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

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

NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements; Commissioners Carr and Simington dissenting and issuing separate statements.

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I. INTRODUCTION

1. High-speed Internet is critical to educational equity, economic opportunity, job creation, and civic engagement. Since its inception, the Federal Communications Commission's (Commission) E-Rate program has supported high-speed, affordable Internet services to and within school and library buildings, and has been instrumental in providing students and library patrons with access to the essential broadband services that are required for next-generation learning.[1] But advances in technology have changed the modern learning environment to increasingly employ interactive online education tools that

[1] The E-Rate program is formally known as the schools and libraries universal service support mechanism.

can be used anywhere, at any time, allowing students to develop the digital skills needed to prosper in the 21st Century.[2] The ongoing proliferation of innovative digital learning technologies and the need to connect students, teachers, and library patrons to jobs, life-long learning, and information have led to a steady rise in the demand for broadband connectivity both inside and outside of school and library buildings. In response to those needs, today we propose and seek comment on updates to the E-Rate program to ensure the program is equipped to support the ongoing remote learning needs of today's students, school staff, and library patrons.

2. In recent years, the demand for connectivity beyond school and library buildings became a crisis when the COVID-19 pandemic disrupted operations and caused schools and libraries across the country to temporarily close their doors.[3] Millions of students caught in the "Homework Gap"—i.e., students unable to *fully* participate in educational opportunities because they lack broadband connectivity in their homes—suddenly found themselves unable to participate in education *at all*.[4] Library patrons who relied on their local libraries for remote learning opportunities and Internet access suddenly experienced a loss of these critical services when most, if not all, library buildings closed their doors by the summer of 2020.[5] However, even before the COVID-19 pandemic, the Homework Gap affected somewhere between 8.5 to 16 million K-12 students, leaving 15% of U.S. households with children ages six to seventeen lacking a high-speed Internet connection at home and approximately one in four households without high-speed Internet access.[6] Although the E-Rate program helped approximately

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[2] *See, e.g.*, U.S. Department of Education, Reimagining the Role of Technology in Education at 9 (2017), https://tech.ed.gov/files/2017/01/NETP17.pdf ("Historically, a learner's educational opportunities have been limited by the resources found within the walls of a school. Technology-enabled learning allows learners to tap resources and expertise anywhere in the world, starting with their own communities."); Common Sense Media & Boston Consulting Group, Closing the Digital Divide Benefits Everyone, Not Just the Disconnected at 5 (2022), https://www.commonsensemedia.org/sites/default/files/research/report/2022-cs-bcg-closing-digital-divide_final-release-3-for-web.pdf (Common Sense 2022 Report) (explaining that the use of Internet-based technologies in education provides students with "better access to teachers, tutors, information sources, platforms for content creation and sharing, and collaborative workspaces" and allows teachers to "employ edtech tools and advanced technology (AR/VR), individualized curricula, and comprehensive grading and feedback systems, and they can better collaborate with parents and caregivers").

[3] Colleen McClain et al., *Parents, their children and school during the pandemic* (Sept. 1, 2021), https://www.pewresearch.org/internet/2021/09/01/parents-their-children-and-school-during-the-pandemic/ (finding that 93% of families with children in grades K-12 reported shifting to online learning during the pandemic).

[4] *See* Common Sense Media, Closing the K-12 Digital Divide in the Age of Distance Learning (2020), https://www.commonsensemedia.org/sites/default/files/featured-content/files/common_sense_media_report_final_7_1_3pm_web.pdf (Common Sense 2020 Report) (highlighting that before the pandemic, there were approximately 16 million students nationwide that lived in homes without a broadband connection).

[5] *See, e.g.*, Lisa Guernsey, Sabia Prescott, & Claire Park, *Public Libraries and the Pandemic* (Feb. 25, 2021), https://www.newamerica.org/education-policy/reports/public-libraries-and-the-pandemic/ (describing how the closure of public library buildings by the summer of 2020 hastened the transition to virtual library services for most public libraries); Gretchen Corsillo, *COVID-19: The Impact On Public Libraries* (Mar. 30, 2020), https://publiclibrariesonline.org/2020/03/covid-19-its-impact-on-public-libraries/ (explaining that "[b]ecause libraries play such a vital role in keeping their patrons educated, connected, and entertained, librarians nationwide have been working around the clock to find ways to keep services going despite being closed to the public"); Frank Catalano, *How Library Closures Hurt Adult Learners as Kids Doubled Down on Digital Reading* (Mar. 8, 2021), https://www.edsurge.com/news/2021-03-08-how-library-closures-hurt-adult-learners-as-kids-doubled-down-on-digital-reading (reporting that "15 percent of U.S. adults lost their main source of internet access as libraries started to shut down in March 2020").

[6] *See* Catherine McNally, *Nearly 1 in 4 Households Don't Have Internet—and a Quarter Millions Still Use Dial-up* (Aug. 17, 2021), https://www.reviews.org/internet-service/how-many-us-households-are-without-internet-connection/; Amanda Litvinov, *Coronavirus Brings 'Homework Gap' to the Forefront* (May 4, 2020),

(continued….)

98% of the K-12 schools and districts in the country meet the Commission's connectivity goals by 2018 by providing support for broadband connections to and within schools, and approximately 12,000 distinct libraries from across the nation receive E-Rate support each year for broadband connections to and within libraries,[7] the increasing shift to online and remote instruction highlighted the need to connect the millions of students, school staff, and library patrons who had no at-home broadband connectivity.[8] To address this longstanding critical need, Congress created the Emergency Connectivity Fund (ECF), which allowed the Commission to create the nation's first ever federal program designed to address the Homework Gap by providing funding for connected devices, Wi-Fi hotspot devices, broadband connections, and other eligible equipment and services for students, school staff, and library patrons in need for use at locations outside of their school or library.[9]

3. Over the past two years, the ECF program's funding of Internet access services through Wi-Fi hotspots has enabled significant progress in expanding digital learning, addressing digital and educational equity, and closing the Homework Gap by providing students, school staff, and library patrons with access to broadband connections. Schools in Oakland, California reported that they nearly closed the Homework Gap for their students through the use of ECF-funded Wi-Fi hotspots and Internet access services.[10] Libraries, like the Boston Public Library, established ECF-funded Wi-Fi hotspot lending programs to provide the hotspot equipment and monthly mobile broadband services needed to connect thousands of their most vulnerable residents to library resources.[11] These are just two examples of the many ways that schools and libraries across the nation have relied on ECF support to fulfill the remote learning needs of their students, school staff, and library patrons who otherwise lacked access to these resources.[12]

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https://www.nea.org/advocating-for-change/new-from-nea/coronavirus-brings-homework-gap-forefront (providing data from research conducted in 2017 and 2018); Pew Research Center, Nearly One-In-Five Teens Can't Always Finish Homework Because of the Digital Divide at 2 (2018), https://internet.psych.wisc.edu/wp-content/uploads/532-Master/532-UnitPages/Unit-11/Anderson_Pew_2018.pdf (providing an analysis based on 2015 U.S. Census Bureau data); Common Sense 2020 Report.

[7] *See* USAC, *E-Rate Recipient Details and Commitments*, https://opendata.usac.org/E-rate/E-Rate-Recipient-Details-And-Commitments/avi8-svp9 (last visited Oct. 31, 2023).

[8] CoSN, *Addressing the Homework Gap Through Public-Private Partnerships*, https://www.cosn.org/addressing-the-homework-gap-through-public-private-partnerships/ (last visited Oct. 31, 2023).

[9] *See* American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at https://www.congress.gov/bill/117th-congress/house-bill/1319/text (American Rescue Plan Act) (enrolled bill).

[10] *See* Javeria Salman, *How One City Closed the Digital Divide for Nearly all its Students* (Apr. 14, 2022), https://hechingerreport.org/how-one-city-closed-the-digital-divide-for-nearly-all-its-students/ (reporting that schools in Oakland, California have used ECF support and other funds to connect 98% of their student population through the distribution of Wi-Fi hotspots and connected devices).

[11] *See* Press Release, City of Boston, Over $12 Million Invested in Digital Equity and Inclusion (Feb. 2, 2022), https://www.boston.gov/news/over-12-million-invested-digital-equity-and-inclusion (explaining that the Boston Public Library's Long Term Device Lending Program will provide ECF-funded equipment and services to "target the unmet digital needs of vulnerable and eligible library patrons").

[12] *See, e.g.*, Aaron Stuve, *Blue Earth County Library System to Offer Wi-Fi Hotspots for Checkout* (Oct. 25, 2021), https://www.keyc.com/2021/10/25/blue-earth-county-library-system-offer-wi-fi-hotspots-checkout/ (explaining that Wi-Fi hotspots would be available to patrons "if they don't have Internet access at home, if they need internet, as so many do, for school, for work, for job applications, for so many things"); Marla K. Kuhlman, *Federal Grant Gives Westerville Middle Schoolers Access to Laptops, Hot Spots for Homework* (Dec. 2, 2021), https://www.dispatch.com/story/news/local/communities/westerville/2021/12/02/grant-gives-westerville-middle-schoolers-access-laptops-hot-spots-for-homework/8837114002/ (reporting that students in Westerville, Ohio were provided connected devices and Wi-Fi hotspot service to meet their remote learning needs); Samantha Silva, *Emergency Connectivity Program gives $2.4 million in Grant Funding to Corpus Christi Public Libraries* (Aug. 6,

(continued….)

4. Following three successful application filing windows and more than two years of funding broadband services for students, school staff, and library patrons with unmet needs, ECF funding is nearly fully obligated, and the program will sunset on June 30, 2024.[13] As we approach the sunsetting of the ECF program, the Commission has committed more than $123 million for the purchase of Wi-Fi hotspot devices and nearly $1.3 billion for the associated services to provide off-premises broadband connectivity to students, school staff, and library patrons who otherwise would lack sufficient broadband access needed to fully engage in remote learning.[14] Building on our experience with the ECF program, we now reexamine the E-Rate program and seek comment on proposals and potential actions the Commission could take to support the needs of students, school staff, and library patrons who risk losing access to essential broadband connections necessary to engage in educational opportunities once the ECF program sunsets.

5. In this Notice of Proposed Rulemaking (NPRM), we initiate a proceeding to address the ongoing remote learning needs of today's students, school staff, and library patrons through the E-Rate program and to ensure the millions who have benefitted from ECF program support do not fall back onto the wrong side of the digital divide once the program ends. Specifically, we propose to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and wireless Internet services[15] that can be used off-premises. We propose to find that the off-premises use of Wi-Fi hotspots and Internet services by students, school staff, and library patrons for remote learning and the provision of virtual library services constitutes an educational purpose as defined by the Commission and enhances access to advanced telecommunications and information services for schools and libraries.[16] We also seek comment on how to adapt the E-Rate program to reflect the virtual nature of today's modern educational environment. Additionally, we seek comment on the applicability of the Children's Internet Protection Act (CIPA) requirements and the off-premises use of E-Rate-supported hotspots and services. In considering whether to support the off-premises use of Wi-Fi hotspots and Internet access services, this NPRM seeks to balance the need to modernize the E-Rate program to support today's technology-based learning environment with the need to ensure the limited E-Rate funding remains available for its primary purpose of providing connectivity to schools and libraries, and is protected from potential waste, fraud, and abuse.

II. BACKGROUND

6. *E-Rate Program*. The E-Rate program was authorized by Congress as part of the Telecommunications Act of 1996, and created by the Commission in 1997, as a universal service support mechanism to ensure the delivery of affordable telecommunications and information services to eligible schools and libraries.[17] Sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Communications Act of 1934, as amended (Communications Act) collectively grant the Commission broad and flexible authority to establish the list of services that will be supported for eligible schools and libraries, as well as to design

2022), https://www.kiiitv.com/article/news/local/grant-funding-corpus-christi-public-libraries/503-7320a4fd-bc31-42c1-9d33-024ff36a83e6 (providing 5,000 Wi-Fi hotspots and services for Corpus Christi Public Libraries' patrons who are otherwise without access).

[13] *See* H.R. 1319, tit. VII, § 7402(d)(5)(B). *See also* 47 CFR § 54.1711(e) (establishing the service delivery date for ECF program funding requests).

[14] *See* Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr (last visited Oct. 31, 2023) (reporting data on what Wi-Fi hotspot devices and services have been requested in the ECF program to date).

[15] For the purposes of this NPRM, unless otherwise noted, references to E-Rate support for Wi-Fi hotspots or services include both the purchase and distribution of hotspot devices and the provision of service to the hotspots.

[16] 47 U.S.C. § 254(h)(1)(B) and (h)(2)(A).

[17] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 *et seq*.) (Communications Act).

the specific mechanisms of support.[18] This authority reflects recognition by Congress that technology needs are constantly evolving in light of "advances in telecommunications and information technologies and services."[19]

7. Under the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services and/or equipment (collectively, eligible services). Eligible services are divided into "category one" services (which provide connectivity, including broadband connectivity, *to* eligible school and library locations) and "category two" services (which provide connectivity *within* eligible school and library locations).[20] Category one services generally include data transmission and Internet access services, while category two services include internal connections (e.g., Wi-Fi, routers, switches), managed internal broadband services (e.g., managed Wi-Fi), and basic maintenance of internal connections.[21] The E-Rate program currently supports wireless Internet access services for use at a school or library only in very limited circumstances.[22]

8. Section 254(h)(1)(B) of the Communications Act provides that E-Rate discounts be applied to services provided to eligible schools and libraries for "educational purposes."[23] As a result, E-Rate rules require schools and libraries to use eligible services "primarily for educational purposes."[24] In the case of schools, "educational purposes" is defined as "activities that are integral, immediate, and proximate to the education of students."[25] In the case of libraries, "educational purposes" is defined as activities that are "integral, immediate, and proximate to the provision of library services to library patrons."[26] The Commission also established a presumption that activities that occur on library or school

[18] 47 U.S.C. § 254(c)(1), (c)(3), (h)(1)(B), (h)(2).

[19] 47 U.S.C. § 254(c)(1).

[20] *See* 47 CFR §§ 54.501, 54.502.

[21] 47 CFR § 54.502(a)(1)-(2).

[22] In 2014, the Commission found that individual data plans for mobile devices are generally not cost-effective when those users already have access to the Internet through internal wireless broadband networks on wireless-enabled devices within a school or library without the help of stand-alone data plans. *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8932-34, paras. 151-53 (2014) (*First 2014 E-Rate Order*); *Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15601, para. 158 (2014) (*Second 2014 E-Rate Order*). However, recognizing that there could be locales where wireless local-area networks (WLANs) could be impracticable (e.g., bookmobiles) or difficult to install or there may be some schools or libraries where installation of a wireless network would be possible but more costly than individual data plans, the Commission allows applicants to seek funding for individual data plans only if the school or library can demonstrate that the plans are the most cost-effective option for providing internal broadband access for mobile devices. *Id.*; *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 2022 WL 17886489, at *11 (WCB Dec. 14, 2022) (*FY2023 Eligible Services List Order*).

[23] 47 U.S.C. § 254(h)(1)(B).

[24] *Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18774, para. 22 (2010) (*Schools and Libraries Sixth Report and Order*) (amending the rules to require that services be used *primarily* for educational purposes and explaining that "[t]o primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools' resources"). *See* 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v).

[25] *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. 17 (2003) (*Schools and Libraries Second Report and Order*) (clarifying the meaning of educational purposes); 47 CFR § 54.500 (defining "educational purposes").

[26] *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17; 47 CFR § 54.500.

property serve an educational purpose and, therefore, are eligible for E-Rate funding.[27]

9. Section 254(h)(2)(A) of the Communications Act directs the Commission to promulgate rules "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries."[28] While Congress has made clear that the goal of such universal service funding is to enhance access "to Americans everywhere via schools and libraries" to ensure that "no one is barred from benefiting from the power of the Information Age,"[29] neither Congress nor the Commission has defined the term "classroom" or placed any explicit location restrictions on schools or libraries. As a general matter, however, the E-Rate program does not currently provide support for the off-premises use of eligible services, and applicants are usually required to cost-allocate the portion of services used off-premises from their funding requests.[30]

10. In certain instances, the Commission has provided support for the off-premises use of E-Rate supported services, after first finding that the off-premises provision of such service is "integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, serves an educational purpose."[31] For example, in 2003, the Commission determined that "a school bus driver's use of wireless telecommunications services while delivering children to and from school, a library staff's person's use of wireless telecommunications services on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications services while accompanying students on a field trip or sporting event" are permissible activities that could be supported by the E-Rate program.[32] Similarly, recognizing the unique challenges of certain residential student populations, the Commission allowed E-Rate support for eligible services serving the residential areas of schools that serve unique populations—including schools on Tribal lands and schools designed to serve students with medical needs, among others—because such services are primarily, if not exclusively, for educational purposes.[33]

11. The Commission has also examined other measures to help address the digital and educational divide, including allowing E-Rate support for wireless connectivity services used outside of the school or library building. For example, in the *2010 E-Rate Broadband NPRM*, the Commission sought comment on whether to adopt the National Broadband Plan's recommendation to provide E-Rate support for wireless Internet access service for portable learning devices that are used beyond school or library premises.[34] In response, commenters generally agreed that students need to be able to learn

[27] *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

[28] 47 U.S.C. § 254(h)(2)(A).

[29] S. Rep. No. 104-230, at 132-33 (1996) (Joint Explanatory Statement).

[30] *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 2022 WL 17886489, at *11 (WCB Dec. 14, 2022) (*FY2023 Eligible Services List Order*) (adopting the eligible services list for funding year 2023, which requires that off-campus use be cost-allocated from a funding request, among other things); 47 CFR § 54.504(e) (detailing the requirement to cost-allocate ineligible services from requests).

[31] *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19.

[32] *See id.* at n.28.

[33] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18779, paras. 31-32.

[34] *See Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Notice of Proposed Rulemaking, 25 FCC Rcd 6872, 6891-93, paras. 45-51 (2010) (*E-Rate Broadband NPRM*); *see also* FCC, Connecting America: The National Broadband Plan at 239 (2010), https://www.fcc.gov/general/national-broadband-plan (National Broadband Plan).

"anytime/anywhere," which requires Internet access outside of school and library buildings.[35] Accordingly, the Commission launched a pilot program—E-Rate Deployed Ubiquitously (EDU2011)—to investigate the merits and challenges of funding wireless off-premises connectivity services for mobile learning devices through the E-Rate program.[36] As part of the pilot program, for funding year 2011, the Commission authorized up to $10 million in E-Rate support for a small number of off-premises wireless connectivity projects that were submitted by schools and libraries and approved by the Commission.

12. In addition to the above-referenced proceedings, multiple applicants and other stakeholders have also requested that the Commission allow the use of E-Rate-funded equipment and services off-premises to enhance broadband access for students and library patrons who lack reliable access outside of their school or library without requiring the removal of the costs of this ineligible use from their E-Rate funding requests.[37] The volume of requests asking to allow the off-premises use of E-Rate-supported equipment and services increased dramatically during the COVID-19 pandemic, when schools and libraries were abruptly forced to close their doors and unexpectedly had to transition to full-time remote learning. In February 2021, the Wireline Competition Bureau (Bureau) issued a Public Notice seeking comment on several emergency relief petitions requesting to allow applicants to enable remote learning during the pandemic[38] by opening their E-Rate-funded broadband networks to students and library patrons located near the school or library[39] or by providing off-premises Wi-Fi hotspots and

[35] *See, e.g.*, San Diego Unified School District Reply Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 5 (rec. July 25, 2010) (SDUSD Reply Comments) (explaining that "[m]obile broadband equipment, access and applications will allow our teachers to reach our students, and vice versa, no matter where they are during the day and in the evenings"); AT&T Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 9 (rec. July 11, 2010) (AT&T Comments) ("[T]oday's educational systems increasingly require students to have access to information outside of the classroom."); Cisco Systems, Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 5-6 (rec. July 8, 2010) (Cisco Comments) ("[T]echnological advances create educational opportunities for students anywhere students have access to a broadband connection, allowing learning to continue even after students leave school grounds."); eChalk, Inc. Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 3-4 (rec. July 8, 2010) (eChalk Comments) (supporting the "learning outside of the classroom that is increasingly occurring with the advent of new technologies focused on educating students"); Dr. Anthony D. Machado Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 6 (rec. July 8, 2010) (filed on behalf of Miami-Dade County Public Schools) (MDCPS Comments) (supporting E-Rate funding for Internet access services used for learning both on and off school premises); Ohio E-Rate Consortium Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 15-16 (rec. July 8, 2010) (Ohio E-Rate Consortium Comments) ("For elementary and high school students to maintain a level of competency (both technological and general) comparable to that of their peers, they must have Internet access outside of the classroom."); Public Broadcasting Service Comments, CC Docket No. 02-6, GN Docket No. 09-51, at 2-4 (rec. July 8, 2010) (PBS Comments) (explaining that students without broadband access at home are increasingly being left behind and the E-Rate program should "close the gap so that more children can take advantage of the vast library of educational content on the Internet both inside and outside the classroom").

[36] *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18783-87, paras. 41-50.

[37] *See, e.g.*, *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11397-99, paras. 319-23 (2013) (seeking comment on two petitions for waiver to permit E-Rate funding for offsite use of community hotspots); *Wireline Competition Bureau Seeks Comment on Petitions Regarding Off-Campus Use of Existing E-Rate Connectivity*, CC Docket 02-6, WC Docket Nos. 10-90 and 13-184, Public Notice, 31 FCC Rcd 10510 (WCB 2016) (seeking comment on two petitions for waiver of E-Rate program cost allocation rule to allow off-campus use of E-Rate funded services by students at home for educational purposes).

[38] *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31, Public Notice, 36 FCC Rcd 1304 (WCB 2021) (*Remote Learning Public Notice*).

[39] *See* Petition for Waiver on behalf of the State of Colorado, WC Docket No. 13-184 (filed Sept. 2, 2020), https://www.fcc.gov/ecfs/filing/10902218280692 (Colorado Petition).

services to students and library patrons who lacked access to the Internet at their homes.[40] In response, the vast majority of commenters asserted that because of the massive shift to remote learning, students' homes became "virtual classrooms" and students without broadband access were being left behind during the pandemic.[41] They also urged the Commission to provide E-Rate support for the off-premises use of Wi-Fi hotspots and services on a permanent basis,[42] arguing that the pandemic only underscored that Internet access at home is essential to the modern technology-based learning environment of today's schools and libraries.[43]

13. *Emergency Connectivity Fund Program*. As part of the American Rescue Plan Act of 2021, Congress appropriated $7.171 billion to the ECF and directed the Commission to promulgate rules providing for the distribution of funding to eligible schools and libraries for the purchase, during the COVID-19 emergency period, of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations that include locations other than a school or library.[44] On May 10, 2021, the Commission adopted a Report and Order establishing the program and allowing eligible schools and libraries to request funding for the purchase of

[40] *See, e.g.*, Petition for Expedited Declaratory Ruling and Waivers filed by the Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 13-184, at 8-10, 18-19 (filed Jan. 26, 2021), https://www.fcc.gov/ecfs/filing/101260036427898 (SHLB Petition) (arguing that connectivity solutions to expand broadband accessibility for remote learning during the pandemic are for educational purposes, including personal hotspots with mobile data connections); Letter from John Kraman, Chief Information Officer, Mississippi Department of Education, to Ajit Pai, Chairman, FCC, WC Docket No. 02-6, at 1 (filed Mar. 24, 2020), https://www.fcc.gov/ecfs/filing/1032470516353 (asking the Commission to make data cards and Wi-Fi hotspots eligible as long as schools provide remote education due to the COVID-19 pandemic); Letter from Lyell Walker, State E-Rate Coordinator, Florida Department of Management Services, to Ajit Pai, Chairman, FCC, WC Docket No. 02-6, at 1 (filed Mar. 12, 2020), https://www.fcc.gov/ecfs/filing/10312280696180; Letter from Terry Loftus, Assistant Superintendent & Chief Technology Officer, San Diego County Office of Education, to Ajit Pai, Chairman, FCC, at 1-2 (filed Apr. 9, 2020), https://www.fcc.gov/ecfs/filing/104231014223661 (asking the Commission to deem mobile Wi-Fi hotspots and the monthly recurring services eligible for E-Rate support).

[41] *See, e.g.*, Education & Libraries Network Coalition Comments at 7 (EdLiNC Comments) (explaining that home Internet access is now a prerequisite for receiving an education); Internet Association Comments at 5 (IA Comments) (stating that the COVID-19 emergency has "drastically changed the way all students are able to learn and educators are able to teach"); Infinity Communications & Consulting, Inc. Comments at 1 (Infinity Comments) (arguing that the "presumption that educational opportunities and environments occur only in the school or library is an antiquated concept").

[42] *See, e.g.*, New York State Education Department Comments at 4 (NYSED Comments) (recommending that the E-Rate program provide support for the off-campus use of hotspots during and after the pandemic to close the Homework Gap); Lee County School District Comments at 1-2 (LCSD Comments) (urging the Commission to provide funding for mobile hotspots to address the Homework Gap, both during and after the pandemic); Qualcomm Incorporated Comments at 10 (Qualcomm Comments) (arguing that the E-Rate program should cover mobile hotspots "without restriction" and noting that mobile hotspots provide important benefits because students can use them whenever and wherever); Aurora Institute Comments at 2-3 (Aurora Comments) (explaining that the E-Rate program should step in as a more permanent solution to funding wireless hotspots to continue the temporary solutions provided through emergency pandemic relief); Kellogg & Sovereign Consulting, LLC Comments at 3-5 (KSLLC Comments) (surveying 12 school districts that reported needing E-Rate support to cover wireless hotspots the most because students with the greatest need are often high mobility and require mobile connectivity solutions like hotspots).

[43] *See, e.g.*, IA Comments at 2 (supporting the use of E-Rate funds for remote learning as a way of adapting to modern educational needs in "the age of the 'virtual' campus"); Qualcomm Comments at 1-2 (referring to connectivity as "the 21st Century version of textbooks"); INCOMPAS Reply Comments at 6 (INCOMPAS Reply) (recognizing the need to prepare for future emergencies that may cause additional campus closures); Los Angeles Unified School District Comments at 4-5 (LAUSD Comments) (urging the Commission to re-examine the E-Rate rules to support the rapidly changing face of education, even beyond the pandemic).

[44] H.R. 1319, tit. VII, § 7402(a)(1)-(2).

eligible equipment and/or services needed to support remote learning during the COVID-19 pandemic.[45] The ECF program provides funding to connect students, school staff, and library patrons who would otherwise be unable to fully engage in remote learning and included funding for the purchase of Wi-Fi hotspots and services for use at locations, including locations other than at their school or library, among the eligible equipment and services that are available through the program.[46]

14. The Commission opened an initial ECF application filing window from June 29, 2021 to August 13, 2021,[47] and a second application filing window from September 28, 2021 to October 13, 2021, to allow schools and libraries to request ECF program support for eligible equipment and services to be provided or delivered between July 1, 2021 and June 30, 2022 for students, school staff, and library patrons with unmet needs.[48] During the first two filing windows, applicants requested over $6.4 billion in ECF support.[49] In view of the outstanding demand, the Bureau opened a third application filing window from April 28, 2022 to May 13, 2022, during which applicants could request support for eligible equipment and up to 12 months of recurring services to be provided or delivered between July 1, 2022 and December 31, 2023 for students, school staff, and library patrons with unmet needs.[50] Applicants requested over $2.81 billion during the final ECF filing window with demand exceeding the amount of available funding.[51] Pursuant to ECF rules, the remaining funding is being prioritized to schools and libraries with the greatest need,[52] and the current service delivery deadline for these ECF third window funding requests for equipment, and recurring and nonrecurring services is June 30, 2024.[53]

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[45] *See generally Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*Emergency Connectivity Fund Report and Order*).

[46] *See, e.g., id.* at 8708, 8712-13, paras. 29, 35 (allowing schools and libraries to use ECF support to purchase Wi-Fi hotspots and commercially available Internet access services to provide off-premises broadband connections to students, school staff, and library patrons who otherwise lack sufficient broadband access).

[47] News Release, FCC, FCC Announces Emergency Connectivity Fund Application Window Will Open on June 29 (June 15, 2021), https://www.fcc.gov/document/emergency-connectivity-fund-application-window-opens-june-29 (*First ECF Application Window News Release*).

[48] News Release, FCC, FCC Announces Over $5 Billion in Funding Requests Received in Emergency Connectivity Fund Program (Aug. 25, 2021), https://www.fcc.gov/document/fcc-announces-over-5-billion-emergencyconnectivity-fund-requests (*Second ECF Application Window News Release*). On February 22, 2022, the Bureau waived and extended the service delivery deadline for ECF first and second window funding requests for equipment, other non-recurring services, and recurring services from June 30, 2022 to June 30, 2023. *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915, 1917, para. 8 (WCB 2022). *See also infra* n.53 (explaining additional waivers and extensions of the service delivery deadlines).

[49] *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, DA 22-309, 2022 WL 867322, at *3 (WCB Mar. 23, 2022) (*Third ECF Application Window PN*).

[50] *Id.*

[51] News Release, FCC, FCC Announces Over $2.8 Billion in Funding Requests for Final Window in Ongoing Work to Close the Homework Gap (May 25, 2022), https://docs.fcc.gov/public/attachments/DOC-383685A1.pdf (*Third ECF Application Window News Release*).

[52] *See* 47 CFR § 54.1708(c).

[53] *See* 47 CFR § 54.1711(e)(2). On April 5, 2023, the Schools, Health, and Libraries Broadband (SHLB) Coalition and the Consortium for School Networking (CoSN) filed a request for a waiver asking to extend the service delivery deadline for Windows 1 and 2 applications that received funding commitment decisions after March 1, 2022, and all Window 3 applications to June 30, 2024. *See* Petition of Schools, Health & Libraries Broadband Coalition and Consortium for School Networking, WC Docket No. 21-93, at 6-7 (filed Apr. 5, 2023), https://www.fcc.gov/ecfs/filing/104051359207045. The request was granted, in part, in the *May 2023 Service Delivery Deadline Extension Order*, which extended the service delivery date for certain applicants who applied for

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15. Further, we note that the U.S. Department of Health and Human Services (HHS) permitted the COVID-19 public health emergency to expire on May 11, 2023,[54] triggering the ECF program's statutory requirement to sunset on the June 30 that first occurs one year after the date that the Secretary of HHS determines that a public health emergency no longer exists – i.e., June 30, 2024.[55] In preparation for the impending end of the ECF program, several stakeholders have echoed earlier requests to continue the ECF-funded off-premises connectivity services and devices for students and library patrons with unmet needs through the E-Rate program.[56]

16. Online instruction and remote learning are poised to continue post-pandemic, with parents, students, teachers, and library patrons increasingly embracing digital learning opportunities after the end of the pandemic emergency,[57] and with 30% of school districts and charter management organizations either considering or implementing an online or hybrid approach to K-12 education.[58] In fact, pre-pandemic data showed that up to 70% of teachers assigned homework requiring an Internet connection and almost half of K-12 students were required to complete online homework daily.[59] Similarly, libraries have accelerated their reliance on digital technology and content, increasing the use of digital collections and online programs.[60] According to the 2020 Public Library Technology Survey, at least 36.7% of public libraries employ dedicated staff for digital literacy and technology programs and

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ECF support in the first, second, and third filing windows but did not receive a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) early enough to make full use of the committed funding or were approved for new construction services but were unable to use the full amount of their approved funding for monthly recurring services associated with the construction. *See Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192 (WCB May 12, 2023) (*May 2023 Service Delivery Deadline Extension Order*).

[54] The Public Health Emergency concerning COVID-19 was originally declared on January 30, 2020 "as in existence since January 27, 2020," by the Secretary of HHS, pursuant to section 319 of the Public Health Service Act. *See* 47 U.S.C. § 247d. The public health emergency has been renewed repeatedly, most recently on February 11, 2023. Although the COVID-19 national emergency declared pursuant to section 202 of the National Emergencies Act (50 U.S.C. § 1622) terminated on April 10, 2023, when President Biden signed bipartisan congressional resolution H.J. Res. 7, the public health emergency declared by HHS pursuant to section 319 of the Public Health Service Act expired on May 11, 2023. *See* News Release, Department of Health and Human Services (HHS), HHS Secretary Xavier Becerra Statement on End of the COVID-19 Public Health Emergency (May 11, 2023), https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html; Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html (last visited Oct. 31, 2023).

[55] *See* H.R. 1319, tit. VII, § 7402(d)(5)(B).

[56] *See, e.g.,* Letter from Debra Duardo, Superintendent, Los Angeles County Office of Education and Los Angeles County Library et al., to Jessica Rosenworcel, Chairwoman, FCC, WC Docket No. 21-476, at 2 (filed Feb. 16, 2022) (Los Angeles Schools and Library *Ex Parte*) (urging the Commission to consider the off-premises use of E-Rate supported services to enable remote learning an educational purpose and to modify E-Rate rules to support devices funded by the ECF program, including Wi-Fi hotspots).

[57] Natasha Singer, *Online Schools Are Here to Stay, Even After the Pandemic* (Apr. 11, 2021), https://www.nytimes.com/2021/04/11/technology/remote-learning-online-school.html.

[58] Common Sense 2022 Report at 7.

[59] School on Wheels, *The Impact of the Digital "Homework Gap" on our Students* (Nov. 21, 2019), https://schoolonwheels.org/the-impact-of-the-digital-homework-gap-on-our-students/; Alia Wong, *Why Millions of Teens Can't Finish Their Homework* (Oct. 30, 2018), https://www.theatlantic.com/education/archive/2018/10/lacking-internet-millions-teens-cant-do-homework/574402/.

[60] Dave Shumaker, *The Next Normal: The Post-Pandemic Future of Library Services* (Apr. 27, 2021), https://newsbreaks.infotoday.com/NewsBreaks/The-Next-Normal-The-PostPandemic-Future-of-Library-Services-146346.asp.

training, while some form of digital literacy programming is offered by more than 88% of public libraries.[61] Embracing digital options has allowed libraries to "overcome transportation and distance barriers and attract attendees from a wider geographic area than programs offered solely in person in a single branch library."[62] Taken together, this data signals that although schools and libraries have returned to in-person operations, Internet access remains necessary to fully engage in educational opportunities that arise outside of the physical confines of school and library buildings and after the close of the traditional school day. As noted by the Center on Reinventing Public Education, "[v]irtual learning is not going away, but it must improve, especially for students of color and those facing economic insecurity."[63]

III. DISCUSSION

17. Today, we propose to modernize the E-Rate program in recognition of the technologically advanced educational needs of students, school staff, and library patrons that persist even when they are not physically at their school or library, by making the off-premises use of Wi-Fi hotspots and services eligible for E-Rate support. Broadband access is proven to improve individuals' educational outcomes, while lack of access has been shown to severely hamper educational opportunities.[64] Yet, for years, the adoption of broadband connectivity in today's educational settings has outpaced the adoption of broadband connectivity in the homes of students, school staff, and library patrons throughout the country.[65] As a result, students, school staff, and library patrons who lack adequate access to broadband connectivity are left further and further behind.[66] Over the course of the last two years, the ECF program

[61] Public Library Association, 2020 Public Library Technology Survey at 2, 6-7, 20 (2020), https://www.ala.org/pla/sites/ala.org.pla/files/content/data/PLA-2020-Technology-Survey-Summary-Report.pdf.

[62] Dave Shumaker, *The Next Normal: The Post-Pandemic Future of Library Services* (Apr. 27, 2021), https://newsbreaks.infotoday.com/NewsBreaks/The-Next-Normal-The-PostPandemic-Future-of-Library-Services-146346.asp.

[63] The Center on Reinventing Public Education, *Virtual Learning, Now and Beyond* (January 2022), https://crpe.org/wp-content/uploads/final2-Virtual-learning-post-COVID-report.pdf.

[64] *See* Common Sense Media, Boston Consulting Group, & Southern Education Foundation, Looking Back, Looking Forward: What it Will Take to Permanently Close the K-12 Digital Divide at 8 (2021). https://www.commonsensemedia.org/sites/default/files/featured-content/files/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf (explaining that historically, students caught in the digital divide have had overall GPAs about 0.4 points lower than students with Internet access, leading to a 4% to 6% lower expected annual income for disconnected students); Michigan State University, Broadband and Student Performance Gaps at 33, 48 (2020), https://quello.msu.edu/wp-content/uploads/2020/03/Broadband_Gap_Quello_Report_MSU.pdf (finding that students on the wrong side of the digital divide tend to have lower overall GPAs and middle and high school students with high-speed Internet access at home benefit from increased digital skills, higher grades, better performance on standardized tests, and are more likely to attend college); John B. Horrigan and Maeve Duggan, *The Growing Value People Place on Broadband* (Dec. 21, 2015), https://www.pewresearch.org/internet/2015/12/21/2-the-growing-value-people-place-on-broadband/ (reporting that lack of Internet access is considered a major disadvantage to finding job opportunities, accessing government services, getting health information, or accessing other key information).

[65] *See* EducationSuperHighway, Overcoming the Barriers to Broadband Adoption at 3 (2021), https://www.educationsuperhighway.org/wp-content/uploads/Broadband-Adoption-Center-Whitepaper.pdf (listing affordability as the number one cause of the digital divide); Anna Read, *How Can the United States Address Broadband Affordability* (Apr. 29, 2022), https://www.pewtrusts.org/en/research-and-analysis/articles/2022/04/29/how-can-the-united-states-address-broadband-affordability (discussing the related but distinct concepts of high average monthly costs for home broadband connections and cost as a barrier to broadband adoption for low-income families).

[66] *See* Michael Calabrese and Amir Nasr, *The Online Learning Equity Gap Innovative Solutions to Connect All Students at Home, Pandemic Disruption from Homework Gap to Remote Learning Chasm*, Open Technology Institute, https://www.newamerica.org/oti/reports/online-learning-equity-gap/i-pandemic-disruption-from-

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has bridged some of the gap between individuals with home broadband access and individuals caught on the wrong side of the digital and educational divide. Schools and libraries have maximized their limited ECF funding by establishing Wi-Fi hotspot lending programs,[67] and ensuring that as many students, school staff, and library patrons in need as possible had access to broadband connectivity outside of the school or library building.[68] With ECF support, approximately 6,800 schools, libraries, and consortia of schools and libraries purchased Wi-Fi hotspot devices and associated services, and were able to provide much-needed mobile broadband connectivity through ECF-funded Wi-Fi hotspots to more than 1.1 million students, school staff, and library patrons who otherwise lacked Internet access services sufficient to engage in remote learning.[69] In this NPRM, we seek to continue supporting ECF-funded broadband connectivity and propose to allow E-Rate support to fund the off-premises use of Wi-Fi hotspots and services to ensure that the students, school staff, and library patrons who lack broadband connectivity remain supported after the ECF program sunsets. We also seek comment on how the Commission can implement funding for the off-premises use of Wi-Fi hotspots and services within existing E-Rate program processes, what actions are necessary to safeguard these critical funds from any potential waste, fraud, or abuse, and our authority to adopt the measures described in this NPRM.

A. Making Off-Premises Use of Wi-Fi Hotspots and Services Eligible for E-Rate Support

18. We propose to permit schools and libraries to receive E-Rate support for Wi-Fi hotspots and services that can be used off-premises by students, school staff, and library patrons, finding that these services serve a critical educational purpose and enhance the ability of students, school staff, and library patrons to access advanced telecommunications and information services. We seek comment on this proposal and, if adopted, how best to implement the proposed measures in a manner that ensures that schools and libraries target their students, school staff, and library patrons who lack Internet access, while simultaneously protecting limited E-Rate funds. In particular, we seek information and data from schools and libraries that have used Wi-Fi hotspots and services for remote learning and/or implemented Wi-Fi hotspot lending programs to provide service to students, school staff, and library patrons who would otherwise lack broadband access outside of their school or library.

1. Equipment and Service Eligibility

19. In proposing to make Wi-Fi hotspot devices eligible for E-Rate support, we seek

homework-gap-to-remote-learning-chasm (last updated Nov. 17, 2020) (projecting that students could face a 9.1% loss in lifetime earnings due to the significant learning loss that could occur after a year of school closures); Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, *COVID-19 and Learning Loss – Disparities Grow and Students Need Help*, McKinsey& Company (Dec. 8, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help ("Students on average could lose five to nine months of learning by the end of June 2021.").

[67] *See, e.g.*, Brad Grimes, *Libraries Loan Mobile Devices and Laptops as a Vital Service* (Apr. 25, 2022), https://statetechmagazine.com/article/2022/04/libraries-loan-mobile-devices-and-laptops-vital-service (reporting how Harris County Public Libraries in Texas created a long-term lending program to allow their patrons to check-out Wi-Fi hotspots); Taylor Griffith, *Coolidge Library Adds Wi-Fi Hotspot Lending Program to Growing List of Amenities* (June 8, 2022), https://www.pinalcentral.com/coolidge_examiner/news/coolidge-library-adds-wi-fi-hotspot-lending-program-to-growing-list-of-amenities/article_57e71748-0b40-58af-abe4-e80153852d4a.html (explaining how a library in Arizona coordinated a lending program with ECF support to connect its patrons who cannot take advantage of the public Wi-Fi service available at the library).

[68] *See, e.g.*, Caroline LeCour, *Waterbury Public Schools to Give Free Internet Access to Families* (Nov. 10, 2021), https://www.nbcconnecticut.com/news/local/waterbury-public-schools-to-give-free-internet-access-to-families/2648588/ (using ECF support to provide one year of Wi-Fi hotspot service to students for remote learning).

[69] *See* Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr (last visited Oct. 31, 2023) (reporting data on what Wi-Fi hotspot devices and services have been requested in the ECF program to date).

comment on what devices should be covered. In the ECF program, a Wi-Fi hotspot is defined as a device that is capable of (a) receiving advanced telecommunications and information services; and (b) sharing such services with a connected device through the use of Wi-Fi.[70] For the E-Rate program, we propose to limit eligibility to Wi-Fi hotspots receiving mobile services and seek comment on whether this is the right approach. Are there any devices that perform the same functions as a Wi-Fi hotspot that are not covered by this definition and that should be included? Conversely, is the ECF program's definition of Wi-Fi hotspot overinclusive and could it encompass devices that go beyond the intended purpose of meeting the remote learning needs of students, school staff, and library patrons with unmet need? We encourage commenters to provide specific examples of any equivalent or similar equipment and/or services, or equipment and/or services that should be considered ineligible. Should Wi-Fi hotspots be treated as internal connections, as the State of Colorado has argued?[71] We note that in defining the scope of E-Rate program eligibility for internal connections, the Commission has previously declined to support "computers and other peripheral equipment" because it found that only equipment that is an essential element in the transmission of information is eligible (e.g., internal connections).[72] We seek comment on whether Wi-Fi hotspot devices are "peripheral equipment" or if they serve the necessary transmission function contemplated by the Commission to be considered internal connections, like wireless access points.

20. Consistent with the ECF program, we also propose to limit Wi-Fi hotspot device eligibility to Wi-Fi hotspots for individual users. We propose to treat as ineligible multi-user hotspot devices or smartphones. We seek comment on this proposal. Additionally, the ECF rules limited support to the purchase of one Wi-Fi hotspot device per student, school staff member, or library patron.[73] Should we similarly adopt a per-user limitation in the E-Rate program or consider a per-household limit? What should that limit be? Is an individual Wi-Fi hotspot capable of connecting more than one user at a time without degrading the quality of the connectivity or compromising connectivity altogether? In considering whether to impose some limit, we seek to balance the goals of administrative ease, such as implementing a simple one-per-household limit, with the needs of all households, including multi-student households. Some sources state that Wi-Fi hotspot devices have a useful life of three to five years.[74] In commenters' experience, is this the typical length of the useful life of Wi-Fi hotspots? If we fund Wi-Fi hotspots, should we limit their eligibility to purchases made once every three years or adopt some other eligibility timeframe? We seek comment on these questions and request that commenters provide any available supporting data.

21. With respect to wireless Internet access services, we propose to limit the use of services to those that can be supported by and delivered with Wi-Fi hotspots provided to an individual user (as opposed to multi-user hotspots). Pursuant to this proposal, schools and libraries would be able to seek E-Rate support for commercially available Internet access services (e.g., a data plan) that will be used on any individual user Wi-Fi hotspot, including E-Rate- or ECF-funded hotspots, previously purchased

[70] *See* 47 CFR § 54.1700(m).

[71] Colorado Petition at 6 ("Wi-Fi hotspots are internal connections, functionally akin to the Wi-Fi routers that distribute wireless connectivity from a school's network to students and teachers in physical classrooms.").

[72] *See Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9021-22, paras. 459-60 (1997) (*First Universal Service Order*).

[73] *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8725, para. 54. The Commission did not adopt a per-location limitation on Wi-Fi hotspot devices and services, like it did for fixed broadband connections, finding that such a limitation would be impracticable because Wi-Fi hotspots can be easily moved and multi-student households may require more than one Wi-Fi hotspot. *Id.* at para. 55.

[74] Larry Baltazar, *How Long Do Wireless Access Points Last* (Sept. 6, 2021), https://www.nextgenmultimedia.com/how-long-do-wireless-access-points-last; Worldlink Integration Group, Network Infrastructure – A Guide to Maintenance, Repairs, Upgrades, and Replacements at 2 (2015), http://worldlinkintegration.com/wp-content/uploads/2015/02/Network-Infrastructure-Maintenance-Final.pdf.

hotspots, and/or student-, staff member-, or patron-owned hotspots. We seek comment on this proposal. We also seek comment on the quality of Internet access services that should be eligible for support through the E-Rate program. For example, should we adopt minimum service standards? We invite input on the level of service that is needed to support remote learning, based on the direct experiences of providing Wi-Fi hotspots to students, school staff, and library patrons during the pandemic. Should we limit support to just the off-premises use of the recurring Internet access services needed for remote learning (and not the Wi-Fi hotspot equipment)? We expect this limitation could allow schools and libraries with existing Wi-Fi hotspot lending programs to continue to lend or check-out a portable Wi-Fi hotspot device with a mobile broadband connection to students, school staff, or library patrons for off-premises access to the Internet. If we decide not to make Wi-Fi hotspot devices eligible, how should we address Wi-Fi hotspot devices that are bundled with services? Are there benefits or disadvantages if the Commission limits E-Rate support to only services, and does not include Wi-Fi hotspot devices as eligible for support? Should we limit eligibility to the services associated with the Wi-Fi hotspots purchased using ECF program funds? Would this limitation help to ensure E-Rate support is directed to students, school staff, and library patrons who are expected to lose their connectivity when the ECF program sunsets? Are there other issues or concerns the Commission should consider when determining how to fund Wi-Fi hotspot devices and/or services? For example, how should leased or bundled equipment and service packages offered by providers be treated and should they be eligible for E-Rate support?[75] We seek comment on these questions.

2. Cost-Effective Purchases

22. Next, we seek comment on how to ensure schools and libraries purchase the most cost-effective service offering(s) when selecting Wi-Fi hotspots and services for students, school staff, and library patrons who lack access to broadband. Are the requirements to pay the non-discounted share of costs and conduct competitive bidding sufficient incentives to prevent wasteful spending? We also seek comment on the anticipated costs of the Wi-Fi hotspots and services if provided on a program-wide basis. We encourage schools, libraries, and other stakeholders to provide in their comments specific information about the devices and services purchased through the ECF program or with other funding, the costs, the device and service parameters, any steps they have taken to ensure the sufficiency of the service, and any steps they have taken to lower costs associated with Wi-Fi hotspots and service. The anticipated costs should consider and describe any secondary components, such as additional hotspot features, different bandwidth capabilities, and any reasonable fees incurred with the purchase of Wi-Fi hotspots and services.

23. We next ask about cost-control mechanisms. Should we adopt a cap on the amount of costs that will be considered cost-effective for Wi-Fi hotspots and/or monthly services, and if so, should we rely on ECF program data to establish a cap for a Wi-Fi hotspot provided to an individual user?[76] For services, the Affordable Connectivity Program (ACP) provides discounts of up to $30 per month towards Internet service (or up to $75 per month for eligible households on qualifying Tribal lands). Are these reasonable caps on what the Commission might consider cost-effective for monthly service? Should we use different amounts for the monthly reimbursement of these services in the E-Rate program, and if so, what amounts should be used? If the Commission adopts caps on the amounts considered cost-effective

[75] We note that many service providers, such as T-Mobile, offered Wi-Fi hotspots free of charge with mobile broadband services provided to schools and libraries with ECF support. *See* Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr (last visited Oct. 31, 2023) (reporting data on what Wi-Fi hotspot devices and services have been requested in the ECF program to date).

[76] Based on the ECF program data, the average cost of a Wi-Fi hotspot is $107.80 and monthly service is $15.44/month. *See* Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr (last visited Mar. 15, 2023) (reporting data on Wi-Fi hotspots and services that have been requested in the ECF program to date).

for monthly services, should those caps be regularly updated, and if so, what mechanism should the Commission use to make those updates? What requirements should we implement to ensure service providers in these underserved areas provide the most cost-effective services to eligible schools and libraries if a higher amount is allowed for support? We seek comment on these questions.

24. Relatedly, under the Commission's E-Rate rules, applicants are required to conduct fair and open competitive bidding when requesting funding for eligible services.[77] The competitive bidding requirements are a cornerstone of the E-Rate program and are critical to ensuring that applicants obtain the most cost-effective offering available.[78] However, we recognize that there may be challenges associated with conducting competitive bidding for off-premises wireless services that can be used from multiple locations. How can we ensure applicants conduct fair and open competitive bidding for off-premises wireless services while also ensuring students, school staff, and library patrons can access those services from locations other than their school or library? For instance, in geographically large districts, a single service provider may not be able to provide service throughout the school's or library's service area. Should we allow applicants to select multiple service providers for Wi-Fi hotspots and services based on the geographic area(s) of their students, school staff, and library patrons? How can we ensure that applicants select the most cost-effective service offerings? Are there competitively-bid state or other master contracts available for schools and libraries to purchase Wi-Fi hotspot devices and services for off-premises use? Are there any other issues that schools and libraries may encounter during their competitive bidding processes for Wi-Fi hotspots and services to be used off-premises that the Commission should also consider?

B. Funding and Prioritization

25. Based on our experience funding Wi-Fi hotspots and services through the ECF program, we tentatively find that taking this step toward addressing the educational needs of millions of students, school staff, and library patrons caught in the digital and educational divide is also technically feasible and economically reasonable, consistent with section 254(h)(2)(A) of the Communications Act.[79] We estimate that approximately 4.5 million students, school staff, and library patrons received mobile broadband service and/or hotspots through the ECF program for the 2021-2022 school year, with an average cost of approximately $294 per user per year.[80] We seek comment on this estimate, and any data and numerical evidence that can be used to support or update our estimate. Given that the demand for E-Rate program funding has consistently fallen below the program's funding cap in recent years,[81] we

[77] *See* 47 CFR § 54.503.

[78] *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9029, para. 480 (1997); *see also Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket No. 02-6, Order, 18 FCC Rcd 26407, 26417, para. 22 (2003) ("Competitive bidding for services eligible for discount is a cornerstone of the E-rate program . . . .").

[79] 47 U.S.C. § 254(h)(2)(A).

[80] *See* Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr (last visited May 19, 2023) (reporting data on Wi-Fi hotspot devices and services that have been requested in the ECF program to date). The average cost is derived from combining the ECF data for (1) the average cost of Wi-Fi hotspots ($107.80 per device) and (2) the average cost of mobile broadband services per user, per year ($15.44 per user, per month, for twelve months). We note that certain added costs like taxes are not captured in these figures, nor are certain proposals considered in this NPRM, such as limiting support to nine months to account for summer break. The estimated number of mobile broadband connections and/or hotspots provided through the ECF program is derived from ECF data for funded Window 1 and Window 2 funding requests for mobile broadband and hotspot devices, excluding requests for school bus hotspots, services on school buses, and other multi-user routers and devices.

[81] For example, for funding year 2023, the funding cap is $4.768 billion and demand is an estimated $2.944 billion. *See Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year*

(continued….)

believe the cost of funding Wi-Fi hotspots and services for off-premises use could be accomplished within the E-Rate program's existing budget, and the potential increase in program disbursements would result in a substantial benefit to students, school staff, and library patrons stuck on the wrong side of the digital and educational divide, and in the Homework Gap across the country.[82] We seek comment on our tentative conclusion.

26. Commenters are also invited to address whether the number of students, school staff, and library patrons that received mobile broadband service through Wi-Fi hotspots in the ECF program provides an accurate basis for estimating demand if we permit mobile broadband service and Wi-Fi hotspots for off-premises use to be funded with E-Rate support, particularly given that not all E-Rate participants applied for the ECF program, and other federal or state funding may have also been used for this purpose during the pandemic. We request additional information on whether there are schools and libraries that did not apply for ECF support that would apply for E-Rate support for the off-premises use of Wi-Fi hotspots and services. In addition, we seek comment on whether the ECF program's $294 estimated average cost per user provides an accurate basis for estimating the potential cost to the E-Rate program of supporting Wi-Fi hotspots and mobile broadband service for off-premises use, provided we reduce that amount by the average discounted share that will be paid by schools and libraries. Is this estimated cost too high, given the ECF program was an emergency program and there were not program-

2023, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, DA 23-178, 2023 WL 2436840 (WCB Mar. 3, 2023); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC (Mar. 29, 2023), https://www.fcc.gov/ecfs/filing/10329233636144. The demand for E-Rate program funding has fallen below the program's funding cap every year since funding year 2016. *See Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2022*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 37 FCC 3458 (WCB 2022) (announcing an E-Rate cap of $4.456 billion); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Trent Harkrader, Chief, Wireline Competition Bureau, FCC (Mar. 23, 2022), https://www.fcc.gov/ecfs/filing/103233066426383 (estimating a demand of $3.15 billion); *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2021*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 36 FCC Rcd 5670 (WCB 2021) (announcing an E-Rate cap of $4.276 billion); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (Mar. 26, 2021), https://www.fcc.gov/ecfs/document/10326316124619/1 (estimating a demand of $3.03 billion); *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2020*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 2062 (WCB 2020) (announcing an E-Rate cap of $4.226 billion); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (May 1, 2020), https://www.fcc.gov/ecfs/document/105010270124617/1 (estimating a demand of $2.91 billion); *Wireline Competition Bureau Announces E-Rate and RHC Programs' Inflation-Based Caps for Funding Year 2019*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 34 FCC Rcd 1138 (WCB 2019) (announcing an E-Rate cap of $4.151 billion); Letter from Catriona Ayer, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (Apr. 1, 2019), https://www.fcc.gov/ecfs/document/1040110172922/1 (estimating a demand of $2.896 billion); *Wireline Competition Bureau Announces E-Rate Inflation-Based Cap for Funding Year 2018*, CC Docket No. 02-6, Public Notice, 33 FCC Rcd 1923 (WCB 2018) (announcing an E-Rate cap of $4.062 billion); Letter from Catriona Ayer, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (Apr. 17, 2018), https://www.fcc.gov/ecfs/document/10417600427057/1 (estimating a demand of $2.77 billion); *Wireline Competition Bureau Announces E-Rate Inflation-Based Cap for Funding Year 2017*, CC Docket No. 02-6, Public Notice, 32 FCC Rcd 1869 (WCB 2017) (announcing an E-Rate cap of $3.990 billion); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC (May 17, 2017), https://www.fcc.gov/ecfs/document/1051779766937/2 (estimating a demand of $3.20 billion); *Wireline Competition Bureau Announces E-Rate Inflation-Based Cap for Funding Year 2016*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 4446 (WCB 2016) (announcing an E-Rate cap of $3.939 billion); Letter from Mel Blackwell, Vice President, Schools and Libraries Division, USAC, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC (June 6, 2016), https://www.fcc.gov/ecfs/document/60001988759/1 (estimating a demand of $3.609 billion).

[82] *See supra* note 64.

specific competitive bidding rules, unlike for the E-Rate program, which requires competitive bidding and for applicants to select the most cost-effective service offering using prices of the eligible services as the primary factor? How should we account for the average three-year lifespan of Wi-Fi hotspot devices and the fact that many users will be able to continue to use devices funded through ECF after the sunset of the program, as well as funded through the other state and federal programs? For example, how can we prevent parties from replacing ECF-funded Wi-Fi hotpots with new Wi-Fi hotpots funded through the E-Rate program before the ECF-funded equipment reaches its end-of-life (EOL)? Could the FCC manage the potential costs to the E-Rate program by establishing limits on the amount of support dedicated to the off-premises use of Wi-Fi hotspots and services? We seek comment on these questions.

27. We acknowledge that there are some circumstances where Wi-Fi hotspots and services may not meet the connectivity needs of all students, school staff, and library patrons caught in the Homework Gap. We also acknowledge that some schools and libraries used ECF funding for other remote learning solutions, such as building their own fixed wireless networks, and may also seek to use E-Rate funding to continue providing connectivity to their students, school staff, or patrons after the ECF program sunsets. While we recognize that there may be other off-premises uses that may meet the definition of an educational purpose, these solutions also have the potential to be extremely costly to fund with the very limited E-Rate support and could be duplicative of funding made available through other state and federal programs. We seek comment on these conclusions. We believe that taking this initial, incremental step to fund Wi-Fi hotspots and services for off-premises use strikes the right balance and is consistent with our universal service goals. We also believe our proposal can be accomplished without excessive cost to the E-Rate program or significant administrative delay. We therefore propose to limit the scope of this NPRM to the off-premises use of Wi-Fi hotspots and services because we are mindful of our obligation to be a prudent, responsible steward of the limited E-Rate funding and our statutory directive to establish rules only to the extent it is "economically reasonable" to do so.[83] We invite comment on this proposal. Recognizing that there may be circumstances where there is either no commercially available mobile service or the existing service is insufficient to allow students, school staff, or library patrons to fully engage in remote learning, we seek comment on whether the Commission should consider alternatives for off-premises services funded through the E-Rate program in such limited circumstances and what alternatives should be considered. For example, should we permit schools and libraries to use existing E-Rate-funded networks to connect students, school staff, or library patrons off-premises in the narrow instances where commercially available mobile broadband is not a viable option (e.g., due to geographic challenges or cost)? We also seek comment on how the Commission should determine there is no commercially available service, or existing service is insufficient to support remote learning and how to ensure the alternative solutions are the most cost-effective way of providing service to students, school staff, and library patrons who otherwise are not able to fully engage in remote learning.

1. Prioritization

28. If the Commission makes students', school staff members', and library patrons' off-premises use of Wi-Fi hotspots devices and services eligible, what category of service should these devices and services be? Under the current Eligible Services List, wireless Internet services are category one services and are eligible under limited circumstances.[84] Should we therefore consider Wi-Fi hotspots

[83] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18779, para. 32, n.102 (limiting E-Rate support to residential schools that serve unique populations, rather than *any* school with residential facilities, in order to be mindful of the potential impact that such a reform would have on the E-Rate program funding cap).

[84] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 2022 WL 17886489, at *7, 11 (WCB Dec. 14, 2022) (*FY2023 Eligible Services List Order*).

to be network equipment necessary to make category one wireless Internet services functional?[85] If we determine that Wi-Fi hotspots are comparable to internal connections as the State of Colorado suggests, should these devices be considered category two services?[86]

29. Based on the Commission's experience in the ECF program and other publicly available information, we anticipate that our proposal to fund the off-premises use of Wi-Fi hotspots and services will result in an increase in E-Rate funding requests. In the event that E-Rate program demand exceeds its annual funding cap, we seek comment on how requests for the off-premises use of Wi-Fi hotspots and services should be prioritized. Are there measures the Commission should consider to ensure that E-Rate funding remains available for the currently-eligible category one and category two services that are needed by schools and libraries? Should these requests be prioritized after services and equipment needed to bring connectivity *to* and *within* schools and libraries (i.e., category one and category two services) are funded? Should we prioritize requests for services associated with the Wi-Fi hotspots purchased using ECF program funds? Will funding the off-premises use of Wi-Fi hotspot devices and services have any impact on other pending E-Rate-related eligibility requests, such as expanding basic firewall services to include advanced or next-generation firewall services?[87] Are there other ways to limit the financial impact of supporting the off-premises use of Wi-Fi hotspots and services? For example, should we consider an overall budget for these new off-premises services?[88] Should there be an annual funding cap for the amount of support that is available for the off-premises use of Wi-Fi hotspots and services? If so, what should the funding cap be? Should it be indexed to inflation? Alternatively, would a per-student limit, like the one used for category two funding budgets, help to ensure the limited E-Rate program support is distributed equitably to schools and libraries across the various discount rates? Should we implement these changes on an interim basis and subsequently assess whether to implement a permanent rule change based on our interim experience? We seek comment on these proposals and questions.

2. Unmet Need

30. We also recognize that there are insufficient E-Rate funds to support Wi-Fi hotspots and services for every student, school staff member, and library patron across the nation. Therefore, how can we prioritize support for students, school staff, and library patrons who do not have Internet access at home? In the ECF program, the Commission limited support to students, school staff, and library patrons without Internet access services sufficient to engage in remote learning. Through our experience in the ECF program, we understand that schools and libraries have faced challenges in determining which parts of their population needed access to Wi-Fi hotspots and services for the upcoming funding year. We therefore seek comment on administratively feasible ways to ensure the E-Rate program prioritizes support for Wi-Fi hotspots and services for use by students, school staff, or patrons who would otherwise lack access to Internet access services.

31. The ECF program limited support for eligible equipment and services to students, school staff, or library patrons with unmet need, and, because it was an emergency COVID-19 relief program, schools and libraries were required to provide only their best estimate of unmet need during the application stage. However, because the E-Rate program is not an emergency program, there is time for

[85] *See id. See also Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8748, para. 111, n.301 (explaining that hotspots qualify as eligible "Network Equipment" for Internet access, Internet service, or internal connections in the ECF and E-Rate programs).

[86] *See supra* para. 19.

[87] *See generally Wireline Competition Bureau Seeks Comment on Requests to Allow the Use of E-Rate Funds for Advanced or Next-Generation Firewalls and Other Network Security Services*, WC Docket No. 13-184, Public Notice, DA 22-1315, 2022 WL 17886490 (WCB Dec. 14, 2022).

[88] In the *First 2014 E-Rate Order*, the Commission similarly set an annual budget of $1 billion for category two services to ensure funds were focused on Wi-Fi networks, while protecting support for critical category one services. *See First 2014 E-Rate Order*, 29 FCC Rcd at 8898-8900, paras. 76, 78.

schools and libraries to determine the actual number of students, school staff, and library patrons with unmet needs. We seek comment on whether the Commission should adopt more stringent unmet needs requirements for the E-Rate program than it adopted for the ECF program. For example, should we require schools and libraries to conduct and submit as part of their funding requests a survey or other documentation that substantiates their student and school staff, or patron population who has current unmet needs? Would such a requirement raise any privacy concerns (e.g., insofar as such surveys would be intended to elicit information from potentially lower-income children, families, and individuals)? If this requirement would create privacy risks for students, families, and patrons, how could the Commission mitigate those risks (e.g., via data minimization, anonymization, or deidentification)? For example, would it be possible for schools and libraries to conduct such surveys without collecting any personally identifiable information (PII) from students, staff, or patrons, and what burdens would such a collection place on school and library resources? If schools and libraries would need to collect PII, should we require that all such information be removed from the survey results when submitted with funding requests?

32. Are there other ways that the Commission can ensure it focuses and targets the limited E-Rate program support to only students, school staff, and library patrons who currently lack broadband access—and who cannot afford it—so that the E-Rate program does not support services for students, school staff, or library patrons who already have broadband connectivity at their homes? For example, should we restrict the support of off-premises use of Wi-Fi hotspots and services to students whose parent or guardian certifies that they lack broadband at home and who are eligible for the free or reduced-price lunch program (also known as the National School Lunch Program or NSLP)? Are there any other school nutrition programs that a student's parent or guardian should be able to use to demonstrate eligibility under this approach, such as the School Breakfast Program? What burdens could conditioning support on NSLP participation impose on school administrators and/or students? If the Commission declines to use NSLP for determining eligibility, what other measures could be taken to ensure the limited E-Rate support is directed to the students with the greatest need? For school staff and library patrons, are there similar or alternative requirements that we should consider to ensure that E-Rate support is used towards existing unmet needs and to prevent waste, fraud, and abuse of the program? We seek comment on these questions and how to best target E-Rate funding to only students, school staff, and library patrons with the greatest need.

33. We further seek comment on whether there are certain school populations, such as Head Start and pre-kindergarten students, for whom the risks may outweigh the benefits of providing E-Rate support for the off-premises use of Wi-Fi hotspots and services. For example, studies show that children under the age of 5 should limit Internet access to one hour or less per day and are harmed if exposed to longer periods of use.[89] We propose that the Head Start program, which provides early learning and development for pre-school children from the ages of 3 to 5,[90] and pre-kindergarten students should be determined to be ineligible to receive E-Rate support for off-premises use of Wi-Fi hotspots and services. We note that Head Start and/or pre-kindergarten education facilities serving this particular age group may be eligible for E-Rate funding for broadband connectivity to and within their facilities, if determined to be elementary schools under their applicable state laws. Further, parents and guardians of Head Start students may be eligible for home Internet access services through ACP because Head Start is an income-based program and, to qualify, a family must be at or below the federal poverty level, or participate in a

[89] *See, e.g.,* World Health Organization, Guidelines on Physical Activity, Sedentary Behaviour and Sleep For Children Under 5 Years of Age (Apr. 2, 2019), https://www.who.int/publications/i/item/9789241550536 (recommending no more than one hour of screen time for children under 5 years of age).

[90] U.S. Department of Health and Human Services, Office of Head Start, *Head Start Services*, https://www.acf.hhs.gov/ohs/about/head-start (last visited June 23, 2023).

federal government assistance program.[91] We seek comment on this proposal and other measures the Commission should take to ensure that the E-Rate program's limited support is targeted to students, school staff, and library patrons with the greatest need, as there is insufficient funding to support the off-premises use of Wi-Fi hotspots and services for every student, school staff member, and library patron.

C. Program Safeguards

34. We are mindful of our obligation to protect the Universal Service Fund (USF) and the USF programs from waste, fraud, and abuse, and take seriously our duty to be a careful steward of E-Rate program funds. We are similarly committed to ensuring the integrity of the E-Rate program and identify below potential tools at our disposal to ensure that the E-Rate program's funds are used for its intended purposes, i.e., to enhance and enable access to broadband services for educational opportunities for schools and libraries nationwide. We seek comment on what safeguards the Commission should consider imposing to protect the constrained E-Rate funds from waste, fraud, and abuse, and to prevent the imposition of unnecessary costs on the program.

1. Educational Purpose

35. We first seek comment on how to ensure that the off-premises use of Wi-Fi hotspots and services is primarily for educational purposes, consistent with the Commission's rules and section 254(h)(1)(B) of the Communications Act.[92] The COVID-19 pandemic demonstrated the educational benefits of providing critical broadband connections to students, school staff, and library patrons and highlighted their reliance on interactive and collaborative remote learning outside the physical school or library building. We recognize that the use of eligible services on school or library property typically occurs under the supervision of school or library staff; whereas, the 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. In balancing these benefits and concerns, we therefore seek comment on what safeguards should be imposed to mitigate the risk of off-premises non-educational use of E-Rate-supported Wi-Fi hotspots and services.

36. Currently, E-Rate participants are required to certify on program forms that supported services will be used primarily for educational purposes.[93] We seek comment on whether requiring schools and libraries to certify on their forms that E-Rate support is being used primarily for educational purposes is sufficient to protect against improper use or if additional guardrails should be imposed to ensure that services are used "primarily for educational purposes." For example, libraries that used ECF funding to connect their patrons through Wi-Fi hotspot lending programs are required to provide patrons with a copy of their eligible use policy and collect signed statements from patrons confirming that they would otherwise lack access to the equipment or services necessary to meet their educational needs.[94] Should we adopt a similar requirement in the E-Rate program and require schools and libraries to provide copies of their eligible use policies and collect signed documentation of user compliance from patrons,

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[91] FCC, *Affordable Connectivity Program*, https://www.fcc.gov/acp (last visited June 23, 2023) (explaining that households with incomes 200% or less than the Federal Poverty Guidelines or that participate in qualifying government assistance programs are eligible for ACP, and households that participate in Tribal Head Start programs are eligible for the Tribal benefit). To be eligible for Head Start, families must be at or below the federal poverty level or participate in a federal government assistance program (i.e., TANF, SNAP, or SSI). *See* HHS, Head Start/Early Education Learning & Knowledge Center, *Applying for Head Start Services*, https://eclkc.ohs.acf.hhs.gov/how-apply (last visited June 23, 2023).

[92] *See* 47 U.S.C. § 254(h)(1)(B).

[93] 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v) (requiring applicants to certify that E-Rate-supported services will be used primarily for educational purposes).

[94] *See Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8737, para. 82; 47 CFR § 54.1710(a)(1)(viii) (requiring applicants to certify that support is only being requested for equipment/services provided to patrons who have signed and returned a statement of compliance).

school staff members, or parents/guardians of students to ensure the E-Rate-funded Wi-Fi hotspots and services are used solely by the intended recipient and serve an educational purpose? How can we ensure that the off-premises Wi-Fi hotspots and services are being used as intended by the individual student, school staff member, or library patron for educational purposes, and E-Rate funding is not being used to provide broadband connectivity for the whole family, for which there are more appropriate funding sources available, like the ACP? Should we require schools and libraries, as a condition of receiving E-Rate support for off-premises use, to include certain minimum requirements in their eligible use policies, or limit the duration of time a student, school staff member, or library patron can use the hotspot at home? Should, for example, schools and libraries be required to restrict access to the off-premises use of Wi-Fi hotspots and services to students, school staff, and patrons with appropriate credentials? What would constitute appropriate credentials? Should there be an annual verification process to establish continuing need and eligible use for students and school staff before the start of each school year? Should the documentation signed by users include a notice of potential consequences if a Wi-Fi hotspot is used improperly, including the return of the device and revocation of the associated service? Are there other actions that the Commission could take to help ensure the appropriate use of the E-Rate-funded Wi-Fi hotspots and services? We seek comment on these questions.

37. 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 (e.g., Beneficiary and Contributor Audit Program (BCAP) audits, Payment Quality Assurance (PQA) audits, and Payment Integrity Assurance (PIA) reviews and Selective Reviews (SR) of the FCC Form 471).[95] Are the current E-Rate audit and application/invoice review mechanisms sufficient to ensure that off-premises Wi-Fi hotspots and services are actively being used by eligible users primarily for educational purposes? Should we increase the number and frequency of random or targeted audits in the first few years of support as a means of detecting and preventing improper payments for Wi-Fi hotspots and services that are not needed, are not being used, are being used to provide home broadband connectivity to an entire family, or are not being used primarily for an educational purpose?[96] Are there other issues, such as privacy concerns, or changes we should consider for audits and reviews related to funding requests and disbursements for off-premises use of Wi-Fi hotspots and services? For example, because it is presumed to serve an educational purpose when the services are used on school or library property, how should we verify that the off-premises use of E-Rate-funded Wi-Fi hotspots and services are being used for educational purposes? Are there mechanisms or tools available that would allow for verifying compliance with E-Rate rules regarding the off-premises use of supported Wi-Fi hotspots and services that would *not* require review of users' online activities, browsing history, etc.? If not, 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? We seek comment on these questions.

38. We also seek comment on what other requirements should be imposed to ensure schools and libraries are not requesting funding for more Wi-Fi hotspots and services than are necessary to meet the needs of only students, school staff, and library patrons who lack access to broadband and are used for educational purposes. For instance, schools and libraries may allow the community to use E-Rate-funded services from on-premises locations during non-operating hours, subject to certain conditions to ensure students always have the first priority to use the supported services and to protect against the waste, fraud,

[95] 47 CFR § 54.516 (b), (c).

[96] *Compare* USAC, *PQA Program*, https://www.usac.org/about/appeals-audits/pqa-program/ (last visited Oct. 31, 2023) (explaining that the PQA program audits specific payments), *and Beneficiary and Contributor Audit Program (BCAP)*, https://www.usac.org/about/appeals-audits/beneficiary-and-contributor-audit-program-bcap/ (last visited Oct. 31, 2023) (explaining that the BCAP program uses randomly-selected or targeted audits to ensure compliance with Commission rules and program requirements).

and abuse of the funds.[97] Are there similar conditions that the Commission should impose on the off-premises use of Wi-Fi hotspots and services to ensure applicants are not requesting excess services for non-educational purposes like video games or non-educational streaming services, and that students, school staff, and library patrons are receiving first priority in the use of school or library resources? Are there incidental uses that should be permissible, like telehealth appointments or filling out government forms, that would not result in a greater demand on E-Rate funding? We seek comment on these questions and invite input on what steps schools and libraries have taken to ensure the off-premises use of ECF-funded Wi-Fi hotspots and services were used only by the intended individual(s) and for educational purposes.

2. Usage

39. If the Commission makes off-premises use of Wi-Fi hotspots and services eligible, how can the Commission prevent the warehousing of Wi-Fi hotspots and reimbursement for unused equipment and/or services? Are there ways to prevent the purchase of "back-up" Wi-Fi hotspots, e.g., hotspots purchased in anticipation of loss, breakage, or additional unmet need? Should we adopt numerical criteria to assess usage: e.g., should usage below a weekly, monthly, or quarterly threshold of X hours be treated as "non-usage"? Should we require participants to provide evidence of usage and/or strengthen the certification requirements surrounding non-usage? For example, should we require the submission of data usage reports (i.e., reports on the *amount* of data used, not the *substance* of the usage) with requests for reimbursement to demonstrate the Wi-Fi hotspots and services were used by students, school staff, and library patrons as intended for the time period being invoiced to the E-Rate program? Should there be different usage requirements applicable to schools and libraries? How do we avoid having the E-Rate program pay for service to Wi-Fi hotspots during the summer, when students may not be using the devices? For example, should E-Rate support for schools be limited to only nine months per school year to prevent the E-Rate program from covering the costs of unused devices and/or services during the summer? Should the certifications regarding non-usage in the ECF program be strengthened for the E-Rate program?[98] How should the certifications be strengthened, and how could a school, library, or service provider demonstrate compliance with the certification requirements? We seek comment on these questions.

40. We also seek comment on how schools, libraries, and service providers should address non-usage issues. If the monthly usage report indicates that certain hotspot devices are not being used by the student, school staff member, or library patron, should the school or library be required to terminate the service to that device? Should the service provider be responsible for notifying the school or library which devices had no usage on a monthly basis and be required to terminate the service? Should there be a cure or notification period to allow the student, school staff member, or library patron to restart use of the services or should the services be terminated after there is a month of no usage? We seek comment on what requirements should be implemented to ensure usage of the devices and services and what actions the school, library, or service provider should be required to take to address any non-usage issues related to their students, school staff, or library patrons.

41. We also seek comment on how the Administrator should handle non-usage issues related to off-premises Wi-Fi hotspots and services. If a school or library cannot demonstrate the Wi-Fi hotspots

[97] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774-76, paras. 22-26 (requiring schools who choose to allow community use to comply with certain conditions, such as: (1) they may not request more funding than is necessary to serve their current student population; (2) any community use of E-Rate-funded services at a school facility must be limited to non-operating hours of the school and to community members who access Internet while on the school's campus; and (3) they may not charge for the use of these E-Rate-funded services). *See also Community Use of E-Rate Supported Wi-Fi is Permitted During Closures*, WC Docket Nos. 02-6 and 13-184, Public Notice, 35 FCC Rcd 2879, 2879 (WCB 2020) (reminding schools and libraries that they may allow the public to access E-Rate-funded services even when they are closed due to the coronavirus pandemic).

[98] *See, e.g.*, 47 CFR § 54.1711(a)(1)(viii), (a)(2)(vi) (requiring applicants and service providers to certify that they are not willfully or knowingly requesting reimbursement for equipment or services that are not being used).

and services were used by the intended individual, should their request for reimbursement be denied, and the Administrator be directed to reduce the committed funding amount by the same amount to prevent this funding from being disbursed in the future? Should schools and libraries be required to notify the Administrator if their service provider submits invoices for Wi-Fi hotspots or services that the school or library knows are not being used by its students, school staff, or library patrons, because, for example, the device has not been distributed yet? Should the Administrator be directed to seek recovery from a service provider that invoices the program for Wi-Fi hotspots and services that were not in use during the reimbursement period? Should we also prohibit service providers from invoicing applicants for periods of non-usage? If there is evidence of non-usage of the off-premises Wi-Fi hotspots and/or services, should schools and libraries be required to file an FCC Form 500, or other post-commitment request, to reflect the actual periods of time that the Wi-Fi hotspots and services were in use by their students, school staff, or library patrons? Should E-Rate participants that improperly received E-Rate support for unused Wi-Fi hotspots and/or services not be eligible to request E-Rate support for off-premises Wi-Fi hotspots and services in future funding years? Or should the school or library be required to reduce their funding requests by the amount of funding related to the unused Wi-Fi hotspots and services in future funding years? We seek comment on these questions and ways to ensure the off-premises Wi-Fi hotspots and services are actually being used for their intended purpose of providing broadband connectivity to students, school staff, and library patrons who lack access and are used for educational purposes.

3. Duplicative Funding

42. We seek comment on what safeguards are necessary to prevent duplicative funding for the same off-premises Wi-Fi hotspots and/or services across the federal universal service programs and other funding programs, including federal, state, Tribal, or local programs. For example, the ACP provides discounts to help low-income households pay for the home broadband service and connected devices needed for critical activities like work and school. However, a household may justifiably receive support from multiple universal service programs at the same time: for instance, a household may receive a Lifeline-supported discount on mobile broadband and voice service for a cellular phone that a parent takes with them to work, while separately receiving support for a Wi-Fi hotspot to help a child in that same household complete their homework on a school-issued laptop. How can we ensure that funding sought for Internet access services through the E-Rate program will not be duplicative of funding received through other programs, like the ACP, for home Internet access, while recognizing that a household may permissibly benefit from multiple federal universal service programs simultaneously? If schools and libraries already provide off-premises access for their students, school staff, and patrons through ECF or other sources of funding, should those schools and libraries be prohibited from using E-Rate support for that same purpose? For example, how do we ensure that schools and libraries that have purchased Wi-Fi hotspots with ECF support do not purchase new hotspots with E-Rate support prior to the end of the useful life of the ECF-funded hotspots? To help us assess this issue, we ask commenters to identify any ECF support or other sources of funding currently being used by schools or libraries to subsidize off-premises access for students, school staff, and library patrons that would eliminate or reduce the need for E-Rate-supported Wi-Fi hotspots. Would a certification by the school or library be sufficient to indicate that E-Rate support is only being sought for eligible students, school staff, or library patrons and the school or library does not already have access to Wi-Fi hotspots purchased with ECF support or other sources of funding? We seek comment on how to prevent duplicative funding between E-Rate, ECF, and other funding programs, including federal, state, Tribal, or local programs.

4. Recordkeeping

43. Our rules currently require schools and libraries to retain all documentation related to the application, receipt, and delivery of eligible services received through the E-Rate program for at least ten years after the last date of the delivery of services.[99] We propose to apply existing E-Rate recordkeeping requirements to funding provided for the off-premises use of Wi-Fi hotspots and services. We seek

[99] 47 CFR § 54.516(a).

comment on this proposal and whether additional recordkeeping requirements should be imposed for these purposes. For example, while both the E-Rate and ECF rules require applicants to maintain inventories of equipment purchased with the programs' support,[100] ECF rules require applicants to maintain specific information in their equipment and service inventories for each device or service purchased with ECF support and provided to an individual student, school staff member, or library patron.[101] For each hotspot purchased with ECF support, a school or library must maintain the device make/model, the device serial number, the name of the person to whom the device was provided, and the dates the device was loaned out and returned to the school or library.[102] Each ECF-funded service inventory must include the type of service provided, the broadband plan details (i.e., upload and download speeds and the monthly data cap), and the name of the person to whom the service was provided.[103] Should we adopt these inventory requirements in the E-Rate program for the off-premises use of Wi-Fi hotspots and services? For Wi-Fi hotspot lending programs, should the Commission consider library-specific inventory rules?

44. We seek comment on any other issues related to maintaining documentation to demonstrate compliance with E-Rate rules and certifications. Related to our unmet need inquiries above, should applicants be required to maintain records of students', school staff members', or library patrons' unmet needs, and if so, what types of records should be required (e.g., surveys)? If we require schools and libraries to retain new records regarding unmet needs containing PII, how can we address any privacy risks to students, families, school staff, and patrons? Related to our non-usage requirements inquiries above, we note that service providers would be required to retain and produce monthly usage reports for off-premises Wi-Fi hotspots and services funded through the E-Rate program under our current rules.[104] Should applicants be required to request and retain monthly usage reports from their service providers as well? Are there other recordkeeping requirements for the off-premises use of Wi-Fi hotspots and services that should be considered by the Commission?

D. Legal Authority and Other Outstanding Issues

45. Several stakeholders have argued that the Commission should, and has the authority to, clarify that the E-Rate program may support off-premises solutions like Wi-Fi hotspots for extending connectivity to students', school staff members', and patrons' homes.[105] For example, the Schools, Health & Libraries Broadband (SHLB) Coalition argued that section 254(h)(1)(B) of the Communications Act does not prohibit the provision of E-Rate support for off-premises services; rather, it simply requires a demonstration by E-Rate participants that the off-premises use of eligible equipment and services primarily serves an educational purpose.[106] Additionally, Apple posited that the Commission should

[100] *See* 47 CFR § 54.516(a) (requiring asset and inventory records of E-Rate-funded equipment to verify location of the assets); 47 CFR § 54.1715(a) (requiring equipment and service inventories of ECF-funded equipment).

[101] *See* 47 CFR § 54.1715(a).

[102] *See* 47 CFR § 54.1715(a)(1).

[103] *See* 47 CFR § 54.1715(a)(3).

[104] *See* 47 CFR § 54.516(a)(2).

[105] *See Remote Learning Public Notice*, 36 FCC Rcd at 1310-11 (seeking comment on SHLB's and Colorado's arguments that the Commission has authority under sections 254(c)(1), 254(h)(1)(B), and 254(h)(2)(A) of the Communications Act to clarify that E-Rate support may be used for off-premises use of equipment to support remote learning); *see also* Petition for Expedited Declaratory Ruling and Waivers filed by the Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 13-184, at 21 (filed Jan. 26, 2021), https://www.fcc.gov/ecfs/filing/101260036427898 (SHLB Petition); Petition for Waiver on behalf of the State of Colorado, WC Docket No. 13-184 (filed Sept. 2, 2020), at 5-6, https://www.fcc.gov/ecfs/filing/10902218280692 (Colorado Petition).

[106] *See* SHLB Petition at 8-9 (explaining that the Commission has broadly interpreted the "educational services" language of section 254(h)(1)(B) and therefore, could support remote learning during the COVID-19 pandemic

(continued….)

determine that equipment and services that support remote learning, like Wi-Fi hotspots, are eligible for E-Rate support because they "enhance . . . access to advanced telecommunications and information services" for schools and libraries under section 254(h)(2)(A) of the Communications Act.[107] Today, we tentatively conclude, consistent with the recent *Wi-Fi on School Buses Declaratory Ruling* and the Commission's past determinations regarding the off-campus use of certain E-Rate services,[108] that the Commission has authority under section 254 of the Communications Act to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and wireless Internet services that may be used off-premises. We seek comment on our tentative conclusion and the scope of the Commission's relevant legal authority, including the applicability of CIPA requirements.

46. First, we tentatively conclude that such Wi-Fi hotspot and wireless Internet services that may be used off-premises and are targeted for use by students and educators constitute services that are "provide[d] . . . to elementary schools, secondary schools, and libraries," and thus may be supported pursuant to section 254(h)(1)(B) of the Communications Act when used "for educational purposes."[109] We seek comment on this tentative conclusion, including that the reference to "elementary schools, secondary schools, and libraries" does not constrain us from supporting off-premises use of such services for educational purposes. We also seek comment on whether and under what circumstances the off-premises use of wireless services, and the Wi-Fi hotspots needed to deliver such services, by students, school staff, and library patrons at locations other than at a school or library constitutes an educational purpose under section 254(h)(1)(B) of the Communications Act.[110] Taking into consideration the lack of a reliable broadband connection at some students', school staff members', and library patrons' homes, and the increasing need for connectivity in today's technology-based educational environment that extends learning beyond a school or library building (e.g., for virtual classes, electronic research projects, homework assignments, virtual library resources, and job or government assistance applications), as well as our experience connecting students, school staff, and library patrons using ECF-funded Wi-Fi hotspots and services, we specifically propose that the off-premises use of mobile wireless services and the Wi-Fi hotspots needed to deliver such connectivity is 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. We seek comment on this proposal and invite commenters to provide specific examples of how Wi-Fi hotspots and services used off-premises serve an educational purpose. As discussed in greater detail above, we also seek comment on the necessary safeguards to ensure that this off-premises use is primarily for educational purposes, consistent with our rules and section 254(h)(1)(B) of the Communications Act.[111]

47. Next, we seek comment on whether supporting Wi-Fi hotspots and services is consistent

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because "there is no question that technological solutions [including, for example, personal hotspots with mobile broadband connections,] that schools and libraries are deploying or want to deploy to expand broadband accessibility for remote learning . . . will be used for educational purposes"). *See also* United States Cellular Corporation Comments at 4-5 (U.S. Cellular Comments) (asserting that section 254(h)(1)(B) of the Communications Act provides authority to support off-premises services that are used primarily for educational purposes and does not limit such access to the physical confines of a school or library); North Carolina Department of Information Technology's Broadband Infrastructure Office Comments at 2 (NCDIT Comments) (contending that the expansion of E-Rate to support the off-premises services provided for educational purposes is consistent with section 254(h)(1)(B)).

[107] Apple Inc. Comments at 3.

[108] *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Declaratory Ruling, FCC 23-84, at *6, para. 9 & n.32 (Oct. 25, 2023) (*Wi-Fi on School Buses Declaratory Ruling*); *see also supra* para. 10.

[109] 47 U.S.C. § 254(h)(1)(B).

[110] 47 U.S.C. § 254(h)(1)(B); *see also* 47 CFR § 54.500 (defining "educational purposes").

[111] *Supra* Part III.C.1.

with the Commission's precedent permitting certain off-premises uses of other E-Rate-funded services.[112] Although prior off-premises uses permitted by the Commission were limited to telecommunications services,[113] the Commission has expressly rejected the assertion that the support provided under section 254(h) of the Communications Act is limited to telecommunications services.[114] Specifically, in the *First Universal Service Order*, the Commission concluded that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services *and* additional services such as information services.[115] Furthermore, in the *Wi-Fi on School Buses Declaratory Ruling*, the Commission concluded that the provision of support for Wi-Fi on school buses fit squarely within its authority under section 254(h)(1)(B) to designate "'services that are within the definition of universal service under subsection (c)(3),' which itself authorizes the Commission to designate non-telecommunications services for support under E-Rate."[116] To the extent section 254(h)(1)(B) of the Communications Act encompasses additional services, such as information services, does the Commission have a basis to authorize support under that subsection for wireless Internet access services needed for the off-premises use of Wi-Fi hotspots?

48. We also seek comment on how the Commission should reconcile the authority provided under section 254(h)(1)(B) of the Communications Act to support certain "services" with the fact that Wi-Fi hotspots are physical devices needed to provide those services. In the *First Universal Service Order*, for example, the Commission specifically concluded that "we can include 'the information services' e.g., protocol conversion and information storage, that are needed to access the Internet, as well as *internal connections*, as 'additional services' that section 254(h)(1)(B), through section 254(c)(3), authorizes us to support."[117] Consistent with that precedent, we tentatively conclude that the Commission has authority under section 254(h)(1)(B) through section 254(c)(3) of the Communications Act to support the Wi-Fi hotspot devices that are needed for the off-premises use of the broadband services.[118] We invite comment on our tentative conclusion.

49. Further, we tentatively conclude that providing E-Rate support for the off-premises use of Wi-Fi hotspots and services "enhance[s], to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries" consistent with section 254(h)(2)(A) of the Communications Act.[119] Funding the off-premises use of Wi-Fi hotspots and services will help provide the broadband connectivity necessary to support the ability of schools and libraries to facilitate remote

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[112] *See supra* para. 10.

[113] *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19 n.28.

[114] *See Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9010-11, para. 439 (1997) (*First Universal Service Order*). Note that this was upheld in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 443-44 (5th Cir. 1999).

[115] In the *First Universal Service Order*, the Commission explained: "[T]he term used in section 254(h)(1)(B), 'any of its *services* that are within the definition of universal service under subsection (c)(3),' cannot be read as a generic reference to the heading of that section. Rather, the varying use of the terms 'telecommunications services' and 'services' in sections 254(h)(1)(A) and 254(h)(1)(B) suggests that the terms were used consciously to signify different *meanings*. In addition, the mandate in section 254(h)(2)(A) to enhance access to "advanced telecommunications and information services," particularly when read in conjunction with the legislative history as discussed below, suggests that Congress did not intend to limit the support provided under section 254(h) to telecommunications services.'" *Id.*

[116] *See Wi-Fi on School Buses Declaratory Ruling* at *6, para. 9 & n.32.

[117] *Id*. (emphasis added).

[118] *Id. See also First Universal Service Order*, 12 FCC Rcd at 9010-11, para. 439 (holding that equipment such as a router is eligible for support if "necessary to transport information all the way to individual classrooms").

[119] *See* 47 U.S.C. § 254(h)(2)(A).

learning for students, school staff, and library patrons who lack access when they are away from school or library premises and will allow schools and libraries to provide digital educational resources at anytime from anywhere. Therefore, we believe the action proposed today will enhance schools' and libraries' access to advanced telecommunications and information services under section 254(h)(2)(A) of the Communications Act. We seek comment on this interpretation.

50. We also tentatively conclude that this proposal is consistent with the Commission's exercise of its authority under section 254(h)(2)(A) of the Communications Act to establish the Connected Care Pilot Program and in its recent Declaratory Ruling clarifying that use of Wi-Fi services on school buses is an educational purpose and, therefore, can be eligible for E-Rate support. In establishing the Connected Care Pilot Program, the Commission found that providing support for patients' home broadband connections expanded health care providers' digital footprints for purposes of providing connected care services and allowed health care providers to serve more patients through the pilot program, thus enhancing eligible health care providers' access to advanced telecommunications and information services.[120] Similarly, in the recent *Wi-Fi on School Buses Declaratory Ruling*, the Commission found that "the use of Wi-Fi on school buses to aid the many students who lack robust internet access at home similarly enhances eligible schools' and libraries' access to advanced telecommunications and information services."[121] Would funding Wi-Fi hotspots and services to provide off-premises connectivity to students, school staff, and library patrons who lack access similarly enhance eligible schools' and libraries' access to advanced telecommunications and information services? We seek comment on our tentative conclusion.

51. *Off-Premises Limitations.* In tentatively concluding that providing E-Rate support for off-premises use of Wi-Fi hotspots and services is consistent with section 254(h)(2)(A) of the Communications Act, we also seek comment on how today's modern educational environment has evolved for the purposes of enhancing affordable access to 21st Century broadband services capable of supporting today's digital learning.[122] The Commission has long recognized the evolving nature of educational technology, noting in the 2010 National Broadband Plan that "[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries."[123] Over a decade later, and in the wake of nationwide school and library shutdowns, the need for connectivity for remote learning has become only more pronounced. There is little doubt that advances in technology have enabled students to continue to learn well after the school bell rings, including from their homes or other locations like, for example, youth centers.[124] Today's learning settings have evolved, and learning now occurs outside of the school or library building, increasing the need to have broadband connections for educational success.[125] As such, we seek comment on our tentative conclusion that the reference in section 254(h)(2)(A) of the Communications Act to "elementary and secondary school classrooms . . . and libraries" extends to student, school staff, and library patron homes, given that today's educational environment clearly

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[120] *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket No. 18-213, Report and Order, 35 FCC Rcd 3366, 3417-18, paras. 87-88 (2020) (*Connected Care Report and Order*).

[121] *See Wi-Fi on School Buses Declaratory Ruling* at *6, para. 9, n.32.

[122] *See, e.g.*, Amazon.com, Inc. Comments at 5 (Amazon Comments) ("Because remote learning enables a 'classroom' to be virtual, providing support for virtual classrooms would be consistent with the Section 254(h)(6) principle and also the provisions in Section 254(h)(2)(A).").

[123] National Broadband Plan at 254.

[124] *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18779, para. 42.

[125] *See* Common Sense 2022 Report at 4-5 (stating that Internet access enables schools to accommodate students during emergencies, gives students access to online learning resources, permits teachers to use modern educational technology tools, allows parents to better engage with their child's schools, and provides access to beneficial government and employment resources).

extends outside of the physical school or library building. Does the modern student, school staff member, or library patron require Internet access outside of school or library premises to achieve their educational goals? Is there data showing the extent to which certain educational activities take place in both the physical on-premises classroom and other off-premises locations? What about the extent to which students are required to do homework or engage in remote learning beyond school or library premises? We invite commenters to share their experiences with the increasingly virtual nature of the modern educational environment and how evolving technologies have changed education.

52. As noted above, Congress did not define "classrooms" for the purposes of section 254(h)(2)(A) of the Communications Act.[126] In the *First Universal Service Order*, the Commission concluded that the statutory reference to "classrooms" demonstrated that Congress intended to fund service to each individual classroom but did not define the term.[127] More recently, the Commission determined that "in today's world, teaching and learning often occur outside of brick and mortar school buildings and thus 'classroom' may be interpreted more broadly," which may include, for example, school buses.[128] We seek comment on whether the Commission should adopt a definition of "classrooms" for the purposes of the E-Rate program and what would be an appropriate definition to adequately cover the modern learning environment. Do homes and other off-premises locations (i.e., community centers, after-school centers, etc.) function as "virtual classrooms" within the meaning of "classrooms" as used in section 254(h)(2)(A) of the Communications Act, particularly after the COVID-19 pandemic? Furthermore, in establishing universal service support for schools and libraries, Congress explained that the intent of the support authorized under subsection (h)(2) is to "enhance the availability of advanced telecommunications and information services to public institutional telecommunications users" and to ensure "Americans everywhere" have access "via schools and libraries."[129] We seek comment on whether interpreting "classroom" to mean an in-person, on-premises setting would bar any intended Americans from benefiting from supported advanced telecommunications and information services. Alternatively, would a broader interpretation of "classrooms" to include locations other than the school or library and that focuses on the intended beneficiaries' (i.e., "Americans everywhere") ability to access educational services, rather than the exact location of the services, be consistent with Congress's intent? Relatedly, if we adopt a broader interpretation of "classrooms", is there a definition that strikes a balance between ensuring access to educational services in this evolving learning environment while also establishing boundaries to ensure that the off-premises use of E-Rate-supported services remains the exception to the general presumption that activities that occur on library or school property serve an educational purpose? We emphasize that any determination of support for off-premises use of E-Rate-supported services will still be subject to the relevant statutory requirements discussed herein, including that the Commission first finds that the off-premises provision of such services serves an educational purpose pursuant to section 254(h)(1)(B), and enhances, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services under section 254(h)(2)(A) of the Communications Act. We seek comment on whether these limitations are sufficient to ensure that E-Rate funding is being used for its intended purposes.

53. *The Children's Internet Protection Act (CIPA).* We seek comment on the applicability of the Children's Internet Protection Act (CIPA) when connecting to Internet made available by E-Rate-funded Wi-Fi hotspots and services. Congress enacted CIPA to protect children from exposure to harmful

[126] *See* 47 U.S.C. § 254(h)(2)(A).

[127] *See First Universal Service Order*, 12 FCC Rcd at 9018, para. 455 ("[W]e conclude that Congress contemplated extending discounted service all the way to the individual classrooms of a school, not merely to a single computer lab in each school or merely to the schoolhouse door.").

[128] *See Wi-Fi on School Buses Declaratory Ruling* at *6, para. 9, n.32 (finding that the use of Wi-Fi on school buses "satisfies the 'classroom' test in section 254(h)(2)(A)").

[129] S. Rep. No. 104-230, at 132-33 (1996) (Joint Explanatory Statement), https://www.congress.gov/104/crpt/srpt230/CRPT-104srpt230.pdf.

material while accessing the Internet from a school or library.[130] In enacting CIPA, Congress was particularly concerned with protecting children from exposure to material that was obscene, child pornography, or otherwise inappropriate for minors (i.e., harmful content).[131] CIPA prohibits certain schools and libraries from receiving funding under section 254(h)(1)(B) of the Communications Act for Internet access, Internet service, or internal connections, unless they comply with specific Internet safety requirements.[132] Specifically, CIPA applies to schools and libraries "having computers with Internet access,"[133] and requires each such school or library to certify that it is enforcing a policy of Internet safety that includes the operation of a technology protection measure "with respect to any of its computers with Internet access."[134] Schools, but not libraries, must also monitor the online activities of minors and provide education about appropriate online behavior, including warnings against cyberbullying.[135] Today, we tentatively conclude that the requirements of CIPA would apply to 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, and seek comment on this conclusion.

54. In the ECF program, the Commission found that the purchase of hotspots would qualify as the purchase of network equipment for Internet access, Internet service, or internal connections, and would trigger CIPA compliance for the purchasing school or library only if used with any school- or library-owned computers.[136] Similarly, other ECF-funded recurring Internet access or Internet services (if

[130] *See* S. Rep. No. 106-141, at 1 (1999), https://www.congress.gov/106/crpt/srpt141/CRPT-106srpt141.pdf ("The purpose of the bill is to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the Internet from a school or library receiving Federal Universal Service assistance for provisions of Internet access, Internet service, or internal connection.").

[131] *Id.*

[132] Congress passed CIPA as part of a major spending bill in December 2000, and the President signed the bill into law on December 21, 2000. Children's Internet Protection Act, H.R. 4577, Pub. L. No. 106-554, 106th Cong., tit. XVII, § 1701-1703, 1711-1712, 1721 (2000) (enacted), available at https://www.congress.gov/106/plaws/publ554/PLAW-106publ554.pdf. CIPA is codified at section 254(h)(5)-(6), and section 254(l) of the Communications Act of 1934, as amended. 47 U.S.C. § 254(h)(5)-(6), (l). CIPA requires each covered school and library to certify that the school or library is: (1) "enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers" to visual depictions that are (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) "enforcing the operation of such technology protection measure during any use of such computers" by minors and adults. 47 U.S.C. § 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (h)(6)(B)(i)(ii) and (C)(i)(ii), and (l); 47 CFR § 54.520(c)(1)(i), (c)(2)(i); *see also Federal-State Joint Board on Universal Service*; *Children's Internet Protection Act,* CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8184, n.5 (2001); *Schools and Libraries Universal Service Support Mechanism*, *A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 26 FCC Rcd 11819, 11829, para. 23 (2011) (*2011 CIPA Order*).

[133] 47 U.S.C. § 254(h)(5)(A)(i), (h)(6)(A)(i).

[134] 47 U.S.C. § 254(h)(5)(B)(i) and (C)(i), (h)(6)(B)(i) and (C)(i).

[135] *2011 CIPA Order*, 26 FCC Rcd at 11821, para. 5.

[136] *See Establishing the Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8746-49, paras. 108-14 (2021) (*Emergency Connectivity Fund Report and Orde*r) (discussing the applicability of CIPA and rejecting the suggestion that CIPA applicability is limited to applicant-owned computers within a school or library building); *see also* FCC, *Emergency Connectivity Fund FAQs: FAQ 10.1*, https://www.fcc.gov/emergency-connectivity-fund-faqs (last visited Oct. 31, 2023) ("CIPA requirements apply only to school- or library-owned computers (e.g., tablet computers and laptop computers) when the school or library receives (1) ECF or E-Rate support for internet access, internet services or network equipment for internet access or internet service that will be used by any school- or library-owned computers; or (2) E-Rate support for internal connections or network equipment for internal connections that will be used by any school- or library-owned

(continued….)

any) used off-premises triggers CIPA compliance if used with any school- or library-owned computer. On the other hand, the Commission determined for the ECF program that CIPA does not apply to the use of any third-party-owned device, even if that device is connecting to a school's or library's ECF-funded hotspot or other ECF-funded Internet access or Internet service.[137] We seek comment on whether this is the appropriate interpretation of CIPA with regard to E-Rate-funded Wi-Fi hotspots and services used off-premises as discussed further below.

55. At the time of CIPA's enactment, schools and libraries primarily owned one or two stationary computer terminals that were used solely on-premises.[138] Today, it is commonplace for students, school staff, and library patrons to carry Internet-enabled devices onto school or library premises and for schools and libraries to allow third-party-owned devices access to their Internet and broadband networks.[139] In view of the changes in technology and the wider range of Internet-enabled devices in circulation today, we seek comment on whether our current interpretation of CIPA's applicability to computers owned by schools or libraries that receive E-Rate-funded Internet service, Internet access, or internal connections achieves CIPA's intended purpose of protecting minors from exposure to harmful content while accessing Internet services provided by a school or library. Are students or library patrons able to access content that is obscene, child pornography, or harmful to minors through E-Rate-funded Internet or internal connections when they use their own (i.e., third-party) computers or devices? What steps can the Commission take to ensure that E-Rate funding is not being used to facilitate minors' access to harmful content, including when using third-party-owned devices to connect to E-Rate-funded Internet access, Internet service, or internal connections? We also understand that many mobile broadband service providers include network-level filtering in their service offerings and that many schools and libraries already deploy network-level technology protection measures.[140] We seek comment on whether we can and should require or encourage filtering and other technology protection measures to be implemented at the network-level to ensure that minors are not accessing harmful content through E-Rate-funded Internet access, Internet service, or internal connections. We invite input from commenters on their experiences implementing and using network-level protections to protect minors from accessing harmful content.

56. We also invite comment on the scope of the Commission's authority to impose requirements on third-party-owned devices pursuant to CIPA. For example, we seek comment on whether the requirement in section 254(h)(5)(B)(i) of the Communications Act that requires schools to

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computers . . . [W]hile CIPA does not impose any requirements on a Wi-Fi hotspot device itself, the purchase of a Wi-Fi hotspot through ECF would qualify as the purchase of network equipment for internet access, internet service, or internal connections, and would trigger CIPA compliance for the purchasing school or library only if it is used by any school- or library-owned computers.").

[137] *Id.*

[138] *See* AGiRepair, *The Evolution of Technology in the Classroom* (Mar. 15, 2021), https://agirepair.com/evolution-of-technology-in-the-classroom/ (explaining that by 1994, most schools had at least one PC in the classroom).

[139] Gary Ackerman, *A Brief History of Computers in Schools* (Nov. 11, 2019), https://hackscience.education/2019/11/11/a-brief-history-of-computers-in-schools/ ("As we approach the third decade of the 21st century, students in the United States, and other industrialized nations, attend schools in which computers abound. The machines may be desktop, laptop, tablet, or handheld models that are owned by and maintained by the school, or the devices may be owned by students and brought to school for educational (or distracting) purposes."). *See also* ALA Policy Perspectives, Keeping Communities Connected—Library Broadband Services During the COVID-19 Pandemic at 2 (2022), https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/broadband/Keeping_Communities_Connected_030722.pdf (observing that "[t]he country's nearly 17,000 public libraries offer no-fee internet access, Wi-Fi, and devices, such as computers and tablets").

[140] *See, e.g.*, State of South Carolina Comments, WC Docket No. 21-93, at 9, 11 (rec. Apr. 5, 2021) (reporting that many school districts filter at the network-level); Cradlepoint Reply, WC Docket No. 21-93, at 6 (rec. Apr. 23, 2021) (explaining that filtering mechanisms generally take place at the network-level). *See also* Kajeet Comments at 3-4 (stating that Kajeet, Verizon, and AT&T offer filtering at the network-level).

certify that their Internet safety policy "includes monitoring the online activities of minors" could be construed to extend to third-party-owned devices, notwithstanding other language in CIPA that suggests that its applicability is limited to school- or library-owned computers.[141] Should monitoring the online activities of minors requirement apply to third-party-owned devices that use or access E-Rate-funded Internet access, Internet service, or internal connections? Is that interpretation consistent with Congress's intent "to protect America's children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the Internet from a school or library receiving Federal Universal Service assistance for provisions of Internet access, Internet service, or internal connection"?[142] We seek information about current practices that would assist the Commission in formulating policies that reflect the importance of CIPA protections in the context of more modern uses of the Internet services supported by E-Rate.

57. We also seek comment on how CIPA's requirements are being met remotely and whether the Commission's existing CIPA-related rules adequately cover off-premises use. What measures are ECF recipients taking to comply with CIPA when providing ECF-funded hotspots for use on school- or library-owned computers? How are libraries balancing CIPA requirements and the needs of library patrons who rely on E-Rate-funded Internet access or internal connections for remote learning and other E-Rate approved uses (e.g., job searching)? We seek comment on these questions and whether there may be other circumstances we have not considered related to the application of CIPA to the proposals in this notice.

58. Finally, we acknowledge there are privacy concerns related to certain CIPA requirements, particularly as it relates to library patrons' data that is often subject to various federal and/or state privacy laws. We seek comment on these privacy-related issues and encourage commenters to be specific about how CIPA can be applied to ensure minors who are using E-Rate-funded Wi-Fi hotspots and services are protected from harmful online content, as intended by Congress. We also seek comment on any privacy-related implications if network-level filtering or other technology protection measures are required for third-party-owned devices that access E-Rate funded Internet or internal connections.

E. Promoting Digital Equity and Inclusion

59. The Commission, as part of its continuing effort to advance digital equity for all,[143] including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations[144] and benefits (if any) that may be

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[141] *See* 47 U.S.C. § 254(h)(5)(A)(i) (providing that "an elementary or secondary school *having* computers with Internet access may not receive services . . . unless the school . . . submits to the Commission [a] certification[]" (emphasis added)); *id.* § 254(h)(6)(A)(i) (similar); *see also* § 254(h)(5)(B)(i) (providing that a school must enforce "a policy of Internet safety that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of *its* computers with Internet access" (emphasis added)).

[142] S. Rep. No. 106-141, at 1, at https://www.congress.gov/106/crpt/srpt141/CRPT-106srpt141.pdf.

[143] Section 1 of the Communications Act of 1934, as amended, provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

[144] The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009,

(continued….)

associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

60. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),[145] requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[146] Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

61. *Paperwork Reduction Act.* This document contains possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

62. *Providing Accountability Through Transparency Act*. Consistent with the Providing Accountability Through Transparency Act, Public Law 118-9, a summary of this document will be available on https://www.fcc.gov/proposed-rulemakings.

63. *Ex Parte Rules – Permit but Disclose*. Pursuant to section 1.1200(a) of the Commission's rules,[147] this Notice of Proposed Rulemaking shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[148] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment

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Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

[145] *See* 5 U.S.C. § 603.

[146] 5 U.S.C. § 605(b).

[147] 47 CFR § 1.1200(a).

[148] 47 CFR §§ 1.1200 *et seq*.

filing system available for that proceeding, and must be filed in their native format (e.g.,.doc,.xml,.ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

64. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to WC Docket No. 21-31.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): https://www.fcc.gov/ecfs.[149]
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, N.E., Washington DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[150]

65. *People with Disabilities*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

66. *Availability of Documents*. Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.[151]

67. *Further Information.* For further information, contact Molly O'Conor of the Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-0578 or Molly.OConor@fcc.gov.

V. ORDERING CLAUSES

68. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking IS ADOPTED.

69. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed

[149] *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

[150] *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (Mar. 19, 2020), https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.

[151] Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Proposed Rules

For the reasons discussed in the document above, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.504 by adding paragraphs (a)(1)(x) through (xiii), and (f)(6) to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(x) If requesting support for Wi-Fi hotspots and service for use off-premises, the school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack Internet access service sufficient to engage in remote learning.

(xi) If requesting support for Wi-Fi hotspots and service for use off-premises, the library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement (physically or electronically) that the library patron would otherwise lack access but for the use of equipment and/or service provided by the library.

(xii) If requesting support for Wi-Fi hotspots and service for use off-premises, the school, library, or consortium is not seeking support and reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other federal, state, Tribal, or local funding, or providing duplicative equipment and/or services to a student, school staff member, or library patron.

(xiii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.516(a)(3).

* * * * *

(f) * * *

(6) If requesting reimbursement for Wi-Fi hotspots and service for use off-premises, the service provider will provide the school, library, or consortium with notice if a student, school staff member, or library patron has not used the equipment and/or service within the past [30] days and will not willfully or knowingly request reimbursement or invoice the school, library, or consortium for eligible equipment and/or services that were not used. The service provider shall provide the school, library, or consortium with monthly usage data upon request.

3. Amend § 54.516 by revising paragraph (a)(1), adding paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 54.516 Auditing and inspections.

(a) *Recordkeeping requirements*.

(1) Schools, libraries, and consortia. Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of

supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Subject to paragraph (a)(3) of this section, schools, libraries, and consortia shall maintain asset and service inventory records for a period of 10 years from the last date of service or delivery of equipment.

* * * * *

(3) Asset and service inventory requirements. Schools, libraries, and consortia shall keep asset and service inventories as follows:

(i) For equipment purchased as components of supported category two services, the asset inventory must be sufficient to verify the actual location of such equipment.

(ii) For each Wi-Fi hotspot provided to an individual student, school staff member, or library patron, the asset inventory must identify:

(A) The device or equipment make/model;

(B) The device or equipment serial number;

(C) The full name of the person to whom the device or other piece of equipment was provided; and

(D) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(iii) For mobile wireless services provided through Wi-Fi hotspots to individual students, school staff, or library patrons, the service inventory must contain:

(A) The type of service provided (i.e., mobile wireless);

(B) The service plan details, including upload and download speeds and any monthly data cap; and

(C) The full name of the person(s) to whom the service was provided.

(b) Production of Records. Schools, libraries, consortia, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state, or federal agency with jurisdiction over the entity. Where necessary for compliance with Federal or state privacy laws, E-Rate participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identifiable information from a student who has reach age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

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APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Addressing the Homework Gap through the E-Rate Program, Notice of Proposed Rulemaking (*Notice*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *Notice.* The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.[3]

A. Need for, and Objectives of, the Proposed Rules

2. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. The primary objectives of the *Notice* are to address the remote learning needs of today's students, school staff, and library patrons and to help close the country's digital and educational divide (sometimes referred to as the Homework Gap), particularly once the Emergency Connectivity Fund (ECF) program funding for off-premises broadband connectivity ends. To achieve these objectives, the *Notice* proposes to make the off-premises use of Wi-Fi hotspots and services by students, school staff, and library patrons who would otherwise be unable to engage in remote learning eligible for E-Rate support.

3. The Commission seeks comments on our proposal to address the Homework Gap through the E-Rate program. Based on our experience gained through the ECF program, our prior record, and other data sources, we believe that there are significant benefits and need for the proposed rules in continuing to fund the off-premises use of Wi-Fi hotspots and services for students, school staff, and library patrons who would otherwise be unable to fully engage in remote learning. The *Notice* requests comments on multiple ways to implement funding for the off-premises use of Wi-Fi hotspots and services within the existing E-Rate program processes, including eligibility limits and how to prioritize requests for off-premises Wi-Fi hotspots and services to help balance service needs with limited E-Rate funding. It also seeks comments on how to ensure cost-effective purchases and the potential challenges associated with conducting competitive bidding for off-premises Wi-Fi hotspots and services. Additionally, the *Notice* seeks comments on what actions are necessary to safeguard these critical funds from potential waste, fraud, or abuse, for example, how to ensure the off-premises Wi-Fi hotspots and services are being used by the intended recipient and serve an educational purpose. We also seek comment on modifying the recordkeeping requirements to require applicants to maintain equipment and service inventories for off-premises Wi-Fi hotspots and services purchased with E-Rate support. Furthermore, the *Notice* seeks comments on how to protect minor online users from harmful content.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201-202, 254, 303(r), and 403.

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[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. § 603(a).

[3] *Id.*

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.[8] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[9] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.[10]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[11] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[12] Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[13]

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[4] *See id* § 603(b)(3).

[5] *See id* § 601(6).

[6] *See id* § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

[7] Small Business Act, 15 U.S.C. § 632.

[8] *See* 5 U.S.C. § 601(3)-(6).

[9] *See* SBA, Office of Advocacy, "What's New With Small Business?,"

https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf. (Mar. 2023)

[10] *Id*.

[11] *See* 5 U.S.C. § 601(4).

[12] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), "Who must file,"

https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

[13] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-

(continued….)

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[14] U.S. Census Bureau data from the 2017 Census of Governments[15] indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[16] Of this number, there were 36,931 general purpose governments (county,[17] municipal, and town or township[18]) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts[19] with enrollment populations of less than 50,000.[20] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[21]

1. Schools and Libraries

9. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.[22] This industry comprises establishments primarily engaged in

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exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to $50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

[14] *See* 5 U.S.C. § 601(5).

[15] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7". *See also* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[16] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[17] *See id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[18] *See id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[19] *See id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[20] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[21] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

[22] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*611110 Elementary and Secondary Schools,*" https://www.census.gov/naics/?input=611110&year=2017&details=611110.

furnishing academic courses and associated course work that comprise a basic preparatory education.[23] A basic preparatory education ordinarily constitutes kindergarten through 12th grade.[24] The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of $17.5 million or less as small.[25] The Commission does not have a size standard for small entities specifically applicable to schools. The Commission's definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

10. Under the E-Rate program, an elementary school is generally defined as "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[26] A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12.[27] For-profit schools, and schools with endowments in excess of $50,000,000, are not eligible to receive discounts under the E-Rate program.[28] In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.[29] While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

11. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.[30] This industry comprises establishments primarily engaged in providing library or archive services.[31] These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their users.[32] These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.[33] All or portions of these collections may be accessible electronically.[34] The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of $18.5 million or less as small.[35] For this industry, U.S.

[23] *Id*.

[24] *Id*.

[25] *See* 13 CFR § 121.201, NAICS Code 611110.

[26] 47 CFR § 54.500.

[27] *Id.*

[28] 47 CFR § 54.501.

[29] *See* Universal Service Administrative Company, Annual Report, at 7, https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf.

[30] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*519120 Libraries and Archives,"* https://www.census.gov/naics/?input=519120&year=2017&details=519120.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *See* 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.[36] Of this number, 1,228 firms had revenues of less than $10 million.[37] Based on this data, the majority of firms in this industry can be considered small.

12. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, a library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) a Tribal library, (4) an academic library, (5) a research library [] and (6) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."[38] For-profit libraries are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.[39] In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.[40] While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

2. Telecommunications Service Providers

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.[41] Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband Internet services.[42] By exception, establishments providing satellite television distribution services using facilities

[36] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 519120, https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[37] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/*revenue* in the individual category for less than $100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[38] 47 CFR § 54.500.

[39] 47 CFR § 54.501.

[40] *See* Universal Service Administrative Company, Annual Report, at 7, https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf.

[41] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[42] *Id.*

and infrastructure that they operate are included in this industry.[43] Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.[44]

14. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.[45] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[46] Of this number, 2,964 firms operated with fewer than 250 employees.[47] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.[48] Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.[49] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

15. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[50] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[51] Providers of Internet services (e.g. dial-up ISPs) or VoIP services, via client-supplied telecommunications connections are also included in this industry.[52] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[53] U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire

[43] *Id.*

[44] Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

[45] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[46] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[47] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[48] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022),

https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf. https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf

[49] *Id.*

[50] *See* U.S. Census Bureau, *2017 NAICS Definition*, "*517919 All Other Telecommunications,*" https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[51] *Id.*

[52] *Id.*

[53] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

year.[54] Of those firms, 1,039 had revenue of less than $25 million.[55] Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

16. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.[56] Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless Internet access, and wireless video services.[57] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[58] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[59] Of that number, 2,837 firms employed fewer than 250 employees.[60] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.[61] Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.[62] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[63] The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.[64] For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the

[54] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[55] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[56] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[57] *Id.*

[58] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[59] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[60] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[61] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[62] *Id.*

[63] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[64] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

entire year.[65] Of this number, 2,837 firms employed fewer than 250 employees.[66] Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.[67] Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.[68] Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

18. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.[69] Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[70] Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.[71] The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.[72] U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.[73] Of this number, 2,964 firms operated with fewer than 250 employees.[74]

19. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.[75] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light

[65] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[66] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[67] Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf.

[68] *Id.*

[69] Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

[70] *See* 47 CFR § 1.7001(a)(1).

[71] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[72] *See* 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

[73] *See* U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517311, https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[74] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[75] *See IAS Status 2018,* Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

of the general data on fixed technology service providers in the Commission's *2022 Communications Marketplace Report*,[76] we believe that the majority of wireline Internet access service providers can be considered small entities.

20. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.[77] Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as "[a] company that provides end-users with wireless access to the Internet[.]"[78] Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.[79] Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).[80] The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.[81] U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.[82] Of that number, 2,837 firms employed fewer than 250 employees.[83]

21. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.[84] The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2022 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,[85] as well as on terrestrial fixed wireless broadband providers in general,[86] we believe that the majority of wireless Internet access service providers can be considered small entities.

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[76] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

[77] Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

[78] Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 *(IAS Status 2018)*, Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports.

[79] *See* 47 CFR § 1.7001(a)(1).

[80] *See* U.S. Census Bureau, *2017 NAICS Definition, "517312 Wireless Telecommunications Carriers (except Satellite),"* https://www.census.gov/naics/?input=517312&year=2017&details=517312.

[81] *See* 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

[82] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 517312, https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[83] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[84] *See IAS Status 2018,* Fig. 30.

[85] *See Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 27, paras. 64-68. (2022) (*2022 Communications Marketplace Report*).

[86] *Id.* at 8, para. 22.

22. Internet Service Providers (Non-Broadband). Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.[87] The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small.[88] For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.[89] Of those firms, 1,039 had revenue of less than $25 million.[90] Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

23. *Vendors of Infrastructure Development or Network Buildout.* Neither the Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are "Radio and Television Broadcasting and Wireless Communications Equipment"[91] with a SBA small business size standard of 1,250 employees or less,[92] and "Other Communications Equipment Manufacturing"[93] with a SBA small business size standard of 750 employees or less."[94] U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.[95] Of this number, 624 firms had fewer than 250 employees.[96] For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.[97] Of that number, 310

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[87] *See* U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[88] *See* 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

[89] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false.

[90] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[91] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[92] *See* 13 CFR § 121.201, NAICS Code 334220.

[93] *See* U.S. Census Bureau, *2017 NAICS Definition, "334290 Other Communications Equipment Manufacturing,"* https://www.census.gov/naics/?input=334290&year=2017&details=334290.

[94] *See* 13 CFR § 121.201, NAICS Code 334290.

[95] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[96] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[97] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334290, https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

firms operated with fewer than 250 employees.[98] Based on this data, we conclude that the majority of firms in this industry are small.

24. *Telephone Apparatus Manufacturing*. This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.[99] These products may be stand-alone or board-level components of a larger system.[100] Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.[101] The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.[102] U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.[103] Of this number, 177 firms operated with fewer than 250 employees.[104] Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

25. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing*. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[105] Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.[106] The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.[107] U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.[108] Of this number, 624 firms had fewer than 250 employees.[109] Thus, under the SBA size standard, the majority of firms in this industry can be considered

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[98] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, *see* https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

[99] *See* U.S. Census Bureau, *2017 NAICS Definition, "334210 Telephone Apparatus Manufacturing,"* https://www.census.gov/naics/?input=334210&year=2017&details=334210.

[100] *Id.*

[101] *Id.*

[102] *See* 13 CFR § 121.201, NAICS Code 334210.

[103] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Selected Sectors: Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334210, https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false.

[104] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[105] *See* U.S. Census Bureau, *2017 NAICS Definition, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,*" https://www.census.gov/naics/?input=334220&year=2017&details=334220.

[106] *Id*.

[107] *See* 13 CFR § 121.201, NAICS Code 334220.

[108] *See* U.S. Census Bureau, *2017 Economic Census of the United States*, *Employment Size of Firms for the U.S.: 2017,* Table ID: EC1700SIZEEMPFIRM, NAICS Code 334220, https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false. https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[109] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

26. The potential rule changes discussed in the *Notice* if adopted, could impose some new or modified reporting, recordkeeping, or other compliance requirements on small entities. The *Notice* proposes to apply existing E-Rate recordkeeping requirements to funding provided for the off-premises use of Wi-Fi hotspots and services and seeks comment on whether additional recordkeeping requirements should be imposed, such as the requirement in the ECF program to maintain detailed equipment and service inventories for each device or service purchased with ECF support and provided to an individual student, school staff member, or library patron. The proposed actions would require schools and libraries to maintain inventory records of the Wi-Fi hotspot device make/model, the device serial number, the name of the person to whom the device was provided, and the dates the device was loaned out and returned to the school or library; and for services, the type of service provided, the broadband plan details (i.e., upload and download speeds and the monthly data cap), and the name of the person to whom the service was provided. To ensure the equipment and services are being used, the Notice also seeks comment on whether applicants and/or service providers should be required to retain and produce monthly usage reports for Wi-Fi hotspots and services funded through the E-Rate program.

27. Additionally, regarding our proposal to prioritize for students, school staff, and library patrons that lack Internet access outside of school or library premises, the *Notice* asks whether applicants should be required to determine and maintain records of students', school staff members', or library patrons' unmet need by, for example, conducting surveys. Although, new recordkeeping requirements may be implemented if the proposals in the *Notice* are adopted, most of the recordkeeping would be similar to what most applicants, including small entities, are already familiar with and currently undertaking for the E-Rate and ECF programs.

28. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the *Notice* seeks comment will require small entities to hire professionals to comply. The information we receive in comments, including, where requested, cost information, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *Notice*.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[110]

30. In the *Notice*, the Commission takes steps to minimize the economic impact on small entities of the proposed changes to the E-Rate program on which it seeks comment. Absent the proposed action, schools and libraries receiving ECF program support may no longer be able to provide the broadband connectivity needed to engage in remote learning to their students, school staff, and library patrons once the program ends. The *Notice* therefore proposes to make the off-premises use of Wi-Fi hotspots and services eligible for E-Rate funding to support remote learning for students, school staff, and library patrons with unmet needs, which, if adopted, will reduce the burden on applicants, including small

[110] 5 U.S.C. § 603(c)(1) – (c)(4).

entities, who seek to provide students, school staff, and library patrons the off-premise broadband connectivity needed for educational success. This proposal will also lessen the administrative requirements of cost-allocating certain portions of services used off-premises from applicants' funding requests. The *Notice* also seeks comment relevant to small entities, including entities in remote areas, by asking how to conduct competitive bidding for off-premises wireless services delivered to multiple locations.

31. Additionally, the *Notice* invites commenters to suggest other measures or alternatives the Commission should consider to best implement E-Rate funding for Wi-Fi hotspots and Internet services for off-premises use. This may result in proposals from small entities that lessen the economic impact of the proposed changes to the E-Rate program, and increase their participation. The Commission expects the information received in the comments to allow it to more fully consider ways to minimize the economic impact on small entities and explore additional alternatives to improve and simplify opportunities for small entities to participate in the E-Rate program.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

32. None.

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Addressing the Homework Gap through the E-Rate Program,* WC Docket No. 21-31, Notice of Proposed Rulemaking (November 1, 2023).

Last week, I spent time at the Brooklyn Public Library. It was bustling. This is a library with more than 850,000 active cardholders. It is a center for physical books, digital materials, access to information and access to culture. In fact, right now the library has a one-of-a-kind exhibit celebrating Brooklyn native Jay-Z and the 50th anniversary of hip hop. It was a treat to see a library so modern and thoughtful about serving its community.

Across the board, I think keeping our institutions modern is important. That is why we are taking a fresh look at the program we have to support libraries, known as E-Rate.

For more than two decades, E-Rate has been a quiet powerhouse. It has provided schools and libraries across the country—including the Brooklyn Public Library—with support for communications. As a result over the years it has helped millions of students and library patrons get online with access to high-speed internet service.

During the pandemic we saw the power of this kind of community-driven effort to help close the digital divide. Many schools and libraries found ways to build on their efforts to support internet access by loaning out Wi-Fi hotspots. Some used this agency's Emergency Connectivity Fund to do so. But this fund was a one-time effort that expires next year. However, it demonstrated what a modern library and modern school library can do to help a community learn without limits and keep connected.

Here we seek to build on that learning from the pandemic and modernize the E-Rate program. Specifically, we start a rulemaking to consider how both libraries and school libraries can loan out Wi-Fi hotspots across the country and support high-speed internet access for patrons and students in rural America, urban America, and everything in between. I believe we can make it a baseline that every library and school library has these hotspots for loan—and we can use E-Rate to do it.

DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking (November 1, 2023).

The FCC's USF program faces a broader set of challenges today than at nearly any other point in its history. The contribution factor has skyrocketed above 30%. The USAC process is overdue for reform. And parties are challenging the lawfulness of the entire USF program in appellate courts across the country. The FCC does not make any of those issues easier to resolve with today's E-Rate decision.

Last month, the FCC took a first step toward expanding the Commission's E-Rate authority beyond the bounds set by Congress in Section 254 of the Communications Act. In my dissent, I warned that we would soon see additional efforts towards even further expansion. And here we are, just weeks later, with yet another item that seeks to rewrite Section 254 and overrule the choices Congress made when it codified the statute.

But do not misunderstand—that is a feature of this plan, not a bug. Those who are pushing for evermore expansion of E-Rate firmly believe that statutory terms such as school, library, and classroom no longer have any relevance in the current era of schooling. E-Rate funds should be spent wherever learning takes place, the argument goes. Indeed, today's NPRM seems to have replaced the schoolhouse with an "anytime/anywhere" approach in the "modern educational environment." But the problem with this approach is that it reads the express language Congress included in the statute right out of the Act. And whatever one thinks about the modern educational environment, the FCC is not free to ignore the express limitations on our authority imposed by Congress—no matter how laudable the agency's intentions may be.

Additionally, I continue to be concerned that we're on track to expand the USF program into an entirely new funding area without addressing some of the fundamental contributions, disbursement, and oversight concerns that I and others have been raising for years now. We cannot continue to spend other peoples' money in this way without a real conversation at this agency about reform. I have put ideas out there. I would welcome a discussion about paths forward. Furthermore, at a time when entire USF program is being challenged in court cases in multiple federal circuits, the FCC's continued steps to push beyond the bounds set by Congress in Section 254 will only make the FCC lawyers' tasks in those cases that much harder.

Ultimately, it is clear to me that the majority and I have a fundamental difference in the reading of the Commission's E-Rate authority in Section 254. Moreover, after the FCC moved forward with a declaratory ruling in the Wi-Fi on school busses proceeding last month—despite my request that the item be changed to a notice of proposed rulemaking to allow for public comment on significant factual and legal deficiencies in the item—the agency has already made the legal and policy cuts that it purports to tee up in this NPRM, relegating it to little more than a procedural nicety on the road to a decision that has already been made.

Accordingly, I am unable to support this item. I dissent.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking (November 1, 2023).

During the COVID pandemic we saw firsthand the positive impact that resulted from providing Wi-Fi connectivity for students and library patrons through hotpots. With schools temporarily closed, students who had long struggled with the homework gap and digital inequality were now able to continue their education and even complete their homework at night.

So I'm glad that we have learned from our experiences in the Emergency Connectivity Fund and propose to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and wireless Internet services to be used off-campus for remote learning and educational purposes. These devices, with the same restrictions for E-Rate funded hotspots as any other E-Rate funded connections in a school, would update and modernize the E-Rate program consistent with how education occurs today. We also have significant experience in creating safeguards to protect against waste, fraud, and abuse in the distribution of Wi-Fi hotspots in order to protect the Universal Service Fund. I support doing everything we can to help our children succeed in their education, and I look forward to record that develops from this *Notice* and thank FCC staff for their work on the item.

DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON

Re: *Addressing the Homework Gap through the E-Rate Program*, WC Docket No. 21-31, Notice of Proposed Rulemaking (November 1, 2023).

This proposed E-Rate expansion is even more lawless and wasteful than the last. Just a few weeks ago, we were told that school buses are actually classrooms. Today, we are asked to believe that when Congress says schools, classrooms, and libraries, it actually means private homes, offices, amusement parks, and, really, anywhere and everywhere a mobile hotspot could be used. I am disappointed by this rapidly metastasizing disregard for the law. It is not clear at this point that there is any location where the Commission would decline to fund connectivity on the premise that someone, sometime, might decide to study there.

In addition to being obviously illegal, E-Rate funding of mobile hotspots would be a waste of money. The federal government already subsidizes home and mobile internet service through affordability programs, like ACP and Lifeline, and high-cost programs, like BEAD, RDOF, and ACAM. In fact, 95% of teenagers already have access to a smartphone.[262] And almost every new smartphone already supports mobile hotspot capability. This is a solution—a very expensive solution—in search of a problem.

[262] https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022