

**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)

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

NTCA–The Rural Broadband Association (“NTCA”)¹ hereby submits these reply comments in connection with the Notice of Proposed Rulemaking (“Notice”) released by the Federal Communications Commission (“Commission”) in the above-captioned proceeding.² While commenters universally supported the Commission’s goal of ensuring students, school staff, and library patrons have access to high-speed Internet service, several commenters urged the Commission to avoid using the E-Rate program to deliver Internet service to homes that already have Internet access, while others demonstrated the futility of any attempt to limit Wi-Fi hotspot usage to educational purposes as required by the Communications Act of 1934 and amended by the Telecommunications Act of 1996 (the “Act”), and emphasized the importance of adhering to the Children’s Internet Protection Act (“CIPA”).

¹ 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 four hundred other firms that support or are themselves engaged in the provision of such services.

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

I. CONGRESS ESTABLISHED THE EMERGENCY CONNECTIVITY FUND AS A TEMPORARY MEASURE WITH A DEFINED BUDGET AND END DATE - NOT ONE THAT WOULD MERGE INTO THE UNIVERSAL SERVICE PROGRAMS.

Several commenters described ways that some schools and libraries used Emergency Connectivity Funding (“ECF”) to rapidly connect individuals to Internet service during the COVID-19 pandemic.³ SHLB, among others, now urged the Commission to go further and allow E-Rate funds to be used “for new network deployment where there are no commercially available options suitable for remote learning, as it did in the ECF rules.”⁴ NTCA applauds the Commission for establishing the ECF rules rapidly so that individuals like those described by SHLB and others could receive as much of the intended benefit from the ECF program as possible; however, Congress established the ECF program with a specific mandate and defined term, with no hint that when the term ended, the devices and services deployed through ECF would be transferred to, or absorbed by, the longstanding E-Rate program that operates under a distinct statutory mandate.

As NTCA described in its comments, allowing E-Rate funds to be used to provide Internet service in locations where service is already available could harm the viability of existing Internet services that are offered to an entire community. Additionally, allowing E-Rate funds to be used to dispatch hotspots where the High-Cost Universal Service Fund (“USF”) has already made high-speed Internet service available would waste critical USF funds by allowing

³ See, e.g., Comments of American Library Ass’n, WC Docket No. 21-31 (Jan. 16, 2024), pp. 5-6; Comments of Smith Bagley, Inc. (“Smith Bagley”), WC Docket No. 21-31 (Jan. 16, 2024), pp. 4-5; Comments of The Schools, Health & Libraries Broadband Coalition and the Open Technology Institute at New America (“SHLB”), WC Docket No. 21-31 (Jan. 17, 2024), p. 10.

⁴ SHLB Comments at p. 11.

duplicative funding for the same location(s) through different USF programs. Additionally, as the State E-Rate Coordinators' Alliance commented, "[o]ther universal service programs and federal funding sources are better suited to address infrastructure needs in areas that need broadband internet access."⁵ Similarly, NCTA commented that the "FCC would more effectively achieve its goal of ensuring that all households have Internet access through programs focused on connecting entire households generally, instead of focusing on a limited use case."⁶

Broadband funding initiatives have resulted in the availability of high-speed Internet service to entire households and businesses throughout communities. In particular, over the course of the past two plus years that the ECF has been funded, and continuing through today, Internet service has expanded to more locations, in part through various federal initiatives. For instance, NTCA members continued to leverage High-Cost USF funding to expand their broadband service to more residences⁷ and as recently as this month, the Treasury Department announced more than \$228 million in support to connect tens of thousands of locations in New York to affordable, high-speed Internet service.⁸

⁵ Comments of State E-Rate Coordinators' Alliance ("E-Rate Alliance"), WC Docket No. 21-31 (Jan. 16, 2024), p. 5, n. 8.

⁶ Comments of NCTA – The Internet and Television Ass'n ("NCTA"), WC Docket No. 21-31 (Jan. 17, 2024), pp. 3-4.

⁷ NTCA members on average had 5,494 residential fixed broadband connections in service in 2023, an increase from 4,287 in 2022. *See* NTCA Broadband/Internet Survey, Dec. 2023, p. 4, available at <https://www.ntca.org/sites/default/files/documents/2023-12/2023%20Broadband%20Survey%20Report%20FINAL.pdf> (last visited Jan. 24, 2024).

⁸ *See Treasury Department Announces Approval of Federal Funds to Connect Tens of Thousands of Homes and Businesses in New York to Affordable, High-Speed Internet*, Press Release, Jan. 22, 2024, available at <https://home.treasury.gov/news/press-releases/jy2039> (last visited Jan. 24, 2024).

Furthermore, as the E-Rate Alliance suggested, at a time when the Commission recently expanded the use of E-Rate funds for Wi-Fi on school buses and is seeking to expand use of E-Rate funds even further through a cybersecurity pilot program for schools and libraries⁹ – initiatives that are neither funded through nor overlap with other federal programs – the Commission can best ensure E-Rate funds are available for these purposes by not venturing into seeking to deploy connectivity in a manner that could conflict with other broadband funding initiatives.

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

Commenters who support using E-Rate funds to enable at-home connectivity raised policy arguments about how connectivity generally furthers educational use rather than confronting directly the specific text of Section 254(h) of the Act.¹⁰ For example, Smith Bagley argues, “[t]he concept of a classroom should not be confined to the building located on a school campus with teachers, but rather the Commission should recognize that a classroom includes anywhere learning through school initiatives takes place, including students’ homes, community centers, parks, and even a school bus or the back seat of a car.”¹¹

⁹ E-Rate Alliance Comments at p. 3 (“Any use of E-Rate funds for Wi-Fi hotspots needs to account for E-Rate funds also being used for Wi-Fi on school buses and the proposal to allow E-Rate funds to be used for cybersecurity – would be easy to exhaust any available E-Rate funds through Wi-Fi hotspots without addressing the other two needs.”).

¹⁰ *See, e.g.*, Comments of Qualcomm Incorporated, WC Docket No. 21-31 (Jan. 16, 2024), pp. 5-7; Comments of Ohio Information Technology Centers, WC Docket No. 21-31 (Jan. 16, 2024), pp. 2-3; Comments of the Council of Great City Schools, WC Docket No. 21-31 (Jan. 16, 2024).

¹¹ Smith Bagley Comments at p. 6.

The importance of broadband connectivity to learning is inarguable; that, however, does not settle the question presented, nor does it change the language of Section 254(h) of the Act, which expressly limits E-Rate funding “to elementary schools, secondary schools, and libraries.”¹² As ACA Connects commented, “if Congress had intended for the E-Rate program to reach every location in the country, there would have been no reason to include the word ‘classroom’ in section 254(h)(2)(A).”¹³ Furthermore, as NCTA pointed out, even if the Commission were somehow to conclude that Section 254(h) of the Act permits schools and libraries to use E-Rate funds to purchase Wi-Fi hotspots and service for students, teachers, and library patrons to use off-site as long as the hotspots are used only for educational purposes, “[g]iven the statutory limitations of the E-Rate program, other members of the household could not permissibly use the Wi-Fi hotspot, nor could anyone, even the assigned person, use the Wi-Fi hotspot for non-educational activities, such as job applications, community engagement, or other similar purposes.”¹⁴ Neither the anchor institutions for which E-Rate funds are intended nor the Commission itself could conceivably ensure such limitations are followed.

III. NEITHER A STATEMENT IN THE STUDENT HANDBOOK NOR A USE AGREEMENT WHEN “CHECKING OUT” HOT SPOTS CAN ENSURE COMPLIANCE WITH THE CHILDREN’S INTERNET PROTECTION ACT.

The Commission tentatively concluded in the Notice that CIPA would apply to Wi-Fi hotspot services funded through the E-Rate program.¹⁵ In doing so, the Commission further

¹² 47 U.S.C. Sec. 254(h).

¹³ Comments of ACA Connects, WC Docket No. 21-31 (Jan. 16, 2024), p. 5.

¹⁴ NCTA Comments at p. 3.

¹⁵ Notice at ¶ 53.

added that CIPA requires schools and libraries to *enforce* “a policy of Internet safety that includes the operation of a technology protection measure....”¹⁶ Simply inserting language in a document, whether a student handbook, Acceptable Use Policy governing the device or service, or an agreement signed when “checking out” a Wi-Fi hotspot, does not equal enforcing a policy.¹⁷ Nor can schools and libraries abdicate this responsibility to parents or students themselves. In fact, as ACA Connects commented, “off-premises use of these services presents new concerns about ensuring the proper use of the E-Rate-funded equipment and services that are not directly supervised by the recipient of the funding.”¹⁸ Schools themselves remain responsible for enforcing compliance with CIPA and doing so for services received outside of school property raises significant logistical and privacy concerns.

The American Library Association asserted that CIPA does not apply to Wi-Fi hotspots “because they are intended to be used at home, and not at the library.”¹⁹ Yet this is entirely contradictory to claims that E-Rate funding for off-premises services is appropriate as long as the service is for educational purposes.²⁰ Hot spots cannot at once qualify for E-Rate funding in residences because they are to be used (only) for educational purposes and at the same time not be bound by CIPA requirements because the hot spots are not located in the physical locations from which such education ostensibly emanates.

¹⁶ *Id.*

¹⁷ *See, e.g.*, Comments of Wisconsin Dept. of Public Education, WC Docket No. 21-31 (Jan. 16, 2024), p. 4.

¹⁸ ACA Connects Comments at p. 8.

¹⁹ American Library Ass’n Comments at p. 10.

²⁰ *Id.* at p. 2.

IV. CONCLUSION

NTCA applauds the Commission for issuing ECF rules quickly, ensuring students, school staff, and library patrons could receive as much benefit from the program as possible, as shown by multiple commenters in this proceeding. Nowhere, however, did Congress direct that the ECF be rolled into the E-Rate program or that the E-Rate program be expanded to match ECF rules when the ECF concluded. Furthermore, allowing for such expansion of the E-Rate program would run counter to and duplicate funding from not only initiatives and investments made pursuant to the Commission's High-Cost USF program, but also other federal broadband funding programs and private investment. Furthermore, allowing E-Rate funds to be used to deliver Wi-Fi hotspots to homes on the premise that the terms "school" and "library" contained in the Act do not mean just that is inconsistent with the clear language of the Act and would raise substantial logistical and privacy concerns surrounding any methods used by schools and libraries to enforce CIPA. Thus, NTCA encourages the Commission to recognize that while there is no disagreement among commenters that broadband service has become an integral part of schools' teaching, the Commission can better accomplish the objectives set forth in the Notice through other means.

Respectfully submitted,



By: /s/ Michael Romano
Michael Romano
Tamber Ray
4121 Wilson Boulevard
Suite 1000
Arlington, VA 22203
703-351-2000 (Tel)