

**Before the Federal Communications Commission  
Washington, D.C. 20554**

**In The Matter of**

<b>Schools and Libraries Universal Service Support Mechanism</b>	)	<b>CC Docket No. 02-6</b>
	)	
	)	
<b>Connect American Fund</b>	)	<b>WC Docket No. 10-90</b>
	)	
	)	
<b>Modernizing the E-rate Program for Schools and Libraries</b>	)	<b>WC Docket No. 13-184</b>
	)	

**Comments of Voqal on Behalf of Mobile Citizen**

These Comments, filed by five nonprofit organizations that hold licenses in the Educational Broadband Service (EBS),<sup>1</sup> are submitted in response to the Commission’s request for comments on petitions<sup>2</sup> that would allow E-rate subsidized broadband networks to be accessed by students at home for educational purposes, without an obligation on the E-rate applicants to cost allocate out the portion of the traffic attributable to off-campus use. Though these five commenting organizations are separate, many of their activities are similar or are conducted together, a combination that tended to be confusing to users. Consequently, the five adopted the trade name Voqal in common, and are referred to collectively as Voqal in this pleading.

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<sup>1</sup> These EBS licensees are: Chicago Instructional Technology Foundation (“CITF”), Denver Area Educational Telecommunications Consortium (“DAETC”), Instructional Telecommunications Foundation (“ITF”), Portland Regional Educational Telecommunications Corporation (“PRETC”), and Twin Cities Schools’ Telecommunications Group (“TCSTG”). CITF is licensee of WLX-630, Chicago. DAETC is licensee of WHR-488, Denver. ITF is licensee of WHR-509, Indianapolis; WHR-527, Philadelphia; WHR-512, Sacramento; WHR-511, Kansas City; WLX-699, Salt Lake City; WLX-694, Las Vegas; and WLX-816, Phoenix. PRETC is licensee of WHR-522, Portland, OR. TCSTG is licensee of WHR-487, Minneapolis.

<sup>2</sup> See *Wireline Competition Bureau Seeks Comment On Petitions Regarding Off-Campus Use of Existing E-Rate Supported Connectivity*, DA 16-1051, CC Docket No. 02-6; WC Docket 10-90; WC Docket No. 13-184, released September 19, 2016 (*Request for Comment*). See also, Petition filed by Microsoft Corporation, Mid-Atlantic Broadband Communities Corporation, Charlotte County Public Schools, Halifax County Public Schools, GCR Company, and Kinex Telecom, (*Charlotte and Halifax County Petition*).

## **Background**

Voqal's most prominent project is known as Mobile Citizen, a wireless broadband service for educational institutions and nonprofit organizations. As it operates today, Mobile Citizen is made possible because of a series of interrelated excess capacity agreements (referred to herein as the Clearwire Agreements) between EBS licensees Voqal and North American Catholic Educational Programming Foundation (NACEPF) on the one hand; and Clearwire Corporation<sup>3</sup> and one of its subsidiaries on the other.

Pursuant to the Clearwire Agreements, Voqal and NACEPF receive what are referred to as Cost-Free Educational Accounts (CFEAs), which they may give away or resell to educational institutions, nonprofit organizations, and social welfare agencies. CFEAs are broadband access accounts that have allowed access to the Sprint broadband services platform. Voqal provides these CFEAs to nonprofit and educational entities via our Mobile Citizen project offering them free or at very favorable rates. NACEPF provides these CFEAs to such entities via Mobile Beacon.

Though Mobile Citizen serves a wide variety of educational entities, social welfare agencies and nonprofit organizations across the country, its services have found widespread adoption among nonprofits whose chief purpose is to reduce the digital divide and homework gap. As well, Mobile Citizen is used by educational institutions both on campus<sup>4</sup> to provide ancillary buildings connectivity as well as off-site through student and teacher loaner programs.

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<sup>3</sup> Clearwire was acquired by Sprint in mid-2013. Mobile Citizen now utilizes Sprint's LTE network to deliver service through mobile "hot spots".

<sup>4</sup> Schools have used Mobile Citizen's service in a number of ways to fill existing gaps including in areas of the school where teachers can't get access to their on-campus Internet or at a school's baseball fields, which are just out of range of the school's WiFi.

## Comments of Voqal

Voqal supports the *Charlotte and Halifax County Petition*'s request for clarification that E-rate rules be interpreted to permit E-rate-covered Internet access to extend to the homes of students without an obligation on the E-rate applicants to cost allocate out the portion of the traffic attributable to off-campus use. As the *Charlotte and Halifax County Petition* argues, the current E-rate rules are unclear as to what off-premises uses satisfy the educational purpose requirement of the E-rate fund.<sup>5</sup>

In its *Universal Service First Report and Order* the Commission required schools and libraries seeking E-rate support to certify that requested services would be used for “educational purposes.”<sup>6</sup> Educational purposes were subsequently clarified to mean “activities that are integral, immediate, and proximate to the education of students”<sup>7</sup> but the Commission established “a presumption that activities that occur *in* a library or classroom or *on* library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.”<sup>8</sup> [emphasis added] The program proposed though the *Charlotte and Halifax County Petition* would allow students to “connect from home to safe school district networks and access content and applications needed to complete their

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<sup>5</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 19 (2003) (*Schools and Libraries Second Report and Order*). The *Schools and Libraries Second Report and Order* states that “in certain limited instances, the use of telecommunications services offsite” would serve purposes considered educational. However, the list provided as examples of approved offsite use are just that, examples, and not a full and definitive list of qualifying offsite uses, including the type of service the *Charlotte and Halifax Petition* proposes.

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 577 (1997) (*Universal Service First Report and Order*).

<sup>7</sup> *Schools and Libraries Universal Second Report and Order*, para. 17

<sup>8</sup> *Id.*, para. 17

homework assignments and engage in other school-sanctioned educational activities.”<sup>9</sup> It’s hard to think of tasks more integral to the education of today’s students than their ability to complete homework assignments, perform online research relevant to their homework, and participate in online class discussions.

While the *Schools and Libraries Second Report and Order* clarified the meaning of “educational purposes” as cited above, it maintained an emphasis on E-rate funding supporting educational activities *in*<sup>10</sup> or services provided *to* school and library premises. While the Commission did find that “in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students...and thus, would be considered to be an educational purpose,”<sup>11</sup> those eligible offsite services stopped well short of extending to students’ homes. The examples given for off-campus educational use were: “a school bus driver’s use of wireless telecommunications services while delivering children to and from school, a library staff person’s use of wireless telecommunications service on a library’s mobile library unit van, and the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event.”<sup>12</sup>

In the *Sixth Report and Order*, the Commission acknowledged that its rules “may prevent the full utilization of learning opportunities that portable wireless devices, such as digital textbooks, can provide off campus and outside of regular schools hours.”<sup>13</sup> To address the competing concerns of those commenters that supported programs which “would require Internet

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<sup>9</sup> *Charlotte and Halifax County Petition*. Pages 11-12.

<sup>10</sup> *Schools and Libraries Second Report and Order*, para. 20.

<sup>11</sup> *Id.*, para. 19.

<sup>12</sup> *Id.*, footnote 28.

<sup>13</sup> *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6; GN Docket No. 09-51, 25 FCC Rcd 18762, para. 41 (2010) (*Sixth Report and Order*).

access outside schools and libraries” as well as those commenters that urged the Commission to “proceed cautiously” and emphasized the “challenges that may accompany support for connectivity for portable learning devices used outside the physical grounds of schools and libraries” the Commission established the E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program, also known as the *Learning On-the-Go pilot program* to “gather more information...and to identify and disseminate best practices in existing projects.”<sup>14</sup>

The projects funded through the *Learning On-the-Go pilot program* attempted, in part, to do what the *Charlotte and Halifax Petition* now asks the Commission to endorse broadly, that is, to “promote initiatives to improve off-campus access,” and not require those that completed the program to “cost-allocate the dollar amount of support for the time that portable devices are not on school or library premises.”<sup>15</sup> One such applicant that completed the project and submitted a final report was the Sioux City Community School District (SCCSD) which used wireless devices to meet its curriculum objectives of differentiated instruction, assessment, 21<sup>st</sup> Century skill development / communication and achievement.<sup>16</sup> The *SCCSD Final Report* describes the myriad ways in which wireless devices were employed as part of the program and concluded that “While this project was only implemented for a single school year it does appear to have contributed to positive improvements in attendance, student discipline, student engagement, graduation rate, dropout rate, and some improvement in standardized test scores.”<sup>17</sup>

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<sup>14</sup> Id. paras. 41-42 and 44.

<sup>15</sup> *E-rate Deployed Ubiquitously 2011 Pilot Program*, WC Docket No. 10-222, Order, (*Learning On-the-Go pilot program*).

<sup>16</sup> See Sioux City Community Schools E-Rate Deployed Ubiquitously (EDU) 2011 Pilot Program FINAL REPORT located at <https://ecfsapi.fcc.gov/file/7520949372.pdf> (*SCCSD Final Report*).

<sup>17</sup> Id. page 5. The *SCCSD Final Report* does go on to say that due to the “many possible variables involved it is not possible to say with 100 percent certainty that these outcomes were solely the result of the learning to go program [sic]. However, it is likely that the learning to go [sic] program had a large impact on the results.”

Despite the success of programs like SCCSD’s described above and two proceedings that modified the E-rate program to keep it modern and effective,<sup>18</sup> E-rate continues to focus funding for services and educational purposes that are on campus and not offsite locations such as students’ homes. Review of the most recent Eligible Services List (*ESL*) for funding year 2017 that was adopted September 12, 2016, will show no eligible services like those proposed by the *Charlotte and Halifax Petition* that extend to students’ homes or any other off-campus use.<sup>19</sup> In fact, the only mention of off-campus use appears on page 7 and declares off-campus use of wireless services and wireless Internet access as ineligible *even when used for an educational purpose*.<sup>20</sup>

Given the evidence that the homework gap in this country is real and certain Commissioners have noted such gaps<sup>21</sup>, the continued focus on E-rate-subsidized programs for school and library campuses seems inadequate. For instance, in the *Statement of Commissioner Clyburn*, she highlights the importance of broadband Internet access at home and its connection to a student’s success. She encourages us to view broadband connectivity as a “three-legged stool where all pieces need to be present for success: broadband at school, broadband in the library, and broadband at home. Absent one leg, the stool does not stand.”<sup>22</sup> Unfortunately for

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<sup>18</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Notice of Proposed Rulemaking, (2014) (*E-rate Modernization Order*) and *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order on Reconsideration, (2014) (*Second E-rate Modernization Order*).

<sup>19</sup> *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, Appendix C (2016).

<sup>20</sup> *ESL* page 7, see [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1023A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1023A1.pdf).

<sup>21</sup> *Statement of Commissioner Jessica Rosenworcel*, Modernizing the E-rate Program for Schools and Libraries, Report and Order, WC Docket 10-90, 13-184, (Dec. 19, 2014), “Today, roughly seven in ten teachers assign homework that requires access to broadband. But the FCC’s data suggest that almost one in three households do not subscribe to broadband services at any speed—for reasons such as the lack of affordability and lack of interest.”

<sup>22</sup> See, *Statement of Commissioner Mignon L. Clyburn*, Modernizing the E-rate Program for Schools and Libraries, Report and Order, WC Docket No. 10-90, 13-184, (Dec. 19, 2014) (*Statement of Commissioner Clyburn*).

the millions of students across the country without broadband access at home,<sup>23</sup> the incomplete access to broadband Commissioner Clyburn describes is exactly the situation leading to an ever-widening homework gap between the haves and the have-nots.

Voqal appreciates the *Charlotte and Halifax Petition*'s detailed description of the program proposed to extend E-rate subsidized Internet access to students' homes. As described in the *Charlotte and Halifax Petition*, the 18 Participating Schools' primary purpose for pursuing the program is educational in nature and aims "to assist in closing the homework gap of thousands of eligible students in the participating school districts."<sup>24</sup> Despite the fact that the certification requirements of section 47 U.S.C § 254(h) are for "schools with computers having Internet access," the *Charlotte and Halifax Petition* specifies that the proposed service to students' homes will be held to the same certification standards as if those students' computers were on campus. In the declarations accompanying the *Charlotte and Halifax Petition*, Superintendents Herndon and Leonard both certify that as a condition of receiving E-rate subsidized funding, students accessing the "Internet service at home would be required to log in with a username and password, and their use would be subject to the same filtering and compliance policies as it would be on school grounds."<sup>25</sup> As described in those same declarations, these filtering and compliance policies are part of "formal Internet Safety Policies in compliance with the Children's Internet Protection Act ('CIPA)."<sup>26</sup> Both the *Charlotte and Halifax Petition*'s program description and the superintendents' declarations are silent on

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<sup>23</sup> According to the PEW Research analysis of 2013 American Community Survey (IPUMS), roughly 17.5% or 5 million households with school age children do not have access to Internet service at home. See The numbers behind the broadband 'homework gap' found at <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

<sup>24</sup> *Charlotte and Halifax Petition*, page ii.

<sup>25</sup> Id., Attachments. Declaration of Superintendent Dr. Merle P. Herndon and Superintendent Nancy Leonard.

<sup>26</sup> Id.

whether such filters would allow content that isn't strictly educational, i.e. content that is merely "entertaining", as distinct from content that is obscene, pornographic or otherwise harmful to minors.<sup>27</sup> Without the types of monitoring that can be assured on school premises by teachers and administrators, students accessing the Internet at home could conceivably access programming that, while not harmful, wouldn't meet the strict educational purposes of E-rate. Voqal believes to deny programs like those proposed by the *Charlotte and Halifax Petition* due to such concerns would be shortsighted. Even assuming, arguendo, that the program proposed by the *Charlotte and Halifax Petition* is abused by some students who never use the home Internet access for educational purposes, the *Charlotte and Halifax Petition* proposes *no additional cost to schools, students or the Universal Service Fund*.<sup>28</sup> To deny those students who would access the Internet to complete homework assignments, complete research and participate in other school programs in order to prevent potential misuse, even when such access would add no additional cost to the E-rate program, would be a huge missed opportunity to close the homework gap through programs like the one described in the *Charlotte and Halifax Petition*.

### Summary

Voqal appreciates the opportunity to comment on the *Charlotte and Halifax Petition*.<sup>29</sup>

Voqal believes E-rate should allow for innovative off-campus programs like those proposed in

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<sup>27</sup> 47 U.S.C § 254(h)(5)(B)(i) requires school administrators to certify that technology protection measures are put in place to protect minors against access to visual depictions that are obscene, child pornography or harmful to minors.

<sup>28</sup> *Charlotte Halifax County Petition*, page 7.

<sup>29</sup> While Voqal also supports the petition submitted by Samuelson-Glushko Technology Law & Policy Clinic on behalf of Boulder Valley School District (BVSD Petition) referenced in the *Request for Comment*, it has chosen to support the *Charlotte and Halifax Petition* because it agrees with *the Charlotte and Halifax Petition* that the rules regarding off-campus use of existing E-rate supported connectivity are unclear and a rule clarification would better serve many E-rate applicants rather than just the two parties seeking waivers.

the *Charlotte and Halifax Petition*. In the words of Commissioner Rosenworcel, “we need to recognize that expanding opportunity goes beyond the school doors. We can’t forget that in a world where students rely on online resources and digital content in the classroom, they also need access to broadband when they go home.”<sup>30</sup> In order to best serve the students that need it most, it is imperative that the E-rate program be adapted to reflect this new reality. By clarifying the rules to extend E-rate funding for certain off-campus uses and thereby removing the need that applicants cost-allocate those expenses out of E-rate funding requests, the Commission can open the door to innovative programs that help reduce the homework gap at no additional costs to the E-rate program. To do so is the logical next step in the dynamic history of the E-rate program and its efforts to support education in this country. For these reasons, Voqal supports the *Charlotte Halifax Petition* for clarification.

Respectfully submitted,

VOQAL

By:



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<sup>30</sup> *Statement of Commissioner Jessica Rosenworcel, Modernizing the E-rate Program for Schools and Libraries, Report and Order, WC Docket 10-90, 13-184, (Dec. 19, 2014).*