

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

In the Matter of )  
 )  
Addressing the Homework Gap through the E- ) WC Docket No. 21-31  
Rate Program )

**COMMENTS OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Notice of Proposed Rulemaking (“Notice”) released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.<sup>2</sup> The Commission seeks comment in the Notice regarding whether Universal Service Fund (“USF”) Schools and Libraries (“E-Rate”) beneficiaries can use program funds to purchase Wi-Fi hotspots and wireless Internet service that can be used off-premises by students, school staff, and library patrons. While the Commission should rightly examine every tool in its toolkit to address concerns regarding the ability of all Americans to access the Internet, the Commission must employ not only the right tools for the task but also ensure that the tools are squarely within the toolkit to start. Unfortunately, the proposed rules could put at risk investments already made to connect many rural Americans, could blur the distinct lines established by Congress for the four

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<sup>1</sup> NTCA–The Rural Broadband Association represents approximately 850 independent, community-based companies and cooperatives that provide advanced communications services in rural America and more than 400 other firms that support or are themselves engaged in the provision of such services.

<sup>2</sup> *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking (rel. Nov. 8, 2023).

parts of the USF in rural areas, are inconsistent with the clear definition of “educational purpose” contained in the Communications Act, as amended by the Telecommunications Act of 1996 (“Act”), and raise serious questions regarding the Children’s Internet Privacy Act (“CIPA”).

**I. THE COMMISSION MUST BE CAREFUL TO ENSURE THE E-RATE PROGRAM OPERATES IN CONJUNCTION WITH, AND DOES NOT DUPLICATE, OTHER USF COMPONENTS.**

NTCA’s community-based members take seriously their responsibility to ensure that each school and library has the best possible broadband connection.<sup>3</sup> NTCA members further share the Commission’s interest in maximizing affordable access to quality voice and broadband services for each and every household in each and every community<sup>4</sup> and recognize that the fundamental connectivity problem that the Notice attempts to solve is very real for some American households. Overcoming the problem, however, requires carefully fashioned solutions that provide reliable connections to those in need while minimizing the risk to existing networks and ensuring proper coordination across the Commission’s various USF initiatives.

Unfortunately, the rules proposed in the Notice present several problems in this regard. First, as a general matter of good public policy, providing a subsidized hotspot to a household

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<sup>3</sup> NTCA members serve all of the public libraries, hospitals/medical clinics and 911 call centers located in their service area with fixed broadband service. The maximum broadband speed NTCA members make available to these anchor institutions in their area averages 3,197 Mbps, while the average speed of broadband purchased by these institutions is 453 Mbps. NTCA 2023 Broadband/Internet Availability Survey Report, Dec. 2023, at p. 13, available at <https://www.ntca.org/sites/default/files/documents/2023-12/2023%20Broadband%20Survey%20Report%20FINAL.pdf> (last visited Dec. 27, 2023).

<sup>4</sup> 84% of NTCA members’ customers are able to receive maximum downstream speed greater than or equal to 100 Mbps (up from 81.9% the year before) and an average of 67.1% of members’ customers can receive a maximum downstream speed for fixed broadband greater than or equal to 1 Gig, up from 60.9% in 2022, 55.4% in 2021, 45.1% in 2020, and 25.3% in 2019. *Id.* at p. 7.

makes little sense when a robust connection already exists at the particular household – meaning the problem is one of adoption rather than availability. Moreover, providing E-Rate funds for Wi-Fi hotspots at a household where an existing broadband connection is already available and supported by the High-Cost USF program or other governmental initiative would waste USF resources that could be used to promote deployment of broadband facilities elsewhere as needed, to make Internet service more affordable for lower income households where service already exists, or to provide better connections for schools, libraries, hospitals, or rural health care facilities rather than the deployment of redundant networks. The High-Cost USF program offers the added benefit of providing internet access for the entire household to use for remote learning, remote work, and general access to the internet, in lieu of providing a service that by its legal terms can only be used for educational purposes.

Indeed, allowing the E-Rate program to fund Wi-Fi hotspots in communities that are already connected through support from the High-Cost USF program could substantially erode the public’s confidence in the integrity of USF, and invite concern from Congress itself. Congress specifically designed the E-Rate program to make telecommunications and information services more affordable for schools and libraries by providing discounted telecommunications and Internet services and equipment. Meanwhile, the High-Cost USF program provides funding to deploy, maintain and upgrade broadband facilities to locations throughout rural areas where, due to terrain, distance between locations or small population, the cost of doing so is not feasible without such support.<sup>5</sup> These facilities must be in place to allow the E-Rate program to provide

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<sup>5</sup> The High-Cost program helps ensure not only that networks are available, but that rates paid by users of all kinds in rural areas for services on those networks will be reasonably comparable to those in urban areas.

discounts for the services made available by these facilities. In other words, these communities likely already have broadband facilities due to the High-Cost USF program, and even the E-Rate program has already likely facilitated or furthered the deployment of broadband-capable networks specifically to connect the anchor institutions in these communities. Therefore, the lack of broadband service in an individual home in these communities is more likely an issue of broadband affordability or education as to relevance than broadband availability.

As a fundamental matter, if the Commission proceeds as suggested by the Notice, no E-Rate funds should be used to provide hotspots at locations where the Commission's own broadband availability data indicate service is already available. Moreover, rather than use the E-Rate program to fund service at the very same locations that the High-Cost program helps to connect, if the Commission proceeds with rules along the lines of those proposed in the Notice, the Commission must assure careful coordination of the interconnected USF programs by limiting the purchase of Wi-Fi hotspots and service using E-Rate funds to locations only in areas where High-Cost USF support is not already distributed. Furthermore, to avoid potentially redundant and wasteful funding, the Commission should make clear that a school or library seeking to use E-Rate funds to subsidize the purchase of at-home Wi-Fi equipment and services is precluded from structuring the bids for such equipment and services on a "district-wide" or consortia basis. This will help ensure smaller providers have a meaningful opportunity to bid on any such equipment and services requested by school districts or libraries in the communities they serve, and that funds only go to individual locations in communities where they are needed most. Finally, if the Commission chooses to allow schools and libraries to use E-Rate funds to subsidize the cost of home Internet service through the use of hotspot devices and services, the

provider selected by the school or library to provide these devices and services should be required to adhere to the same cybersecurity requirements as other recipients of USF funding.<sup>6</sup>

## **II. THE PROPOSED USE OF E-RATE FUNDS RUNS COUNTER TO THE CLEAR AND EXPRESS LANGUAGE OF SECTION 254(h) OF THE ACT.**

While in the preceding section NTCA recommends how the Commission should proceed if the Commission were to adopt rules along the lines of those proposed in the Notice, there are important jurisdictional concerns that must be addressed as a threshold matter. Notably, allowing schools and libraries to use E-Rate funds to purchase Wi-Fi hotspots and services for students, school staff, and library patrons to use in their homes runs counter to Section 254(h) of the Act, which restricts the use of E-Rate funds to an “educational purpose.” Furthermore, the Commission has repeatedly defined “educational purpose” to require a link to a place of instruction.

Section 254(h)(1)(B) states in relevant part:

All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries *for educational purposes* at rates less than the amounts charged for similar services to other parties.<sup>7</sup>

This language makes clear that the services are to be provided “to” schools and libraries pursuant to the Act, and that such services are to be utilized by those institutions for “educational purposes.” To date, the Commission has adhered faithfully to this statutory requirement; while

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<sup>6</sup> For instance, these providers should be required to implement and file Cybersecurity and Supply Chain Risk Management Plans pursuant to 47 C.F.R § 54.308(e)(1) as well as provide an annual certification that they do not have any equipment or services identified on the Commission’s Covered List in their networks. *See* 47 C.F.R. § 54.11(a).

<sup>7</sup> 47 U.S.C. § 254(h)(1)(B) (emphasis added).

the definition of “educational purpose” has been clarified over the life of the E-Rate program, the touchstone has always been that “the purpose for which support is provided [is] for educational purposes *in a place of instruction*.”<sup>8</sup> Orders clarifying the definition of “educational purpose” – while authorizing the use of E-Rate supported services by school and library staff and by members of the community after normal school hours – in every case maintained the requirement that the use of such facilities was tied to *a place of instruction*.<sup>9</sup> These Orders neither addressed nor authorized the extension of E-Rate supported services or facilities to a *residential setting*.

There is no practical way for schools to ensure any and every hotspot funded by the E-Rate program is used solely for educational purposes; libraries would seem to face an even greater uphill battle ensuring such limitations on the use of services at home by their patrons.

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<sup>8</sup> See *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-Rate Supported Connectivity*, CC Docket No. 02-6, WC Docket Nos. 10-90 and 13-184, Public Notice, DA 16-1051 (rel. Sep. 19, 2016), fns 4-6 (citing nearly two decades of Commission commitment to the principle of “educational purpose” being ultimately tied to “a place of instruction”).

<sup>9</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313 (rel. Dec. 14, 2022), Appendix B at 11 (“[o]ff-campus use even if used for an educational purpose is ineligible for support and must be cost-allocated out of any funding request.”); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 03-101 (rel. Apr. 30, 2003) (“2003 Second Report and Order”), ¶ 17 (clarifying that “educational purposes” includes “services to be used by support staff not involved in instructional activities” and that “activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program.”). The 2003 Second Report and Order also stated that certain off-premises uses of E-Rate supported services would be considered “activities that are integral, immediate, and proximate to the education of students.” Examples of such uses included “a school bus driver’s use of wireless telecommunications services while delivering children to and from school [or] the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event.” *Id.*, n. 28. Interestingly, the 2003 Second Report and Order stated that “[w]e find that our clarification is consistent with statutory mandates that the purpose for which support is provided be for educational purposes *in a place of instruction*.” *Id.* at ¶ 20 (emphasis added).

Requiring students to adhere to eligible use policies or to log on to the hotspot using unique authentication credentials<sup>10</sup> does not ensure that the connection once accessed is used only for an “educational purpose.” By contrast, the Emergency Connectivity Fund (“ECF”) Program was created by Congress specifically and expressly to help ensure students had the technology and services needed to participate in remote learning during the COVID-19 pandemic while many school buildings were closed and students and teachers relied upon remote learning.<sup>11</sup> Indeed, the legislation that established the ECF Program expressly directed the funding to be used for “locations that include locations other than” the school or library.<sup>12</sup> Thus, ECF was created with a defined budget and term with an explicit charge to quickly provide students, teachers and library patrons with the technology and services necessary to engage in remote learning during the COVID-19 pandemic while many schools were operating only remotely – all provisions that do not appear in Section 254.

Claims that there are sufficient funds in the E-Rate budget for the Notice’s proposed expansion of the use of E-Rate funds miss the point. The Act is the final arbiter of what the Commission can and cannot do with whatever levels of funding are available. Congress never intended E-Rate funds to be used to provide discounted services or facilities to residential users; to the contrary and to reiterate, the Act clearly and expressly limits provision of E-Rate funding

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<sup>10</sup> Notice at ¶ 36.

<sup>11</sup> *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, FCC 21-58 (rel. May 11, 2021) at n. 4 (“Support provided under the regulations adopted today is provided through amounts made available from the [ECF] and not from contributions under section 254(d) of the Communications Act of 1934.”).

<sup>12</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2).

to support the delivery of services “to” schools and libraries “for educational purposes.” The Commission therefore cannot cite the creation and implementation of the ECF or the availability of resources as a basis for extending the E-Rate program beyond its separate and independent statutory bounds.

### **III. SCHOOLS AND LIBRARIES WOULD BE UNABLE TO ENSURE COMPLIANCE WITH THE CHILDREN’S INTERNET PROTECTION ACT.**

The Commission also seeks comment in the Notice regarding whether the Children’s Internet Protection Act (“CIPA”) would apply if the Commission adopted rules allowing schools and libraries to use E-Rate funds to purchase Wi-Fi hotspots and services for use in students’ homes. NTCA agrees with the Commission’s tentative conclusion that CIPA applies to any “school- or library-owned computers being used off-premises if the school or library receives Internet service, Internet access, or network connection services or related equipment (including Wi-Fi hotspots) funded through the E-Rate program.”<sup>13</sup> The fact that Wi-Fi hotspots would be used by students makes no difference and, in fact, would require schools and libraries to somehow monitor the websites being accessed by the Wi-Fi hotspots in order to ensure compliance with CIPA, likely raising significant privacy concerns.

While the Commission chose not to apply CIPA to the ECF program if personal devices are used to connect to the ECF-funded Internet service rather than school or library equipment, the Commission also recognizes, as described above, that CIPA would apply to E-Rate Wi-Fi hotspots if school or library equipment is being used to access that Internet service.<sup>14</sup> The

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<sup>13</sup> Notice at ¶ 53.

<sup>14</sup> *Id.*



Commission does not, however, explain how schools, libraries or even the Commission (for purposes of audits) would identify and distinguish between students or library patrons connecting to the E-Rate funded Wi-Fi service using their personal devices or school or library provided devices.

Accordingly, the Commission would first need to determine whether a school district or library has the authority or wherewithal to deploy and update filtering software on Wi-Fi hotspots in private residences to ensure the hotspots could not be used in violation of CIPA. Notably, the Commission has previously concluded that CIPA “prohibits recipients from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for compliance with [CIPA].”<sup>15</sup> Next, the Commission would need to determine whether schools or libraries have legal authority, and the wherewithal, to monitor the activities of minors and/or their parents within a private residence, including the resources to take responsibility for any deviations from CIPA.<sup>16</sup> Finally, the Commission would need to address how schools and libraries would demonstrate the Wi-Fi hotspots and services are being used in compliance with CIPA.<sup>17</sup>

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<sup>15</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket 13-184, Report and Order, FCC 19-117 (rel. Dec. 3, 2019) at ¶ 46.

<sup>16</sup> *See, e.g.*, Notice at ¶ 37 (“should users receive advance notice that their use of an E-Rate-supported Wi-Fi hotspot and service is subject to audit, which may include review of their online activities and browsing history to verify compliance with the Commission’s rules?”).

<sup>17</sup> *Id.* (“If we extend support to the off-premises use of Wi-Fi hotspots and services, we expect the support would be subject to the audits and reviews currently utilized in the E-Rate program....”).

#### IV. CONCLUSION

NTCA and its members fully support the Commission's goal in the instant proceeding. The challenges of connectivity are persistent in some areas and NTCA applauds the Commission for continuing to consider ways of overcoming them. Nevertheless, the rules proposed in the Notice present significant risk of duplicating existing connections and undermining the work and integrity of other critical USF programs. Moreover, the proposed expansion of the E-Rate program stretches the boundaries of the program as authorized under Section 254, and implementation of the proposals raises significant questions under CIPA. For these reasons, NTCA urges the Commission to focus upon other means of seeking to overcome remaining challenges of availability or, at a minimum, if the Commission proceeds with the proposed rules, to tailor the rules in a manner that preserves the integrity of the USF programs and avoids undermining private investment in broadband connectivity.

Respectfully submitted,



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