



April 27, 2017

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: WC Dockets 10-90, 16-106, 11-42, 13-184

Dear Chairman Pai:

I am writing to express our appreciation to you for acknowledging the difficulties with the E-rate application process in your letter to the Universal Service Administrative Company (USAC) on April 17. The E-rate community within the Schools, Health & Libraries Broadband (SHLB) Coalition has been struggling with the E-rate Productivity Center (EPC) portal and delays in the application process for some time, and we are pleased that these issues are receiving attention at the highest levels.

In that spirit, I also write to convey our concern about the recent set of inquiries sent by USAC on April 14, 2017 to over 100 E-rate applicants seeking support for special construction costs for fiber installation. Both the timing and the substance of these questions have created great uncertainty among E-rate fiber applicants. This uncertainty is likely to discourage schools and libraries from seeking the high-capacity broadband infrastructure that they need, especially in rural markets, and could significantly increase schools' and libraries' broadband costs.

The questions ask for information that is irrelevant to determining whether an application meets E-rate requirements and suggests new limitations on funding that were not contained in the 2014 E-rate Modernization Orders, the FCC's rules, or USAC's training materials. This new line of inquiry comes after applicants have followed all E-rate procurement rules and guidance, completed the already exhaustive Program Integrity Assurance (PIA) Review process, completed their budgeting processes and, in some cases, already signed contracts and begun to deploy their networks. The request for new and detailed information also adds more delay to an already extremely delayed process. In addition, we are concerned that this latest inquiry may result in attempts—using new guidance previously unknown to applicants—to recoup funds for projects already approved and for projects where the special construction of fiber is already underway.

For instance, the questions ask for information about the identity of non-E-rate parties who might use additional fiber strands, even though this information is unnecessary to determine whether or not the special construction is cost-effective for schools and libraries. Furthermore, the questions seem to suggest that a new and different cost allocation methodology must be used when the special construction includes both E-rate eligible and non-eligible fiber strands. Until this point, applicants were advised that they were required only to cost allocate out the incremental costs of any unused excess fiber strands being installed by the vendors, in addition to any increased incremental deployment costs, if any. The USAC slide presentation says that, after allocating out the cost of the excess fiber strands, “all other special construction costs would be fully eligible.”¹ This guidance was disseminated by USAC and was also used by FCC staff during nationwide meetings conducted with numerous individual state officials. E-rate applicants and service providers relied on this guidance in conducting their competitive procurements and many of them entered into multi-year contracts for fiber services.

We respectfully request that the existing guidance provided to the applicant community (and that continues to be displayed on the USAC website)² should be honored for all Funding Year 2016 and 2017 E-rate fiber based funding requests so that applicants can move forward to deploy their much-needed broadband services. Going forward, we ask the FCC and USAC to re-confirm in writing that, if no incremental special construction costs are incurred due to the installation of unused excess fiber, then all special construction charges are E-rate eligible.

The 2014 E-rate Modernization Orders introduced additional fiber and wireless service options that have already brought substantial benefits to schools and libraries. Hundreds of schools and libraries have applied for funding for fiber-based services (both leased lit and dark fiber services) and, in far more limited situations, they have requested funding for the self-provisioning option. Applicants are obtaining much higher bandwidth at lower prices than they were able to achieve in the past, and the new fiber rules are allowing the installation of fiber to areas of the country that were previously unserved. Many other applicants were able to obtain significant price reductions for lit fiber services by leveraging the competitive choices offered by dark fiber or self-provisioned fiber. In addition and importantly, the 2014 Orders forged a path for states to contribute matching funds to enable schools and libraries to take advantage of the new special construction opportunities to meet their critical needs. According to the USAC website, at least eleven states have appropriated funding for special construction of fiber to schools and libraries; these state plans could be severely impacted by the new cost allocation approach that is suggested by the new USAC questions.³

¹ See slide #22 of the presentation located at <http://www.usac.org/res/documents/SL/training/2015/Applicant-Training-05-Fiber-Options.pdf>.

² Id.

³ See. <http://www.usac.org/sl/applicants/beforeyoubegin/state-matching-provision.aspx>.

We encourage the FCC and USAC to maintain the existing policies adopted in 2014 that promote competition and cost-effective fiber options for schools and libraries. We are seeking to maintain an orderly and transparent process for applicants who follow the rules. Placing new limits on special construction options even when it is the most cost-effective option would cause E-rate disbursements to rise, and cause consumers to pay a higher contribution on their phone bills. It would not be fair to applicants to change the guidance to applicants in mid-stream or after projects have already been funded, or to subject applicants to additional cost allocation requirements that were not defined or known during the competitive bidding process. Most important, it would not serve the interests of the country if students and library patrons are not able to receive the broadband connectivity or develop the broadband skills that they so sorely need.

Again, we appreciate your efforts to improve the operations of the E-rate program, and we look forward to working with you to resolve these concerns as soon as possible. Please feel free to contact me directly if you have any questions about this letter. I can be reached at jwindhausen@shlb.org or by phone at (202) 256-9616.

Sincerely,



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cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Kris Monteith, Acting Bureau Chief, Wireline Competition Bureau
Chris Henderson, CEO, USAC
Craig Davis, Vice President, Schools and Libraries Program, USAC
Dr. Daniel Domenech, Chair, Schools and Libraries Committee, USAC Board