

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

In the Matter of)
)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
)
)
)

**COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

On February 19, 2010, the Federal Communications Commission (“FCC” or “Commission”) issued an order that “enable[d] schools that receive funding from the E-rate program (more formally, the schools and libraries universal service support program) to allow members of the general public to use the schools’ Internet access during non-operating hours.”¹ Included with the Order was a Notice of Proposed Rulemaking (“NPRM”) that sought

comment on revising our rules to enable schools to allow the use of services and equipment funded under the E-rate program by the community during non-operating school hours. We also seek comment on conditions that should be established to guard against potential additional costs being imposed on the E-rate program and to reduce the likelihood of waste, fraud, and abuse.²

¹ FCC 10-33 (rel. February 19, 2010), ¶ 1. In the order, the Commission “waive[d]... through funding year 2010 (which ends June 30, 2011), rules that currently discourage public use of resources funded by E-rate.” Id. See 47 C.F.R. §§ 54.504(b)(2)(v); 54.504(c)(1)(vii).

² FCC 10-33, ¶ 3. Having, on its own motion, granted the waiver, it would be unreasonable for the Commission not to adopt these rule changes, which would require the programs that have benefited the public during the waiver period to be eliminated at the end of the waiver.

The National Association of State Utility Consumer Advocates (“NASUCA”)³ supports the waiver, and supports the proposed changes in the Commission’s rules.

As the Commission states, the

waiver will promote broadband access across the nation and increase the efficiency and cost-effectiveness of services and facilities funded under the E-rate program. ...[G]ranting this limited waiver to schools participating in the E-rate program will serve the public interest by promoting community access to available services *currently under-utilized* after school hours or when schools are closed, such as evenings, weekends, school holidays, or during the summer months. That is, by allowing schools the option to open their networks to the public to use computer rooms and Internet access during non-operating hours for the purpose of job training, tutoring, or other purposes, we will leverage E-rate funding to serve a larger population. ...[T]his waiver serves the goals of universal service by making Internet access available to more members of the general public. It is also consistent with the Commission’s directive from Congress to encourage access to advanced telecommunications and information services. Further, the waiver is consistent with the use of services funded through E-rate for libraries, which are open to the public for more general purposes, such as access to Internet services.⁴

Likewise, in this narrow context, changing the Commission’s rules to this effect will serve these purposes. NASUCA agrees that “opening the schools” under the waiver should be voluntary, i.e., up to the management of each school.

The Commission also placed conditions on the waiver, which should be continued in newly-adopted rules:

³ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

⁴ FCC 10-33, ¶ 9 (emphasis added).

- First, schools participating in the E-rate program are not permitted to request funding for more services than are necessary for educational purposes.⁵

This emphasizes that the use by the general public is “incidental”⁶ and incremental to the schools’ uses.⁷

- Second, any community usage of E-rate funded services at a school facility is limited to non-operating hours, such as after school hours or during times when the students are out of school.⁸
- Third, “schools’ discounted services or network capacity may not be “sold, resold, or transferred by such user in consideration for money or any other thing of value.”⁹

These conditions emphasize, again, that the uses permitted by the waiver and by the proposed rule changes are incremental to the statutorily-allowed purposes. They increase the efficiency and effectiveness of the resources committed by the Commission – and by consumers around the Nation, who pay for the universal service fund from which the e-rate program derives its support – to benefit the public.

As the Commission states, the expanded use of schools facilities

will leverage E-rate funds to serve a larger population at no increased cost to the E-rate program. Currently, services and facilities purchased using E-rate funding remain unused during evenings, weekends, school holidays, and summer breaks. Moreover, many people lack access or have

⁵ Id., ¶ 11.

⁶ Id., ¶ 17.

⁷ The Commission notes that “although under this waiver schools are permitted to allow use of their facilities by the community during non-operating hours, they shall not seek funding for more services than necessary under the E-rate program to serve their current student population. We do not intend for this waiver to allow schools to request additional capacity to allow for additional uses.” Id., ¶ 11.

⁸ Id., ¶ 12. As noted, “Consistent with the Act, services and equipment supported by E-rate funds must, in the first instance, be used for educational purposes and students shall always get first priority in use of the schools’ resources.” Id., citing 47 U.S.C. § 254 (h)(1)(B).

⁹ Id., ¶ 13, citing 47 U.S.C. § 254 (h)(3). The Commission noted, however, that “schools should be able to charge reasonable fees to cover overhead costs for using school services and facilities – such as electricity, security, and heating – necessary to maintain the building during such periods of use.” Id.

limited access to affordable Internet services for educational and job training opportunities, particularly, for example, in rural, minority, and Tribal communities. Thus, ... opening up these facilities to members of the public to use during non-operating hours, ... will maximize the use of facilities and services supported by E-rate funding and increase community access to the Internet. Further, ... these rule changes are consistent with the goals of universal service by making Internet access available to more members of the general public.¹⁰

As stated, NASUCA supports these rule changes, as part of our support for expanding public access to and usage of broadband services. Yet in closing we must make clear that our support does not extend to the ideological [mis]use of the idea of this public benefit by those who claim that the very existence of the schools and libraries program is a basis for the Commission **not** to reclassify broadband as a Title II service under the Communications Act.¹¹ NASUCA continues to support correction of the Commission's originally erroneous and now-outdated finding that broadband should not be regulated under Title II.¹²

¹⁰ Id., ¶ 18.

¹¹ See, e.g., *A National Broadband Plan for Our Future*, GN Docket No. 09-51 ("09-51"), *Preserving the Open Internet*, GN Docket No. 09-191, *Broadband Industry Practices*, WC Docket No. 07-52, ex parte filing of National Cable & Telecommunications Industry Association ("NCTA") (March 1, 2010), Memorandum at 2-3. Again, despite NASUCA's support for ubiquitous broadband deployment, NCTA's assertion that expansion of broadband deployment to homes is permissible under the schools and libraries program because of possible educational uses at home without Title II reclassification (id. at 4-7) is even more objectionable.

¹² See, e.g., 09-51, *International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act*, GN Docket No. 09-47, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137, NASUCA Reply Comments (January 27, 2010) at 10.

Respectfully submitted,

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