

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

Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

**REPLY TO OPPOSITION
OF
NTCA–THE RURAL BROADBAND ASSOCIATION
AND
THE UTAH RURAL TELECOM ASSOCIATION**

NTCA–The Rural Broadband Association (“NTCA”)¹ and the Utah Rural Telecom Association (“URTA”)² hereby submit this reply to opposition in regards to petitions for reconsideration filed in the above-captioned proceeding. Specifically, NTCA and URTA jointly sought clarification, or to the extent necessary, reconsideration, of the Federal Communications Commission’s (“Commission”) July 23, 2014 *E-rate Modernization Order*.³ That petition for clarification or reconsideration, in addition to additional such petitions,⁴ were filed specifically

¹ NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers (“RLECs”). All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

² Utah Rural Telecom Association (“URTA”) is an association representing 12 independent companies whose facilities serve to provide technologically advanced telecommunications services in the rural areas of Utah. The facilities of the URTA members provide schools, libraries, health care facilities, businesses and residential customers with landline telecommunications services, high speed broadband services, and wireless backhaul services, permitting rural Utah to connect to other businesses, residents and the internet.

³ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking (rel. Jul. 23, 2014) (“*E-rate Modernization Order*”).

⁴ The State E-rate Coordinators Alliance (“SECA”), Petition for Reconsideration or Clarification, WC Docket No. 13-184 (fil. Sep. 18, 2014); The West Virginia Department of Education, Petition for Reconsideration or Clarification, WC Docket No. 13-184 (fil. Sep. 18, 2014); The Utah Education Network (“UEN”), Petition for Reconsideration of the Rural Definition of the E-Rate Program, WC Docket No. 13-184 (fil. Sep. 18, 2014).

with respect to the Commission’s revision of the definition of “rural” for the purposes of determining whether any given school, library, district or other system of anchor institutions qualifies for an additional rural discount under the E-rate program.

THE COMMISSION SHOULD IMMEDIATELY GRANT THE UNOPPOSED PETITIONS FOR RECONSIDERATION AND A PROPOSED DEFINITION OF RURAL THAT WILL HELP TO PROMOTE THE CONTINUED AVAILABILITY AND AFFORDABILITY OF BROADBAND SERVICES FOR SMALL, RURAL COMMUNITY ANCHOR INTUITIONS

In response to the Public Notice⁵ seeking oppositions to the NTCA and URITA, SECA, West Virginia Department of Education, and UEN petitions for reconsideration, not a single party opposed Commission reconsideration of its July revision of the E-rate program definition of rural. Filings in support of the petitions discuss both the effect of the revised definition of rural on such schools and libraries and propose a compromise definition that would meet the FCC’s understandable desire to harmonize the definition of “rural” in accord with Census-based designations with the very acute needs of such areas for access to vital E-rate funding.

By way of background, as NTCA and URITA noted in their petition, the *E-rate Modernization Order* appeared, on its face, to contain a significant inconsistency between text from the order and the explicit and specific use of a different, clearly defined term in the language of revised Section 54.505(b)(3)(i).⁶ Specifically, while the text of Section 54.505(b)(3)(i) states that the Universal Service Administrative Company (“USAC”) should designate as “urban” areas identified as “urbanized areas” (a specially defined term, in Census

⁵ Petitions for Reconsideration of Action in Rulemaking Proceeding, 79 Fed. Reg. 60406 (published Oct. 7, 2014).

⁶ 47 C.F.R. § 54.505(b)(3)(i).

Bureau parlance, as a place of 50,000 or more people), the *E-rate Modernization Order* text referred more broadly to “urban areas.”⁷ At one point in particular the order states that rural areas for purposes of the E-rate program going forward will encompass “all population, housing, and territory not included within an urban area” and points to a Census Bureau definition of “urban areas” that includes Urbanized Areas of 50,000 or more people *and* Urban Clusters of at least 2,500 and less than 50,000 people.⁸ On October 10, 2014, the Wireline Competition Bureau released an *Erratum* that amends Section 54.505(b)(3)(i) to require USAC to designate as urban all “urban” areas as determined by the most recent rural-urban classification by the Bureau of the Census.⁹ This has the effect of including all Urban Clusters (areas with 2,500 or more people) as “urban” for the purposes of the E-rate program.

The record compiled in response to the petitions for reconsideration supports immediate Commission action to reconsider its revised definition of rural. As those filing in support of the petitions state, the revised definition of rural that excludes areas with populations of 2,500 or more has the potential to produce significant shifts in E-rate support away from the rural schools, libraries, school districts, and systems of anchor institutions that previously qualified for an additional rural discount under the E-rate program. This is flatly contrary to the statement in the *Order* that the very premise for the revised definition was to “keep[] with our commitment to

⁷ *E-rate Modernization Order* at ¶ 223.

⁸ *Id.*, citing in FN 521 to Bureau of the Census, 2010 Census Urban Area FAQs, <http://www.census.gov/geo/reference/ua/uafaq.html> (last visited June 18, 2014).

⁹ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, *Erratum*, DA 14-1472 (rel. Oct. 10, 2014), at ¶ 46.

ensuring that all rural schools and libraries are able to afford E-rate supported services.”¹⁰ As the Utah Governor’s Office of Economic Development states, as a result of the revised definition of rural, “only school districts and libraries in five counties in the state would appear to meet the new definition of ‘rural,’ compared to the school districts in 25 counties that previously qualified for the additional rural discount.”¹¹ As a result, 310 Utah schools and school district buildings will no longer qualify for the rural discount.¹² WTA also provides data demonstrating the impact of this definitional change across several rural states.¹³ For example, 12 of 31 schools and libraries in Wyoming, three schools in a Washington State community of only 3,400, and up to 15 schools and libraries in Minnesota will no longer qualify for the rural discount under the E-rate program.¹⁴ The Pennsylvania Secretary of Education filed in support of the petitions for reconsideration and provided similar data showing a negative effect on one school district in particular.¹⁵ ACS also filed in support and noted the large number of Alaskan residents living in “urban clusters” that are geographically isolated in nature and thus benefit greatly from the rural discount should it be available to them.¹⁶

¹⁰ *E-rate Modernization Order* at ¶ 222.

¹¹ Comments of the Utah Governor’s Office of Economic Development (“GOED”), WC Docket No. 13-184 (fil. Oct. 22, 2014), p. 1.

¹² *Id.*

¹³ Comments of WTA-Advocates for Rural Broadband (“WTA”), WC Docket No. 13-184 (fil. Oct. 22, 2014), pp. 5-6.

¹⁴ *Id.*

¹⁵ Comments of the Commonwealth of Pennsylvania, WC Docket No. 13-184 (fil. Oct. 22, 2014), p. 3.

¹⁶ Comments of Alaska Communications Systems (“ACS”), WC Docket No. 13-184 (fil. Oct. 22, 2014), p. 3.

Thus, as can be seen from the record, counting schools and libraries in small rural towns as “urban” for purposes of the E-rate program is likely to result in significant shifts in support flows.¹⁷ What is missing in the record is any support for such a significant directional change in the E-rate program. The lack of analysis in the *E-rate Modernization Order* as to the effect that such a change would have on rural community anchor institutions, combined with the utter lack of comments filed by any party in support of such a change, suggests that the presumably unintended consequence of reducing E-rate support to rural institutions should be rectified in short order. Indeed, as the Utah Governor’s Office of Economic Development also noted,¹⁸ the *E-rate Modernization NPRM*¹⁹ did not suggest that such a sweeping change was even possible. Arguably, had such a suggestion been present, interested stakeholders (or the Commission itself) would have identified impacts all across the country such as those noted above.

As part of the petition for reconsideration proceeding that is the subject of this filing, a large number of associations representing a diverse segment of the educational and library

¹⁷ In addition to comments filed in support of the petitions for reconsideration on the definition of rural, additional data in the record demonstrates the effect of the revised definition. *See, ex parte* letter from Michael Romano, NTCA–The Rural Broadband Association, WC Docket No. 13-184 (fil. Oct. 30, 2014) (providing data, in Attachment 1 showing that “in the state of South Dakota and for the identified school districts noted in Attachment 1, the amended definition of “rural” will cause these school districts to lose a total of \$60,423.41 in Category 1 funding for funding year 2015 as compared to funding year 2014. The reduction in funding for Category 2 funding for the same institutions and for the upcoming five year time period is \$562,163.41. “In some cases, the school districts highlighted in Attachment 1 serve only *several hundred total students*, and thus the dollar figures...represent a particularly large portion of these rural districts’ funding for eligible communications services that support their important educational missions.”).

¹⁸ GOED, p. 2.

¹⁹ *Modernizing the E-Rate Program for Schools and Libraries*, Notice of Proposed Rulemaking, WC Docket No. 13-184, FCC 13-100 (rel. Jul. 23, 2013) (“*E-rate Modernization NPRM*”).

communities²⁰ have worked to craft a proposed change to the definition of “rural” that would allow schools and libraries in urban clusters with populations below 25,000 to be considered rural for the purposes of the E-rate program. Ninety-two percent of all areas defined as “urban clusters” have populations of less than 25,000.

This proposal would be consistent with the direction provided by the Census Bureau itself. As WTA notes in comments supporting the petitions,²¹ the Census Bureau urged government agencies using its urban-rural classifications to make “appropriate modifications of the results of implementing the urban-rural classification specifically for the purposes of its program.”²² In other words, while the Census Bureau urban-rural classifications may serve as a baseline for the Commission’s definition of “rural,” it can and should modify such baseline classifications to ensure that E-rate resources promote the goals of the E-rate mechanism and target funds to the areas of the nation that need them the most.

Finally, NTCA and URITA recognize that grant of the petitions for reconsideration and subsequent adoption of the above-proposed definition of “rural” could present challenges for

²⁰ These groups include AASA, The School Superintendents Association, American Federation of Teachers, American Library Association, Association of Educational Service Agencies, Association of School Business Officials International, Consortium for School Networking, Council of Chief State School Officers, EdLiNC, International Society for Technology in Education, National Association of Elementary School Principals, National Association of Federally Impacted Schools, National Association of Secondary School Principals, National Association of State Directors of Special Education, National Education Association, National PTA, National Rural Education Advocacy Consortium, National Rural Education Association, Organizations Concerned with Rural Education, Rural School and Community Trust, Schools, Health & Libraries Broadband Coalition, State E-Rate Coordinators Alliance, United States Conference of Catholic Bishops. *See*, Letter, AASA, *et al.*, WC Docket No. 13-184 (fil. Oct. 27, 2014).

²¹ WTA, p. 7.

²² Department of Commerce, Census Bureau, Urban Area Criteria for the 2010 Census, 76. Fed. Reg. 53030 (rel. Aug. 24, 2011).

USAC as it implements the change at the same time as its implements the *E-rate Modernization Order*. There is certainly no intention to interfere with this process or to impede in any way USAC's efforts or delay the 2015 funding year application process. Thus, NTCA and URITA urge the Commission to consider this issue on an expedited basis so that timing of the relief could be coordinated within the framework of the upcoming filing window for the FY 2015 period which is slated to open on or around January 7, 2015. In the alternative, the Commission could allow for some form of relief in 2015, including a return to the previous definition of rural, with implementation of a more systematic change in 2016. This would not only avoid any interference with the timely opening of the FY 2015 funding year application process, the latter option would eliminate any confusion that may stem from the revised definition that E-rate applicants did not anticipate and do not now fully grasp. In addition, a reasonable transition to any new definition would also be consistent with the Commission's "no flash cuts" policy and its previous determination to adopt a transition towards a new definition of "rural" in the Rural Health Care Support Mechanism.²³

²³ *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, DA 14-1042 (rel. Jul. 23, 2014 (discussing changes to the definition of "rural" within the Rural Health Care program and adopting a multi-year transition plan to provide recipient health care providers "with notice and sufficient time to determine whether their status as a 'rural' site will change, and to address any implications of this in their business operations").

Respectfully Submitted,

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