

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2016 Biennial Review of Telecommunications	)	WT Docket No. 16-138, WC Docket
Regulation	)	No. 16-132, IB Docket No. 16-131,
	)	PS Docket No. 16-128
	)	

**REPLY COMMENTS OF THE  
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

**January 3, 2017**

The Schools, Health & Libraries Broadband Coalition (SHLB Coalition) is pleased to provide these brief reply comments in this Biennial Review proceeding. We suggest that the Commission use this proceeding to take steps to promote greater competition for broadband services. The National Broadband Plan recommended policies to ensure robust competition to maximize consumer welfare, innovation and investment.<sup>1</sup> Unfortunately, the evidence submitted in the record of both the E-rate proceeding and the special access/business data services (BDS) proceeding demonstrates that there is neither enough competition nor a diverse enough breadth of offerings in the broadband marketplace to meet the needs of anchor institutions.

For instance, the Consortium for School Networking (CoSN)'s 2016 annual survey found that the lack of broadband competition has been a continual problem for schools and school systems:

There continues to be a lack of competition among internet providers. In 2014, 60% of school[] systems reported being in this difficult situation with only one provider selling internet bandwidth to the school system. That number dropped to 46% in 2015 yet stalled at [the] same level in 2016. This problem is especially true for rural school systems and no progress is being made — 54% of rural respondents reported being in this difficult situation in 2016 and 2015. Given the lack of internet providers in some areas, it is not surprising that 30% of school systems reported receiving 1 or fewer qualified proposals for broadband services in 2016 (Category 1, E-rate). There was no improvement in 2016 after slight improvement in 2014. This lack of competition among qualified internet providers is amplified in the rural areas, with 40% of rural survey respondents indicating that they received 1 or fewer proposals for E-rate services, essentially the same as the 2015 data (38%).<sup>2</sup>

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<sup>1</sup> See National Broadband Plan at p. 25.

<sup>2</sup> CoSN's 2016 Annual E-rate and Infrastructure Survey, p. 16 (available at [file:///C:/Users/johnw/Desktop/SHLB/E-rate%202.0/CoSN\\_4th\\_Annual\\_Survey\\_Oct16\\_PROOF5.pdf](file:///C:/Users/johnw/Desktop/SHLB/E-rate%202.0/CoSN_4th_Annual_Survey_Oct16_PROOF5.pdf).)

With declining budgets, anchor institutions often cannot afford to pay the excessive prices charged for high-capacity broadband access or find cost-effective broadband solutions. According to data collected by the FCC in the BDS proceeding, the large majority of customers do not have competitive choices for their broadband services.<sup>3</sup> That means that every interaction — a Skype lecture in the classroom, a tablet using the library’s Wi-Fi, a desktop terminal at the nurse’s station — will at some point travel over broadband “pipes” owned by just a few companies who do not compete with one another. The monopoly or duopoly control of the high-capacity broadband marketplace means that these companies are unlikely to provide competitive prices, offer their infrastructure competitively to companies who can deliver cost-effective services, or cooperate with efforts to construct new facilities in innovative ways to deliver service to the institutions that need it most.

Given the barriers to competition and deployment described in the SHLB Coalition’s Action Plan,<sup>4</sup> this proceeding provides an opportunity for the FCC to reconsider its rules that hinder the growth of competition.

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<sup>3</sup> According to 2013 data, incumbent local exchange carriers (ILECs) own the only connection or provide one of only two connections serving the vast majority business data service customer locations. Professor Rysman found that 77.2 percent of locations with demand for business data services were served by a single provider (usually the ILEC) and only 21.8 percent of such locations were served by two providers (one of which is usually the ILEC). *Business Data Services in an Internet Protocol Environment; Investigation of Certain Price Cap Local Exchange Carrier Business Data Services Tariff Pricing Plans; Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Tariff Investigation Order & Further Notice of Proposed Rulemaking, 31 FCC Rcd. 4723, at 211 & tbl. 7 (2016).

<sup>4</sup> See, “Connecting Anchor Institutions: A Broadband Action Plan”, released July 13, 2016, available at [www.shlb.org/action-plan](http://www.shlb.org/action-plan).

Some of the steps recommended by the SHLB Action Plan include the following:

- Increase the amount of unlicensed spectrum available for Wi-Fi use (e.g., sharing and use of the 5.9 GHz band).
- Encourage joint procurement of broadband services for urban and rural schools, libraries, health, government offices, and other anchor institutions to break down silos between programs and maximize the opportunities for cost savings and to give greater incentives to the private sector to build out new facilities in hard-to-reach areas.
- Enforce the requirement that Connect America Fund recipients must bid in response to an E-rate RFP issued by a school or library.
- Eliminate barriers that prevent anchor institutions from sharing their networks with other anchors and with the surrounding residential community to improve the availability of broadband for everyone.
- Adopt “dig once” policies that will lower the cost of broadband deployment by requiring coordination between government and the private sector on broadband construction and upgrades.
- Establish common and uniform lease agreements, rates, and terms of access to rights-of-way, public lands and facilities for broadband network construction and upgrades.
- Establish a process to resolve pole attachment disputes between providers and utilities quickly, effectively, and in a pro-competitive manner.
- Collect better data on broadband deployment to, and adoption by, anchor institutions. This data can help identify broadband needs more precisely and target funds more efficiently. In particular, efforts should be made both to measure existing broadband capacity and to estimate the future broadband needs of anchor institutions, including the cost of both deployment and ongoing service.
- The FCC should lower the amount of funding required of applicants to the Healthcare Connect Fund from 35 percent down to 15 percent, the amount required for the Rural Health Care pilot program.
- By the end of 2016, the FCC should develop national pricing benchmarks for broadband services to ensure that schools and libraries in high-cost areas are able to purchase broadband offerings at rates that are reasonably comparable to similar offerings to schools and libraries in urban areas.
- Require recipients of funding to include anchor institutions in the design and planning of the network buildout.
- Promote greater competition for service in rural areas through open interconnection and service obligations. Opening rural broadband networks to interconnection and

- allowing government funding to non-traditional entities can stimulate greater investment by new providers. This competitive dynamic can also help to lower broadband prices to more affordable levels.
- Take greater efforts to promote broadband connectivity to anchor institutions in tribal lands.
  - Create a National Digital Literacy Corps, as recommended by the National Broadband Plan, and leverage the work and assets of CAIs in promoting digital literacy.

To its credit, the Commission itself recognized the value of promoting greater competition when it encouraged greater fiber deployment through the E-rate program in the December 2014 Modernization Order.<sup>5</sup> The pro-competitive steps taken by the Commission to enable the E-rate program to support special construction and dark fiber, however, have not yet taken hold. Implementation of those fiber rules were delayed for one year, and most of the first applications for fiber deployment through the E-rate program's new rules are still being reviewed.

The Commission's inability to take steps to reduce wholesale prices in the BDS proceeding this past fall has, unfortunately, delayed the growth of competition. Lowering wholesale prices paid by competitors could have helped to foster more competitive service offerings for schools, libraries and other anchor institutions. The FCC's decision not to adopt an order in that proceeding, leaving the existing above-market prices in effect, is further reason to believe that additional competition will be slow to develop without greater FCC effort.

Some of the Incumbent providers maintain that there is already sufficient competition and that many outdated rules and regulations should be eliminated. We question whether

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<sup>5</sup> "Moreover, having self-construction as an option for all schools and libraries will help drive competition, thereby maximizing the cost-effective use of E-rate funding, which is one of the goals that we have adopted for the program." Second E-rate Modernization Order, para. 53.

there is enough evidence that such competition exists. Incumbent providers have been maintaining for decades that they face increasing competition to support their argument that they should be deregulated. While reviewing the effectiveness of its regulations is certainly a worthwhile exercise, it is premature for the Commission to repeal provisions that are intended to promote competition and encourage investment and innovation in the broadband marketplace until there is verifiable market data demonstrating that facilities-based competition is widespread.

We urge the Commission instead to focus on recommendations set forth in the SHLB Coalition's Action Plan to promote competitive alternatives that will lead to lower prices and greater investment in broadband services for anchor institutions.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized flourish at the end.

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