

November 20, 2009

The Honorable Julius Genachowski, Chair
Federal Communications Commission
c/o Commission's Secretary
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

**Re: Comments –NBP Public Notice # 15, Broadband Needs in Education,
Including Changes to E-Rate Program to Improve Broadband
Deployment
GN Docket Nos. 09-47, 09-51, 09-137
CC Docket No. 02-6
WC Docket No. 05-195**

Dear Chairman Genachowski:

The National School Boards Association (NSBA), representing over 95,000 local school board members through our state school boards associations across the nation is pleased to submit comments on NBP Public Notice #15, Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment.

We applaud the Federal Communications Commission (FCC) effort and commitment to improve broadband deployment to meet the instructional and informational needs of schools and libraries. NSBA agrees that broadband has an important role to play in education, from digital learning resources to eTextbooks, professional development for teachers, remote instruction, and data records management. The transformation in education technology over the last decade has been remarkable, and has the potential to benefit America's most disadvantaged students and communities.

Schools and libraries are essential partners in this process as the backbone of universal service support (the E-rate program). For more than a decade, schools and libraries have developed capacity for Internet connectivity, bringing new learning opportunities to special education students, and enhancing distance-learning in rural areas.

E-Rate is a vital source of assistance to provide students with 21st century skills and knowledge, and NSBA has some concerns regarding the FCC's consideration of whether and how the E-Rate program can be structured to more effectively distribute available funding. Our comments focus on four aspects of Public Notice #15 that touch on this: Item 11.d (E-Rate Modification), Item 13.a (E-Rate Funding), 13.g (Enhancing Education Through Technology) and 13.h (Coordination with other programs).

The unifying theme of NSBA's recommendations is that we support strengthening the E-Rate program to ensure efficient operation of the program, improve the quality and speed of connectivity in our nation's schools, and address the technology gaps that remain. NSBA is acutely aware that available funding is inadequate to meet the current needs of libraries and schools, and the students,



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teachers and communities they serve. Meeting unmet needs of libraries and schools must have primacy, and guide any and all changes to the E-Rate program.

Further, given the important role that telecommunications companies play in the availability of E-Rate discounts, compounded by the current economic climate, it is difficult to envision a scenario where sustainable funding increases could address current unmet needs as well as support the options for expansion described in the Public Notice. Therefore NSBA recommends the following:

1. Issue 11.d. – E-Rate Modification – The FCC seeks comments on any legislative changes that would expand the classes of eligible users. Specifically, what would be the impact of modifying the statute to permit colleges, community colleges, pre-kindergarten, Headstart or other entities to participate in the E-Rate program?

NSBA Recommendation – There should be no consideration of expanding the classes of eligible entities until current needs of schools and libraries are met. Expanding E-Rate to other entities would be devastating to the program without 1) a massive (and possibly unfeasible) increase in the funding cap to address current unmet needs, 2) resolution of multiple administrative and statutory barriers, and 3) a permanent waiver of E-Rate from the Anti-Deficiency Act (ADA).

- The current cap of \$2.25 billion has not been increased or indexed to inflation since the program's inception. Current applications from libraries and schools already exceed availability, and applications do not take into account those districts that forgo applying for full benefits (such as Priority Two) because it is known that funding is insufficient. For the 2009 funding year, almost 40,000 applications were submitted by schools, libraries, or consortia for discounts. Discounts requested totaled an estimated \$3.99 billion. There should be no consideration of expanding the classes of eligible entities until current needs of schools and libraries are met.
- Expanding E-Rate to other entities can lead to duplicative means testing infrastructure, administration, and services in communities already served by school and libraries. Enhancing upon existing services in schools and libraries can foster collaboration among school and community providers, thereby meeting the goals that expanding the classes of eligible users might achieve (such as providing services to the larger community outside of school hours, and services to children birth through Kindergarten entry).
- E-Rate administration already is hampered by application of the ADA, which jeopardizes the timely notification of E-Rate commitments. In 2004, the Federal Communications Commission ruled that the program was subject to the ADA, effectively suspending the issuance of funding commitment decision letters that school districts rely on to plan for their technology services. A series of temporary exemptions from the ADA combined with an accumulation of rollover funds have mitigated the impact of the law for the last few years. Without permanent relief for E-Rate from the ADA, however, other entities could be discouraged from participating. Further, expanding eligible entities could overwhelm the capacity of rollover funds to mitigate the impact of the ADA.

2. Issue 13.a. – E-Rate Funding – To what extent does the annual E-Rate funding cap of \$2.25 billion limit the extent of broadband deployment by eligible schools and libraries? What are the financial or programmatic implications of increasing the cap to fund additional services not currently covered by E-Rate? What are the implications of indexing the cap to inflation? Would there be specific implementation issues that would arise related to such changes?

NSBA Recommendation – An increase in the E-Rate funding cap is essential to address existing unmet needs among schools and libraries, but should not fund additional services until current needs are met.

- The current cap of \$2.25 billion has not been increased or indexed to inflation since the program’s inception. Current applications from libraries and schools already exceed availability (\$4 billion), and that does not take into account those districts that forgo applying for full benefits (such as Priority Two) because funding has been stagnant, and in fact may have lost value due to inflation.
- An increase in the funding cap must be substantive enough to fulfill known unmet needs among libraries and schools, as well as anticipate needs resulting from the changing landscape for education technology. The transformation in education technology from the time of the E-Rate’s inception is comprehensive; therefore a robust increase in the funding cap is needed to bring capacity among libraries and schools up to date.
- A 1999 Fifth Circuit Court of Appeals ruling upheld the funding mechanism for E-Rate for libraries and schools¹, but expanding eligible entities and the resulting demand for funding could re-open the constitutional challenge to E-Rate as an improperly delegated tax.

3. Issue 13.g – Coordination with federal or state agencies on grant programs that could supplement the Commission E-Rate Program...Enhancing Education through Technology State Program (Ed Tech)

NSBA Recommendation – While the Ed Tech program received a one-time funding boost of \$650 million in economic stimulus funding, it is slated for a 62 percent funding cut in FY 2010 appropriations. Unless there is a substantial increase in funding for the Ed Tech program, additional uses should not be added and it should not be modified to provide unmet needs related to the E-Rate program and/or merged with E-Rate.

4. Issue 13.h – Alternatively, E-Rate funds could be used in conjunction with funds from other entities to support broadband projects – For example, upon a state’s recommendation, a particular project might be funded by having the state pay for the computers and training, and providing E-Rate discounts for the broadband connection. Are there other specific ways the Commission could better leverage the benefits of E-Rate funding through coordination with other federal, state, local or non-profit programs that seek to advance broadband deployment?

¹ Texas Office of Public Utility Counsel v. Federal Communications Commission 183 F.3d 393 (5th Cir. 1999).

NSBA Recommendation – While partnerships between states and local communities are important venues for progress, the coordination of E-Rate should in no way diminish the role of schools and libraries in determining and addressing local community needs and services.

- Access to broadband varies among and within states and communities. Local decision makers are best able to understand and address these needs. The Commission should refrain from giving states authority to “leverage” E-Rate funding in ways that supersede or undermine the authority of schools and libraries.

Conclusion: In summary, we believe that the commitment to create a national broadband plan to ensure that every American has access to broadband capability must recognize, maintain and support the vital role played by schools and libraries and the local decision-making that guides them.

Thank you for the opportunity to share our concerns and recommendations. Questions regarding our comments may be directed to Lucy Gettman, director of federal programs at 703-838-6763; or by e-mail at lgettman@nsba.org.

Sincerely,



Michael A. Resnick
Associate Director

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