



International Center
for Law & Economics

Reply Comments of

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In the Matter of

**Modernizing the E-rate Program for Schools and Libraries
WC Docket No. 13-184**

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Everyone agrees on the need to modernize the E-Rate program to reflect the communications needs of schools and libraries today and in the foreseeable future. But as we emphasized in our comments in this proceeding, meeting those needs cannot be reduced to setting arbitrary speed thresholds. Indeed, such thresholds will likely be counter-productive to the extent they divert funding away from the real priorities of particular schools and libraries:

Shifting E-rate's focus away from outdated telecommunications technologies to broadband makes sense. But focusing E-rate funding on essentially arbitrary speed targets does not. Meeting those targets means dictating to schools and libraries that they should spend limited resources on broadband connections that they may not actually need or use, rather than address their real technological needs.⁴

Our comments noted that, while the goal of gigabit per 1000 students has become a popular talking point, it has never actually been justified as an effective use of limited resources. The NPRM cites to a single report, produced by the State Educational Technology Directors Association, to support the claim. But, as we pointed out, that report makes an enormous and unjustified analytical leap from the download speeds involved in various services to the gigabit target conclusion.

In our review of the comments filed in this proceeding, we can find no response to our questions: What analytical basis, if any, is there for these speed targets? What are the actual current and expected near-term bandwidth demands of schools and libraries? Or, more generally, how should policymakers weigh the trade-off between funding higher speeds and funding other telecommunications needs of schools and libraries (connectivity, devices, etc.), or other related needs (training, IT support, etc.)? We offered a detailed list of questions, which simply have not been answered.

While everyone of course wants faster broadband, many commenters expressed similar concerns about the trade-offs that come with arbitrarily prescribing speed targets. The West Virginia Department of Education believes that the current proposals are arbitrary and might actually hinder the state's broadband development in the future.⁵ The State of Alaska faces a unique set of

⁴ Comments of Geoffrey A. Manne & Berin Szoka, *In the Matter of Modernizing the E-rate Program for Schools and Libraries*, Docket No. 13-184 (September 16, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520944261>.

⁵ Comments of West Virginia Department of Education, *Initial Comments By The West Virginia Department of Education Related to the E-Rate Notice of Proposed Rulemaking*, Docket No. 13-184 (September, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520943995>.

challenges for broadband deployment to its schools: because Alaska's school system spans vast rural expanses, it fears it will not be able to meet the speed requirements and worries what effect this will have on funding opportunities.⁶ The School District of Philadelphia pithily expressed our concern and the worries of countless other educational groups saying,

Attaching an arbitrary bandwidth requirement per student would result in overestimating need for some entities and perhaps lowering the bar of connectivity for others – the latter possibly resulting in denied funding requests where bandwidth needs are arbitrarily judged as excessive. In contrast, encouraging every school and library to “achieve” a certain baseline of bandwidth may unnecessarily drive funding demand and result in vastly underused infrastructure.⁷

Essentially, school districts and systems across the country are singing the same tune, but in different octaves: “We aren't sure that arbitrary broadband speed targets are going to fit our needs; instead, we need flexibility to direct funding to meet our particular telecommunications needs.” The FCC should listen.

Imposing speed thresholds would miss the more important goal of the E-Rate program: connecting the neediest schools. The record simply does not support imposing any kind of speed requirement or even target because no one has demonstrated that such targets will actually benefit students more than other potential uses of limited resources. In fact, even assuming infinite funding were available, no one has demonstrated that greater bandwidth has any direct educational benefits. This is not to say that more bandwidth *cannot*, in fact, have such benefits; rather, it is to say that insufficient bandwidth may not be the most relevant, current constraint on the ability of schools and libraries to effectively deploy broadband for educational purposes. If the real bottleneck isn't bandwidth, lavishing money on it will necessarily mean ignoring other problems that should take higher priority.

Given the paucity of real data available to guide decisions about how money should be spent, the FCC should defer, to the greatest extent possible, to schools and libraries themselves about how they think they can best spend money to meet their own needs. To the extent that the

⁶ Comments of the Alaska Department of Education and Early Development, *Initial Comments by The Alaska Department of Education and Early Development and the Alaska State Library Related To The E-Rate 2.0 Notice Of Propose Rulemaking*, Docket No. 13-184, available at <http://apps.fcc.gov/ecfs/document/view?id=7520944002>.

⁷ Comments of the School District of Philadelphia, *Comments of the School District of Philadelphia in Response to Notice of Proposed Rulemaking*, Docket No. 13-184, available at <http://apps.fcc.gov/ecfs/document/view?id=7520944146>.

Commission must make decisions about how to prioritize certain services in allocating funding unequally among schools, the FCC simply does not have enough data to make informed decisions about the trade-offs between funding faster broadband and meeting other technological needs. For that reason, the FCC should issue a Further Notice of Proposed Rulemaking that returns to the question, buried in the NPRM, that should have been central to this proceeding: “Is there a way to measure how success in the classroom is affected by access to E-rate funding or services supported by E-rate?”⁸ So far the answer appears to be “no.”

⁸ Indeed, the FCC should have issued a Notice of Inquiry before issuing this NPRM for precisely this reason – a mistake the FCC all too often makes, frequently putting the Commission in the awkward position of being on the verge of rulemaking without first properly exploring the facts on the ground. This is the worst kind of putting the cart before the horse. What Commissioner Pai in another context wrote about the wisdom of conducting an NOI before an NPRM is apt here: “We simply ask a lot of questions about where things stand, which is typically what we would do in a Notice of Inquiry. While I of course support soliciting comment as we begin this journey, I think the better approach here would have been to ask for input on where we intend to go. The public is better served if attention can be focused on proposed rules, and the FCC’s ultimate decisions are better informed by direct, as opposed to general, public engagement.” Policies Regarding Mobile Spectrum Holdings, WT Docket No. 12-269. For the same reasons, the FCC Process Reform Act, passed by the House last Congress, would generally require the FCC to issue a Notice of Inquiry prior to conducting a rulemaking. See the current version at <http://docs.house.gov/meetings/IF/IF16/20130724/101215/BILLS-113pih-FCCProcessReform.pdf>