Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF ITTA

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ITTA – The Voice of Mid-Size Communications Companies hereby respectfully submits its comments in response to the Federal Communications Commission's ("FCC" or "Commission") July 23, 2014 *Further Notice of Proposed Rulemaking* ("*FNPRM*") seeking comment on the future of the E-rate program in light of the reforms the Commission recently adopted to refocus the program on providing support for high-speed broadband in our nation's schools and libraries.[1]

I. INTRODUCTION

The Commission in July 2014 adopted a number of reforms to promote availability of high-speed broadband in schools and libraries throughout the country. Consistent with its goal to ensure access to cutting-edge technology and make the E-rate program more broadband-centric, the Commission set an annual funding target of $1 billion for internal connections necessary for high-speed data within schools and libraries[2] and voted to phase out or eliminate support for

[1] *See In the Matter of Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) ("*R&O*" or "*FNPRM*," as appropriate).

[2] *R&O* at ¶ 118.

voice and other legacy services.[3] To maximize the cost-effectiveness of spending for E-rate supported purchases, the Commission adopted measures to encourage consortia purchasing[4] and to increase transparency through sharing of cost and connectivity data.[5] The Commission also took a number of steps to simplify administration of the program, including by streamlining the application process[6] and simplifying steps relating to invoicing and disbursement by allowing schools and libraries to deal with USAC directly.[7]

The Commission now seeks comment on meeting the future funding needs of the E-rate program based on the changes and annual budget target it has adopted.[8] The Commission also invites further comment on promoting cost-effective purchasing through multi-year contracts and consortium purchasing. Specifically, the Commission seeks input on how to ensure that multi-year contracts are efficient[9] and on ways to encourage consortium participation through certain incentives, such as by providing an additional percentage discount rate for consortia meeting certain criteria.[10]

ITTA addresses each of these topics in turn below.

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[3] *Id*. at ¶¶ 134-54.

[4] *Id*. at ¶¶ 168-82.

[5] *Id*. at ¶¶ 158-67.

[6] *Id*. at ¶¶ 190-208.

[7] *Id*. at ¶¶ 233-37.

[8] *FNPRM* at ¶ 268.

[9] *Id*. at ¶¶ 271-78.

[10] *Id*. at ¶¶ 285-97.

II. THE COMMISSION SHOULD NOT CONSIDER EXPANSION OF THE E-RATE BUDGET UNTIL IT ADDRESSES USF CONTRIBUTION REFORM

As discussed above, the Commission has made significant changes to the E-rate program, including establishment of a $1 billion annual funding target for category two services that enable Wi-Fi connectivity. Unfortunately, it has not been settled how the funding that will be needed to meet the Commission's objectives in the long term will be derived.

The principles underlying and the goals of the E-rate program are laudable and are fully supported by ITTA. 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 members of the community to take advantage of the educational and economic opportunities available in the digital age. Due in large part to the 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.

Given the important educational and economic opportunities made possible with E-rate support, the program should be afforded the budget necessary to realize the Commission's goals. However, it is premature to discuss whether there is a need to increase the E-rate program budget to meet these goals at this time.

Before the Commission can seriously contemplate expanding the E-rate budget, it must tackle long overdue reform of its universal service contribution methodology. Universal service contribution rates have jumped 60 percent under the current Administration, and the changes the Commission has and continues to adopt threaten the financial integrity of universal service programs.[11] The Commission can no longer ignore the pressure its decisions put on the Universal Service Fund, jeopardizing other important Commission policy goals relating to broadband deployment and adoption and increasing costs of the Fund that are ultimately borne by consumers.

While expanding Wi-Fi connectivity in schools and libraries is a worthy goal, it should not come at the expense of other important initiatives, including those that provide more general support for broadband deployment, such as the Connect America Fund. ITTA is hopeful that the Commission's recent referral of contribution reform to the Federal-State Board on Universal Service signals that the Commission is ready to tackle this issue.[12] At the very least, the Commission's action serves as recognition that the current contribution system has not kept pace with widespread and fundamental changes to the communications industry over the past 15 years.

As ITTA previously has noted, there has been a proliferation of new technologies, services, and service providers that were not anticipated when the current contribution methodology was adopted.[13] The lack of clear guidance under the current system as to when and upon whom the contribution obligation applies have incentivized certain providers to interpret the Commission's rules to minimize their contribution obligations. This has increased the contribution burden on traditional services and providers, putting them at a competitive disadvantage relative to other services and providers that have managed to avoid sharing in the

[11] Dissenting Statement of Commissioner Ajit Pai, p. 173.

[12] *In the Matter of Federal State Joint Board on Universal Service; Universal Service Contribution Methodology; A National Broadband Plan For Our Future*, WC Docket Nos. 06-122, 96-45, GN Docket No. 09-51, Order, FCC 14-116 (rel. August 7, 2014).

[13] *See* Comments of the Independent Telephone & Telecommunications Alliance, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012).

contribution burden. The Commission must adopt new rules that reflect the new marketplace realities.

In other words, if there is an appropriate justification for increasing the E-rate budget, then it is "even more imperative to establish an overall budget for USF so that consumers that pay fees on their phone bills to support USF are not further burdened by the FCC."[14] Addressing long overdue reform of the universal service contribution mechanism could result in a greater amount of funding being made available for all worthy programs. Once contribution reform has occurred, the Commission will have a better handle on the USF revenues available to fund the E-rate program.

In the interim (while contribution reform is pending), the Commission should use the additional funds realized through the efficiencies adopted in the *R&O* along with unallocated USF funds to support the E-rate program. This approach would strike the appropriate balance between ensuring all Americans – including students and patrons of the nation's schools and libraries – have access to modern communications networks and minimizing the financial burden on American consumers.

III. CONTRACTS FOR E-RATE SERVICES SHOULD BE LIMITED TO FIVE YEARS IN DURATION, EXCEPT FOR CONTRACTS REQUIRING LARGE CAPITAL EXPENDITURES

The Commission proposes as part of its continuing efforts to promote cost-effective purchasing to limit E-rate support to eligible services purchased under contracts of no more than five years, including voluntary extensions.[15] ITTA believes that the proposed general 5-year limit on E-rate contracts is acceptable. ITTA also agrees that for contracts including capital

[14] Dissenting Statement of Commissioner Michael O'Rielly, p. 176.

[15] *FNPRM* at ¶ 271.

investments with extended useful life, the limit should be greater than 5 years. While the Commission proposes this exemption for contracts to install facilities expected to have a useful life of 20 years or more, the Commission should be more flexible. As the Commission observes, the ability to enter into multi-year contracts provides cost efficiencies for schools and libraries and allows them to negotiate more favorable terms over the life of the contract.[16] Thus, for contracts where it is necessary to spread the cost of infrastructure builds over many years, the Commission should allow schools and libraries to reach an agreement for a term longer than five years that is sufficient to realize these benefits.

Moreover, assuming the Commission adopts restrictions on the duration of contracts for E-rate services, existing contracts should be grandfathered and only contracts executed after the effective date of the new rules should be required to be in compliance with these restrictions.[17] It is doubtful that the Commission has authority to require long-term contracts that already exist to comply with any new limitations.

IV. NO FURTHER STEPS TO ENCOURAGE CONSORTIUM PARTICIPATION ARE NECESSARY

In the *R&O*, the Commission adopted several changes to its rules in order to encourage consortium purchasing on the theory that consortia can drive down the prices of E-rate supported services.[18] The Commission now seeks further comment on additional ways to promote participation by schools and libraries in consortia by, among other things, changing the way consortia discount rates are calculated.[19]

[16] *Id*. at ¶ 273.

[17] *See id*. at ¶ 278.

[18] *R&O* at ¶¶ 168-82.

[19] *FNPRM* at ¶¶ 285-97.

Specifically, the Commission seeks comment on a proposal by the Education Coalition that the FCC provide an additional 5 percent discount rate for consortia meeting minimum size standards.[20] ITTA objects to this proposal. As ITTA pointed out in its comments in response to the *E-rate Modernization NPRM*, the Commission should not adopt a preference for consortium purchasing because in some circumstances consortia can greatly reduce competition and ultimately increase costs for E-rate services.[21]

A linchpin of the E-rate program is the competitive procurement process. Given the competitive state of the communications marketplace, service providers must consistently deliver reasonable prices, terms, and conditions in order to secure contracts to provide E-rate services. The Commission itself has acknowledged how "dynamic" the market for E-rate supported services is and how prices "have consistently been declining over time" as a result.[22] Preserving a fair and neutral competitive procurement process is the most effective means to promote affordability of E-rate services.

Artificially promoting consortia, on the other hand, only limits competitive options for schools and libraries and unfairly disadvantages smaller providers that may be able to provide high-capacity services more cost effectively. As a general matter, consortia should not need additional discounts in comparison to other marketplace participants. A consortium's greater scale should naturally lead to a lower price where there is economic justification for a lower price. The proposed preferential treatment for consortia is particularly "puzzling" in light of the Commission's pro-competition policies and a record in this proceeding that clearly demonstrates

[20] *Id*. at ¶ 293.

[21] Comments of ITTA, WC Docket No. 13-184 (filed Apr. 7, 2014), at 11-12.

[22] *FNPRM* at ¶ 273.

that competition in the program can dramatically reduce costs and allow schools and libraries to make the most of their E-rate funds.[23]

That said, there are some aspects of the Education Coalition's proposal that ITTA supports. For instance, the Coalition proposes that consortia be required to: (1) document the participation of individual entities; (2) maintain a level of governance; and (3) open participation to all eligible schools and libraries.[24] The first two requirements would advance the Commission's goal to protect against waste, fraud, and abuse in the E-rate program. The third requirement would promote cost-effective spending by maximizing participation in consortia when any eligible school or library has determined it would be in its interests to do so. Thus, those specific suggestions should be adopted.

However, the Commission should not allow private sector entities to participate in consortia as proposed in the *FNPRM*.[25] The FCC should maintain its current rules that limit consortium participation only to eligible schools and libraries and allow private sector participation only when the pre-discount prices for interstate services are at tariffed rates. Expanding eligibility any further would open the door to waste, fraud, and abuse in the program by creating opportunities for ineligible entities to use support and for such entities to use their membership in a consortium to evade tariffed rates. The Commission would be wise to avoid this result.

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[23] Prepared Remarks of FCC Chairman Tom Wheeler, "The Facts and Future of Broadband Competition," 1776 Headquarters, Washington, DC, p. 6 (Sept. 4, 2014) (pointing out that his mantra since his first day as Chairman of the FCC has been "competition, competition, competition").

[24] *FNPRM* at ¶ 294.

[25] *See id*. at ¶ 296.

V. CONCLUSION

In sum, ITTA supports the use of E-rate funding to ensure the nation's schools and libraries have access to modern communications networks that enable students, teachers, parents, and members of the community to take advantage of the educational and economic opportunities available in the digital age. However, the Commission should refrain from expanding the E-rate budget until it addresses USF contribution reform.

The Commission also should refrain from making other changes that ultimately would undermine its goals. While limiting contracts for E-rate services to a general 5-year term would be acceptable, the Commission should allow E-rate participants to realize the cost efficiencies and other benefits associated with longer-term contracts when they involve large capital expenditures. The Commission also should avoid taking steps that would be detrimental to competition in the E-rate services marketplace by perpetuating an artificial preference for consortia.

Respectfully submitted,

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