## FCC's E-Rate Reforms Seen Facing Opposition from Austerity-Minded Policymakers

By James M. Smith

The Federal Communications Commission in late July began a major effort to wire the nation's schools and libraries with faster and higher-capacity broadband service through the federal E-Rate program, one of the four programs of the Universal Service Fund.

In the process, the Democratically controlled FCC and the Obama administration have found themselves on another collision course with congressional Republicans, many of whom consider E-Rate an archetypal big-government federal spending program—albeit a congressionally mandated one—that they would like to either curb or eliminate altogether.

Indeed, there has even been some suggestion that the issue could delay or possibly derail the confirmation of a new FCC chairman and a Republican commissioner now pending before the Senate.

### Revisions Seen as Long Overdue.

The E-Rate program, established in 1997 by the FCC under the mandate of the Telecommunications Act of 1996, is the federal government's largest telecommunications and technology program targeted toward educational institutions, currently providing subsidized internet service to 97 percent of the nation's classrooms. But there have been only modest revisions made to the program over its 15 years of existence, with some schools and libraries still receiving only dial-up quality internet service even as many online educational tools demand ever-higher broadband speeds.

President Obama himself launched the current drive to modernize the program, unveiling on June 6 a ''ConnectED'' initiative to connect 99 percent of America's students to broadband at speeds of at least 100 megabits per second (Mbps) and with a target of 1 gigabit per second (Gbps) within five years, as well as to provide high-speed wireless broadband within their schools and libraries.

''We are living in a digital age, and to help our students get ahead, we must make sure they have access to cutting-edge technology,'' the president said in a speech at a middle school in Mooresville, N.C. ''So today [June 6], I'm issuing a new challenge for America—one that families, businesses, school districts and the federal government can rally around together—to connect virtually every student in America's classrooms to high-speed broadband internet within five years, and equip them with the tools to make the most of it.''

The president went on to stress that ''preparing America's students with the skills they need to get good jobs and compete with countries around the world will rely increasingly on interactive, individualized learning experiences driven by new technology.''

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In another era, an FCC proposal to modernize or even expand an existing, congressionally mandated school subsidy program would be an uncontroversial and (to outsiders) tepid exercise, but that is not the case with the FCC's E-Rate reform proceeding, which is barely warming up. It may well turn out to be a 2014 pre-election battle royal between Democrats and Republicans, in an unlikely and normally congenial forum.

While setting such lofty goals, Obama acknowledged that the success of his initiative is dependent on action by the FCC—an independent regulatory agency with three Democrat and two Republican commissioners when at full strength—to transform its E-Rate program to serve more schools and libraries with more funding. He specifically called on the agency to ''modernize and leverage its existing E-Rate program'' to ''build high-speed digital connections to America's schools and libraries, ensuring that 99 percent of American students can benefit from these advances in teaching and learning.'' Education Secretary Arne Duncan added that a ''slight increase in fees for the short term'' might be necessary to reach these connectivity goals.

Consequently, on July 19 the FCC voted to issue a 175-page notice of proposed rulemaking to transform E-Rate into a more modern, broadband-based and cost-efficient program, stating: ''The challenge we now face is modernizing the program to ensure that

our nation's students and communities have access to high-capacity broadband connections that support digital learning while making sure that the program remains fiscally responsible and fair to the consumers and businesses that pay into the universal service fund.''

The FCC articulated three key goals: (1) ensuring that schools and libraries have affordable access to 21st Century broadband that supports digital learning; (2) maximizing the cost-effectiveness of E-Rate funds; and (3) streamlining the administration of the E-Rate program. The FCC's document asks for comments on hundreds of questions relating to every aspect of the E-Rate program, but clearly its fundamental objective is to implement large portions of the president's ConnectED initiative.

### Dems Show Support, Republicans Indicate Tough Stance.

So far, congressional support has been mixed.

Two days before the FCC acted, Sen. John D. Rockefeller IV (D-W.V.), chairman of the Senate Commerce, Science, and Transportation Committee and one of the architects of the original E-Rate legislation, convened a friendly hearing lauding the E-Rate program and taking testimony from educators on the need to expand and modernize it.

Several weeks later, *The Washington Post* reported that the Obama administration is proposing to fund the estimated $4 billion to $6 billion cost of the expanded program by persuading the FCC to increase monthly universal service fees to cellphone users—an estimated $12 additional fee per wireless customer over three years. (E-Rate is now funded through a monthly surcharge on consumers' phone bills of between roughly 50 cents and $1.)

The *Post* article quoted Rob Nabors, White House deputy chief of staff, who said that the ConnectEd initiative has ''a lot of the characteristics of big-vision policy that you really don't get through legislation anymore.'' The article also quoted the president, as paraphrased by an aide, saying: ''We are here to do big things—and we can do this without Congress.''

Not surprisingly, Rep. Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee, swiftly countered that ''most consumers would balk at

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higher costs, higher phone bills, and I sure hope that this is not part of the equation that ultimately comes out. If they pursue that course, there's going to be pushback, absolutely.''

And more recently, at the Technology Policy Institute forum this month in Aspen, Colo., former Republican congressman and long-time Verizon executive Tom Tauke predicted that Senate Republicans may insist that Tom Wheeler, the president's nominee for FCC chairman, and Mike O'Rielly, nominee for a Republican commission seat, publicly disavow the administration's proposals.

''If you want to derail the nominations, say you're directing the FCC to spend two, four, five billion dollars that's going to be tacked on to the phone bill,'' Tauke said. ''Boy, talk about red meat for some of those on the Republican side of the aisle.''

### Next Steps for FCC.

For its part, the FCC, an independent regulatory agency (albeit one that certainly is not immune to political considerations), is keeping characteristically mum as its rulemaking proceeding moves forward. It has called for public comments on hundreds of E-Rate-related questions by Sept. 16, and replies Oct. 16, but no final decisions are expected before early next year.

As the ongoing political jousting demonstrates, a key challenge for the FCC will be to achieve its and the administration's goal of broadening the E-Rate program in an era of budgetary austerity. Even under the current program, requests for E-Rate funding by schools and libraries far outstrip the program's budgetary cap ($2.25 billion annually, with an index for inflation that resulted in a $2.38 billion cap in 2012). In the current funding year, the amount of funding requests totals $4.9 billion. The pending rulemaking proposes to reprioritize funding by shifting current subsidies from voice telecommunications to high-capacity broadband, phasing out subsidies for arguably outdated services like paging and standalone voice service, and imposing performance measures and data-gathering to optimize the use of funds.

Included among the FCC document's plethora of proposals and questions are:

■ **A Focus on High-Capacity Broadband**

The FCC asks how it should set and measure the effective use of E-Rate funds, such as through the presi-

dent's ConnectED target of at least 100 Mbps service with a target of 1 Gbps to most schools and libraries within five years; a State Education Technology Directors Association (SETDA) proposal for at least 100 Mbps per 1,000 students and staff by the 2014-15 school year and at least 1 Gbps internet access per 1,000 users by the 2017-18 school year; and on SETDA's recommendation for Wide-Area Network (WAN) connectivity for schools within a district of at least 10 Gbps per 1,000 students and staff by 2017-2018.

■ **Maximizing the Cost-Effectiveness of E-Rate Funds**

The FCC acknowledges that major additional funding will be needed to connect all of the nation's classrooms and libraries with high-speed broadband. It asks whether it can find a significant amount of that funding through cutting costs and increasing efficiencies within the E-Rate program itself, by eliminating funding for pagers, components of voice service, separate e-mail and webhosting services, and for services used only by school and library staff and in non-instructional buildings. The FCC suggests various structural changes to the E-Rate support mechanism, asking whether it should eliminate current priorities in funding (i.e., funding for internet access and telecommunications services versus equipment and other items such as maintenance), and whether it should give school districts a fixed per-student budget, perhaps with double funding for rural districts. It also asks whether a flat matching requirement of 25 or 30 percent would improve the cost-effectiveness of E-Rate support. Alternatively, it asks whether it should require schools with the highest discounts to pay greater out-of-pocket matching fees. It also asks for suggestions about how to increase transparency and improve the competitive bidding process for E-Rate funding.

■ **Streamlining the Program**

The FCC makes a number of suggestions on streamlining E-Rate in order to cut administrative costs and make the process easier for applicants. It asks for ideas on how to simplify the application process, such as by allowing schools and libraries with multi-year contracts to file a single application just once. It also asks for ideas on how to speed up the appeals process after a denial of funding or a request for reimbursement. The FCC makes many other suggestions, including some that would add considerable complexity to the application process.

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**E-Rate Fight Could Offer 2014 Election Preview.**

It is highly unusual that the vast ideological and policy differences between the Obama administration and Congressional Republicans would be played out in a regulatory agency such as the FCC. In another era, an FCC proposal to modernize or even expand an existing, congressionally mandated school subsidy program would be an uncontroversial and (to outsiders) tepid exercise, but already that is not the case with the FCC's E-Rate reform proceeding, which is barely warming up. Instead, it may well turn out to be a 2014 pre-election battle royal between Democrats and Republicans, in an unlikely and normally congenial forum.

The first indication of the ferocity of the divide on E-Rate expansion proposals will come with Senate hearings and confirmation votes on the pending FCC chairman and commissioner nominees, expected in early fall. But even if the arrayed political antagonists decide not to clash on the issue in the context of these nominations, it will certainly be one of the most contentious issues before the FCC in 2014.

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