

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**PETITION FOR RECONSIDERATION BY THE
SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION, THE OPEN
TECHNOLOGY INSTITUTE AT NEW AMERICA, THE BENTON INSTITUTE FOR
BROADBAND & SOCIETY, THE CONSORTIUM FOR SCHOOL NETWORKING,
AND COMMON SENSE MEDIA**

Pursuant to section 1.429 of the Commission’s rules,¹ the Schools, Health & Libraries Broadband (SHLB) Coalition,² the Open Technology Institute at New America (OTI),³ the Benton Institute for Broadband & Society,⁴ the Consortium for School Networking (CoSN), and Common Sense Media (collectively, “Petitioners”) respectfully request reconsideration of two

¹ 47 C.F.R. §§ 1.429.

² SHLB is a broad-based public interest coalition of more than 320 organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB members include schools, libraries, representatives of health care providers and telehealth networks, state broadband offices, private sector companies, state and national research and education networks, consulting firms and consumer organizations. For a current list of SHLB members, see <http://shlb.org/about/coalition-members>.

³ OTI works at the intersection of technology and policy to ensure that every community has equitable access to digital technology and its benefits, including universal and affordable access to communications technologies that are both open and secure. More information can be found at <https://www.newamerica.org/oti/about/>.

⁴ Benton is a nonprofit operating foundation focused on broadband policy, working to make sure everyone can use and benefit from high quality, affordable broadband. Benton works to strengthen local, state, and national leadership by providing the timely information, rigorous evidence, practical guidance, and advocacy needed to articulate and implement a broadband-for-all-agenda. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

limited aspects of the recently adopted *E-Rate Hotspot Order*.⁵ Specifically, the Commission should allow E-Rate funding to support cost-effective options that are functionally equivalent to commercially available mobile wireless services and Wi-Fi hotspots within the established pre-discount budget. E-Rate support should also be available for the purchase of hotspots on a standalone basis if an applicant already has access to the service needed to use the hotspots, and for wireless service that could be used with an applicant’s existing non-hotspot Wi-Fi-enabled equipment.⁶ Adopting these limited modifications to the program rules would extend its benefits to students in areas where traditional commercial wireless hotspot service is unavailable, or where mobile provider signal strength is inadequate to support remote learning,⁷ and reduce expenditures by allowing applicants to forgo the purchase of duplicative service or devices.

Petitioners strongly support the Commission’s goal of bridging the digital divide by addressing the need of schools and libraries to provide off-premises technology access to students, staff, and library patrons for educational purposes. Learning is no longer confined to the inside of a classroom or library and the Commission correctly has modernized the E-Rate

⁵ *Addressing the Homework Gap Through the E-Rate Program*, WC Docket No. 21-31, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76 (July 29, 2024) (*E-Rate Hotspot Order*).

⁶ We also have concerns about how the FCC's formula applies the discount matrix twice - first in determining the pre-discount budget and then again when applicants apply for funding. The Commission should correct this double discount by eliminating the discount from the formula establishing an applicant’s overall budget.

⁷ The Executive Officer of Technology Services for Fresno (CA) Unified School District explained to staff that the district “found in drive tests that mobile carriers ‘cover’ virtually the entire district with a signal adequate to make phone calls outdoors – but the signal strength in many low-income neighborhoods isn’t adequate to support remote learning, especially not indoors (where there is often no coverage at all).” Letter from Kristen Corra, Policy Counsel, SHLB, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2 (filed Nov. 3, 2023) (SHLB-OTI November *Ex Parte* Letter).

program to address this evolution. While providing E-Rate support for Wi-Fi hotspots and commercially available mobile wireless service is an important step in providing adequate access, the Commission materially erred by limiting support solely to this particular broadband technology. The Commission acknowledged that supporting functionally equivalent off-premises services and wireless service for other Wi-Fi-enabled devices would benefit students but failed to adequately justify limiting E-Rate support to a specific technology.⁸ The Commission did not fully consider the arguments raised in favor of these proposals and did not provide a sufficient, reasoned basis for rejecting them. Therefore, reconsideration is warranted.

I. SUPPORTING ADDITIONAL FUNCTIONALLY EQUIVALENT SERVICES IS ECONOMICALLY REASONABLE

Many commenters requested that E-Rate support be made available for other technologies in addition to commercially available mobile wireless service.⁹ This is necessary because commercial mobile wireless service coverage is not universally available, particularly in rural and low-income areas, and residents in these places would be unable to benefit from a hotspot program limited in this way. In addition, SHLB and OTI were among the commenters that provided evidence in the record that commercial mobile hotspot service can be inadequate to support remote learning, particularly indoors, in most rural areas and in many low-income urban neighborhoods where signals are not strong enough.¹⁰ Commenters also argued that providing

⁸ *E-rate Hotspot Order*, FCC 24-76, ¶¶24-25.

⁹ *Id.* ¶25.

¹⁰ *Id.* at n. 96, citing Letter from Kristen Corra, Policy Counsel, SHLB, and Michael Calabrese, Director, OTI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-31, at 2-3 (filed May 16, 2024) (stating that hotspots and mobile wireless service can be inadequate to support remote learning in rural areas and low-income urban neighborhoods). *See also* SHLB-OTI November *Ex Parte* Letter at 2-3.

E-Rate support to a specific type of service would contravene the requirement in section 254(h)(2)(A) of the Communications Act that the E-Rate rules be competitively neutral.¹¹

The Commission recognized the validity of these arguments, stating, “We acknowledge these commenters’ concerns and recognize that connectivity provided by Wi-Fi hotspots is not a one-size-fits-all solution.”¹² However, the Commission declined to authorize support for other types of services because it could not determine that doing so would be “economically reasonable.”¹³ The Commission erred when it asserted that it could not establish funding caps for all of the potential costs of alternative technologies – this is unnecessary because the Commission adopted limits on the total amount of support applicants can receive.¹⁴ The Commission found that a three-year pre-discount budget would provide applicants flexibility to address their technology needs and provide incentives for applicants to make cost-effective purchases.¹⁵ There is no reason that these benefits would not also apply to services other than commercially available mobile wireless hotspot services, making them economically reasonable choices. In many cases (e.g., school districts deploying private LTE or 5G connections using free-to-use Citizens Broadband Radio Service spectrum) the underlying technology is exactly the same as mobile carrier connections and, in fact, Verizon has deployed and integrated more CBRS base stations into its network than any other user of CBRS.

¹¹ *E-rate Hotspot Order*, FCC 24-76, ¶25.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* ¶36.

¹⁵ *Id.*

While recognizing that the overall budget would constrain costs for other types of services, the Commission stated, “Even if constrained by the overall budgets adopted below, we are concerned that these alternative solutions would be challenging to review for cost-effectiveness by applicants and the Administrator without additional data and analysis.”¹⁶ But the Commission fails to explain why this review would be more challenging than any other cost-effectiveness review conducted in the E-Rate program, or even whether a separate per-device cost-effectiveness review is necessary. Prior to this order, for the entire history of the program, the Commission has relied on competitive bidding to determine whether a proposed bid for specific equipment was cost-effective. Applicants purchase Category 2 equipment every year and the Commission has used overall budgets, not per-device caps, to ensure the amount of program funding spent on Category 2 services per school, library or school district is reasonable. There is no reason why the Commission could not do the same here.

The Commission claims that the Emergency Connectivity Fund (ECF) program supports its premise that Wi-Fi hotspots and mobile wireless service are the only option that can be funded, but it fails to adequately support this assertion. It cites USAC’s Open Data as showing that 16 applicants received ECF commitments of \$24 million for construction projects,¹⁷ but this is irrelevant – the adopted budgets provide a limit on the amount of funding a single applicant can receive for off-premises E-Rate support. The Commission then states, “We also note that while alternative solutions were eligible for ECF support, the overwhelming majority of ECF funding provided for connections were mobile wireless connections provided via Wi-Fi hotspots and therefore, we conclude that further data and additional analysis is required to determine the

¹⁶ *Id.* ¶25.

¹⁷ *Id.* ¶25 n.101.

economic reasonability and to understand the potential impact of making other solutions eligible, such as fixed solutions.”¹⁸ The fact that most ECF applicants sought funding for Wi-Fi hotspots does not have any bearing on whether alternative technologies are cost reasonable. And again, the existence of budget caps constrains the amount of support applicants can receive for any type of technology and provides sufficient incentives for the selection of cost-effective solutions. Moreover, ECF was intended to be a temporary, emergency connectivity program, for which off-the-shelf commercial mobile hotspot solutions were well tailored, however less cost-effective or adequate to support indoor learning they proved to be in many rural and very low-income areas.¹⁹

Furthermore, SHLB and OTI submitted an economic analysis showing that the cost of purchasing commercial mobile wireless service and hotspots was significantly higher than several other options over a five-year period.²⁰ The Commission did not address this analysis at all, erroneously dismissing it on the basis that it did not provide detailed cost information on which individual component caps could be created.²¹ As discussed above, it is unnecessary to establish detailed component caps in light of the overall budget adopted by the Commission. In early July meetings with staff, our groups (along with the American Library Association, E-Rate

¹⁸ *Id.*

¹⁹ Letter to Marlene H. Dortch, FCC, from Kristen Corra, SHLB, WC Docket No. 21-31 at 2-4 (Mar. 27, 2024).

²⁰ Comments of SHLB and OTI, WC Docket No. 21-31, at 18-19 (Jan. 17, 2024) (citing Dr. Raul Katz, *The “To and Through” Opportunity: An Economic Analysis of Options to Extend Affordable Broadband to Students and Households via Anchor Institutions*, https://assets.noviams.com/novi-file-uploads/shlbc/PDFs_and_Documents/SHLB_Research_and_Publications/Raul_Katz_Economic_Study1.pdf at 3 (August 2022) (Katz Cost Comparison Study).

²¹ *E-Rate Hotspot Order*, FCC 24-76, ¶25.

Central and Fresno Unified School District), specifically proposed and explained how functionally equivalent wireless services could be subject to the same budget limits in the draft Order: “Specifically, the Commission could allow an applicant to rely only on its total 3-year reimbursement budget when purchasing hotspot devices and lines of service. This would model how applicants currently utilize their Category Two budgets.”²² In addition, the evidence provided in the Katz Cost Comparison Study directly refutes the Commission’s assertion that functionally equivalent services are not economically reasonable when compared to commercial wireless service and hotspots. In fact, the record demonstrates that other services can be significantly more cost effective, and the Commission was wrong to ignore this information.²³

For these reasons, allowing applicants to receive E-Rate support for alternative off-premises technologies would be economically reasonable, competitively neutral, and beneficial to a broader range of applicants and the Commission should reconsider its decision to exclude them.

II. THE COMMISSION SHOULD ALLOW SUPPORT FOR STAND-ALONE HOTSPOTS AND SERVICE TO NON-HOTSPOT DEVICES

In the *E-Rate Hotspot Order*, the Commission decided that E-Rate support would not be available for hotspot devices purchased on a stand-alone basis without commercial wireless service,²⁴ or for wireless service purchased for use with existing non-hotspot Wi-Fi-enabled

²² Letter to Marlene H. Dortch, FCC, from Kristen Corra, SHLB, WC Docket No. 21-31 at 5 (July 11, 2024) (SHLB-OTI July 11 *Ex Parte* Letter).

²³ *Id.* at 3 (“Nor does [the Draft Order] account for the suggestions we recommended to support these alternative (yet functionally equivalent) technologies while financially safeguarding limited E-Rate program funds. Specifically, the Draft Order does not cite the Katz Report or the case studies.”)

²⁴ *E-rate Hotspot Order*, FCC 24-76, ¶42 n.160.

devices.²⁵ Both of these exclusions unnecessarily increase the costs of the program, and the Commission erred in adopting them.

In denying E-Rate support for hotspots purchased on a standalone basis, the Commission focused only on its concern that applicants would warehouse unused hotspots for future use.²⁶ This is a valid concern; however, it is fully addressed by the requirement that applicants must certify on the FCC Form 471 that the hotspots will not be used in this way.²⁷ The Commission failed to address SHLB and OTI's argument that applicants with existing service could benefit from E-Rate supported hotspots.²⁸ SHLB and OTI provided the example of the New York Public Library, which has an existing private wireless network but could provide additional Wi-Fi hotspots to its low-income patrons with E-Rate support for the devices.²⁹ The Commission did not address why this would be inconsistent with the goals of the program. By excluding the purchase of stand-alone hotspots, applicants would have to purchase duplicative commercial wireless service to receive E-Rate hotspot support, unnecessarily increasing the costs to the program. The Commission should modify the rules to allow E-Rate to support the purchase of stand-alone hotspots when the applicant has existing wireless service.

The Commission also erred in precluding applicants from purchasing wireless service to use with existing non-hotspot Wi-Fi-enabled devices. The Commission acknowledged that students would benefit from this proposal, but declined to adopt it because it would complicate

²⁵ *Id.* ¶24.

²⁶ *Id.* ¶42.

²⁷ *Id.* ¶42 n.159.

²⁸ SHLB-OTI July 11 *Ex Parte* Letter at 7.

²⁹ *Id.*

efforts to ensure that services were provided only to students and patrons with need.³⁰ But the Commission has put in place measures to ensure that this funding is used only in this manner. First, applicants are required to adopt and provide to recipients Acceptable Use Policies that make clear that the services and equipment are limited to those who lack access to broadband.³¹ Second, the budget limits put in place will provide incentives for applicants to limit supported services only to students, staff and library patrons that have need of broadband off-premises.

As SHLB and OTI pointed out, failing to allow E-Rate support for service to existing Wi-Fi-enabled equipment will unnecessarily increase costs to the program, because applicants will not be able to use existing school-issued, non-hotspot equipment.³² In many cases, this equipment will have been purchased with ECF support. Failing to allow applicants to use devices purchased with ECF money wastes that federal funding and needlessly increases the costs to the E-Rate program when applicants have to replace existing and functional ECF-funded equipment with new hotspots to receive E-Rate support under the Commission's adopted rules. The Commission should correct this problem by allowing applicants to purchase wireless service with E-Rate support to use with their existing non-hotspot Wi-Fi-enabled equipment.

III. CONCLUSION

Petitioners appreciate the Commission's efforts to bridge the digital divide by allowing applicants to provide off-premises service and hotspots to students, staff and library patrons who lack broadband access. However, the Commission should revise its rules to provide applicants with the ability to procure functionally equivalent services, and to purchase hotspots and service

³⁰ *E-Rate Hotspot Order*, FCC 24-76, ¶24.

³¹ *Id.* ¶31.

³² SHLB-OTI July 11 *Ex Parte* Letter at 7.

to other non-hotspot Wi-Fi-enabled devices on a stand-alone basis. These actions would benefit applicants, would not increase the costs to the program, and are consistent with the record established in the proceeding. Therefore, we request reconsideration of these points.

Respectfully submitted,

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