012); Petition for Reconsideration of the Independent Telephone & Telecommunications Alliance, WC Docket Nos. 10-90, *et al.* (filed Dec. 29, 2011).



NBM, it does not make sense for the Commission to utilize it to determine broadband availability in the E-rate context.

#### **IV. THE COMMISSION MUST ENSURE A REASONABLE TRANSITION PERIOD SHOULD IT DECIDE TO PHASE OUT SUPPORT FOR ANY SERVICES**

The Commission seeks comment on whether it should phase out support for some services, including for components of voice service and services not used primarily for educational purposes.<sup>56</sup> It also asks whether it should refocus E-rate support for use exclusively in providing high-capacity broadband connectivity, rather than on the wider array of telecommunications and information services that the program supports today.<sup>57</sup> While it makes sense to discontinue support for services that are clearly outdated and for which there is little demand, the Commission should not undermine the existing program on which schools and libraries have come to rely by discontinuing support for voice services or limiting support to voice service that is bundled with broadband.

As part of the Commission's efforts to modernize the E-rate program, it makes sense for it to discontinue support for services that are so outmoded that they are no longer utilized for digital learning. Support for products and services like paging, directory assistance, dial-up, 800 service, cellular data plans, and air cards could be phased out through gradual reductions in the applicable E-rate discount over a reasonable time period of time.

With respect to traditional "plain old telephone service" ("POTS"), however, the market is effectuating its own transition and the best course of action would be to let the market dictate the transition. Accordingly, the Commission should not eliminate support for standalone voice service or limit support for voice service only where it is offered in connection with a broadband

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<sup>56</sup> *NPRM* at ¶¶ 90-102,105-10.

<sup>57</sup> *Id.* at ¶¶ 103-04.

service offering. Indeed, the Commission lacks authority to adopt any proposal to discontinue E-rate support for voice services in an effort to force applicants and service providers to migrate to IP-based platforms.<sup>58</sup> Although the Act directs the Commission to “[t]ake into account advances in the telecommunication and information technologies and services,” it provides that universal service support extends to the services by “telecommunications carriers” that are “supported by Federal universal service support mechanisms.”<sup>59</sup> Traditional voice service clearly falls within this category.

As technology improves, there will be a natural transition from legacy voice services to IP-based platforms and services. Indeed, this transition is already underway. In the meantime, schools and libraries will continue to depend on traditional voice services until they are replaced by IP-based alternatives, and the Commission should continue to let this process occur organically. Should the Commission nevertheless determine to phase out E-rate support for POTS, it must ensure a reasonable time period for such a transition.

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<sup>58</sup> Forcing premature migration to IP-based architecture not only increases costs for providers, it also raises security concerns for schools that rely extensively on POTS lines in operating alarm systems and elevators.

<sup>59</sup> 47 U.S.C. §§ 254(c)(1), (c)(3). *See also* 47 U.S.C. § 254(h)(1)(B).

## V. CONCLUSION

The E-rate program has been successful in ensuring that schools and libraries are able to provide students, library patrons, and community members with the education, career, and economic opportunities made possible by advances in communications technology. ITTA urges the Commission to build on this success by adopting changes that would make the program more efficient and cost effective, but to refrain from modifications that would increase administrative burdens or costs, or undermine the educational purposes of the E-rate program.

Respectfully submitted,

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