



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF THE
CHAIRWOMAN

August 14, 2023

The Honorable Ted Cruz
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate
512 Hart Senate Office Building
Washington, DC 20510

Dear Ranking Member Cruz:

Thank you for your letter of July 31, 2023 regarding the draft Notice of Proposed Rulemaking that I have circulated to my colleagues at the Federal Communications Commission. If adopted by the full Commission, the Notice would seek public comment on how to ensure the E-Rate program reflects today's realities in connecting schools and libraries.

As you know, in response to the pandemic, Congress created the Emergency Connectivity Fund (ECF) to ensure libraries and schools could connect patrons, students, and school staff to allow them to fully engage in remote learning in response to the COVID-19 pandemic. With ECF support, more than 6,800 schools and libraries were able to provide Wi-Fi hotspots to support broadband connectivity for nearly 1.2 million students, school staff, and library patrons who otherwise lacked internet access services suitable for remote learning. With the sunset of this program slated for June 30, 2024, the Notice seeks public comment on how to develop a long-term solution for the kinds of ongoing remote learning challenges that Congress sought to address with the ECF.

To this end, the Notice proposes to permit eligible schools and libraries to receive E-Rate program support for wireless connections like Wi-Fi hotspots that can be used off-premises. It seeks comment on the eligibility of such services and equipment and asks related questions regarding legal authority. In doing so, it points to the Commission's past actions to provide E-Rate support for certain off-premises use. The Commission has previously determined that off-premises use of equipment and services may be eligible for E-Rate support pursuant to Section 254(h)(1)(B) of the Communications Act, after first finding that the off-premises provision of such services 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."¹ For example, in 2003, the Commission under Chairman Powell unanimously concluded that use of wireless telecommunications on a school bus and in a mobile library van unit as well as use by school officials on a field trip or sporting event are permissible off-premises use of E-Rate supported equipment and services and consistent with the law.²

¹ *Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18774, para. 22 (2010).

² *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 & n.28 (2003).

Moreover, Congress recognized in Section 254(c)(1) of the Communications Act that technology needs are constantly evolving in light of “advances in telecommunications and information technologies and services.” Congress also clearly provided the Commission with the flexibility to update the E-Rate program to meet these changing technological needs, by specifically giving the Commission the authority to “designate additional services” to benefit schools and libraries in Section 254(c)(3) of the Communications Act. This is critical because these sections provide authority for the Commission to modernize the program as technology changes and the needs of schools and libraries evolve. In addition, this is consistent with broader Congressional instruction in Section 254 that universal service is “an evolving level of telecommunications service.” Congress recognized from the start that programs authorized under Section 254 would require periodic updates, and to do otherwise would freeze such programs in 1996 when these provisions were added to the statute.

On top of this, in discussing legal authority, the Notice explains that, when it first established the E-Rate program, Congress declined to define “classrooms” for purposes of Section 254(h)(2)(A) of the Communications Act or expressly limit support this way under the law. The Conference Report to the Telecommunications Act of 1996 explained that the intent of support authorized under subsection Section 254(h)(2) is to “enhance the availability of advanced telecommunications and information services to public institutional users” and to ensure “Americans everywhere” have access to such services “via schools and libraries.”³ As a result, the Notice is entirely consistent with this report when it asks whether it is appropriate to fund Wi-Fi hotspots in today’s educational environment, where learning often occurs outside of brick and mortar school buildings.

It is also important to note that the proposal in the Notice is consistent with the Commission’s recent exercise of its authority under Section 254(h)(2)(A) to establish the Connected Care pilot program. This program was designed and developed by the last Administration. In establishing the pilot, the Commission found that providing support for patients’ home broadband connections expanded health care providers’ ability to serve more patients through the program, thus enhancing eligible health care providers’ access to advanced telecommunications and information services.⁴ Consistent with the approach in the Connected Care pilot, the Notice seeks comment on whether providing off-premises connectivity to students, school staff, and library patrons who lack access similarly enhances eligible schools’ and libraries’ access to advanced telecommunications and information services, as authorized pursuant to Section 254(h)(2)(A) of the Communications Act.

Furthermore, the proposal in the Notice is consistent with agency precedent dating back more than 25 years that concluded that both the E-Rate and Rural Health Care programs in Section 254 may include support for equipment necessary to facilitate access to internet service.⁵ Thus, the equipment necessary to make internet access service functional, such as Wi-Fi hotspots, can be authorized for E-Rate support under the Communications Act. This is distinct

³ S. Rep. No. 104-230, at 132-33 (1996) (Joint Explanatory Statement), <https://www.congress.gov/104/crpt/srpt230/CRPT-104srpt230.pdf>.

⁴ *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).

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from end-user devices and equipment such as computers, laptops, and tablets, which would remain ineligible for support through the E-Rate program.

I am fully committed to protecting the integrity of the E-Rate program, including taking steps necessary to prevent duplicative funding for the same Wi-Fi hotspots and services across other funding programs, including the Affordable Connectivity Program (ACP) and the Lifeline program, as well as other federal, state, Tribal, or local funding programs. As a result, the Notice would seek comment on the safeguards needed to ensure that the limited E-Rate funding is not used for Wi-Fi hotspots or services funded through other sources, while also ensuring schools and libraries across the country have access to the broadband services and equipment they need. The E-Rate program currently serves over 115,000 schools and libraries in all states and territories, including over 9,700 in Texas and over 2,700 in Washington. It is designed to provide a specific, predictable, and sufficient source of funding for needed connectivity for our Nation's schools and libraries, compared to other temporary or limited funding sources. I am committed to protecting the program to ensure schools' and libraries' continued access to this critical source of funding.

I am also mindful of the Commission's obligation to be a prudent, responsible steward of E-Rate funding and the statutory directive under Section 254(h)(2)(A) to establish rules only to the extent it is "economically reasonable." The draft Notice does not seek comment on providing E-Rate support for broadband buildout to homes. Rather, the draft Notice is limited to seeking comment on whether E-Rate funds should support existing wireless services and the Wi-Fi hotspots needed to deliver such services for remote learning. It is also important to note that the Notice proposes to fund these services within the program's current spending cap and does not seek comment on modifying the program's cap.

Finally, I agree that we must protect program integrity in all Universal Service Fund programs, including the E-Rate program. To this end, the Commission has an ongoing proceeding examining efforts to strengthen the program in order to ensure its continued integrity and success.⁶

Should the Commission adopt the proposed Notice, I look forward to the development of a substantial record on the issues you have raised, as well as other matters brought to our attention by stakeholders.

Sincerely,

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Jessica Rosenworcel

⁶ See *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, Notice of Proposed Rulemaking, WC Docket No. 21-455, 36 FCC Rcd 17892 (2021).



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August 14, 2023

The Honorable Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Madam Chair:

Thank you for your letter of July 31, 2023 regarding the draft Notice of Proposed Rulemaking that I have circulated to my colleagues at the Federal Communications Commission. If adopted by the full Commission, the Notice would seek public comment on how to ensure the E-Rate program reflects today's realities in connecting schools and libraries.

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