

**Before the
Federal Communications Commission
Washington, DC 20054**

In the Matter of

**Allowing Use of E-rate Funds for Advanced)
or Next Generation Firewalls and Other) WC Docket No. 13-184
Network Security Services)**

**REPLY COMMENTS OF THE
SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

March 30, 2023

The Schools, Health & Libraries Broadband (SHLB) Coalition respectfully submits these reply comments concerning the eligibility of cybersecurity features and functions for federal E-rate support. SHLB previously joined with the Consortium for School Networking (CoSN) and several other parties in filing initial comments in this proceeding supporting such eligibility. We continue to support that filing. We submit these reply comments to provide a few more specific recommendations that go beyond those initial comments.

We note at the outset that there is almost unanimous support for including advanced security tools in the E-rate program.¹ This widespread support provides the Commission an opportunity to modernize the E-rate program without significant opposition. Indeed, such a change would be consistent with Congress' direction that the FCC should recognize the “evolving” nature of the Universal Service Fund (USF) as set forth in Section 254 of the Communications Act.²

I. The Commission should increase the Category Two budget cap by \$100 million per year for the next two years to give schools and libraries the opportunity to address their cybersecurity needs.

We believe that a modest increase in the budget for Category Two – up to \$100 million per year for the next two years – is warranted given the critical importance of maintaining schools

¹ We note that the term “next-generation firewalls” is often used to describe the advanced cybersecurity features that are under consideration in this proceeding. To be clear, however, these cybersecurity features are not futuristic, as the term “next-generation” might suggest. The cybersecurity protections we support for inclusion in the E-rate program are widely available and frequently purchased by schools and libraries today.

² The “evolving” nature of the universal service definition was recently confirmed by the 5th Circuit Court of Appeals decision in *Consumers’ Research v. FCC*, decided on March 24, 2023 (“Ultimately, § 254 reflects Congress’s understanding that telecommunications services are constantly evolving.”). *See Consumers’ Research, et al. v. FCC*, No. 22-60008, p.11 (5th Cir. 2023).

and library networks against cyber-attacks.³ Such an increase would have a minuscule effect on the Universal Service Fund (USF) contribution factor, but would potentially provide schools and libraries with enormous benefits that could further the vitally important educational purposes of the E-rate program.⁴ Increasing the Category Two budget cap by \$100 million per year for the next two years would lead to approximately a 1% increase in the size of the \$9 billion USF if the entire amount of the \$100 million is awarded.

We understand that schools and libraries are not applying for their full allocation of Category Two funding at the moment, so some may question why an increase in the budget cap is necessary.⁵ Some might claim that no additional funding for Category Two/cybersecurity is necessary even if the FCC does make cybersecurity expenses E-rate eligible because some Category Two funding is still available. Even if there is funding available in the aggregate, however, it does not mean that individual schools and libraries will be able to apply for more funding for cyber expenses. Many individual school and library applicants are planning to request or have already requested their full amount of Category Two support for Category Two equipment and services that are currently eligible and will have no room left in their budgets for cybersecurity expenses. If the Commission makes cybersecurity eligible but does not provide

³ To be clear, we are not suggesting that expenditures for cybersecurity should be capped at only \$100 million. There is already a cap on the entire E-rate program (recently increased to \$4.768 billion), and there is a further cap on Category Two expenses (determined by the budget). Rather, SHLB suggests that cybersecurity functionalities should be eligible for E-rate support under Category Two, and that the entire Category Two budget for schools and libraries should be increased by \$100 million per year.

⁴ Some may argue that any increase in the USF budgets is politically unacceptable. We would note, however, that the Commission adopted a Connected Care program a few years ago, which added approximately \$33 million per year to the size of the USF, without political backlash, because of the importance of expanding the reach of essential telemedicine services to veterans and low-income consumers. We believe that securing the integrity of school and library networks is of similar importance.

⁵ Funds for Learning estimates that schools and libraries applied for \$1.357 billion in Category Two support in 2021 and 2022, which is about \$120 million less than the Category Two budget annual cap of \$1.477 billion. See <https://www.fundsforlearning.com/news/2022/10/estimating-cybersecuritys-impact-on-c2-funds/>.

additional funding, those schools and libraries who have exhausted or will exhaust their budget cap will be unable to benefit from the change. Raising the Category Two cap by a small amount of \$100 million per year for the next two years would give those schools and libraries an opportunity to safeguard their networks while also providing useful data to the Commission to inform its future decisions regarding the next five-year budget cycle.

II. The E-rate program should support cybersecurity equipment and services under Category Two.

Furthermore, we suggest that E-rate support under Category Two should include both equipment and services (including cloud-based services) to ensure that the Commission does not skew the market in favor of one type of technology over another. We also agree with the American Library Association (ALA) that the E-rate eligibility rules should place all cybersecurity equipment and services within the Category Two regime. Trying to identify which functionalities should be treated as Category One or Two expenses will create confusion and difficulties in enforcement for USAC and for the Commission. Further, since Category One services are not subject to a budget approach, there could be an incentive for applicants and industry participants to identify their expenses as Category One expenses in order to avoid the Category Two budget cap. It is simpler and more enforceable for all such cyber-functionalities to be subject to the Category Two budget approach (with a modest increase as discussed above).

III. The Commission should structure the eligibility of cybersecurity solutions by functionality rather than by specific technology.

The marketplace for cybersecurity protection changes significantly over time, and it would be a mistake for the Commission to define the list of eligible services and equipment too

narrowly or specifically. We understand the need for certainty, but we believe the Commission should identify certain functionalities instead of specific products or services that would be eligible for E-rate support.⁶ Rather than defining the specific features and functions of “advanced firewalls” for instance, the Commission should clarify that cybersecurity solutions that keep the network from being shut down and that protect the privacy of user data deserve to be protected, regardless of the specific technology used to achieve those goals.

Identifying eligible cybersecurity functionalities will provide flexibility for support but will not be so open-ended as to encourage abuse. The Commission should feel comfortable that schools and libraries will adhere to this guidance because additional spending for cybersecurity will still be subject to their Category Two budget. Schools and libraries will thus be careful and cost-conscious in their purchase decisions. It is far better for the schools and libraries themselves to make the decisions about what solutions best serve their interests, as long as their purchase decisions are governed by certain pre-defined functionalities.

We note that the ALA and several other commenters cited the importance of providing schools and libraries with flexibility to determine the cyber-security tools that are in their best interest. For instance, rather than adopting specific definitions of “basic” and “advanced” firewalls, the Commission should instead identify the purposes of such firewalls and articulate a definition of the functionality of those firewalls that schools and libraries are allowed to purchase under the E-rate program. Such functionalities should include both basic and advanced firewalls but might also include other security features and functions that are useful to protect the integrity of the network.

⁶ We agree with the Illinois Office of Broadband, which suggested that defining “basic” or “advanced” security services “is inherently a moving target as technology advances and any Bureau attempt to capture its essence today would become obsolete by tomorrow.” *See* Comments filed by the Illinois Office of Broadband, p 5., in WC Docket No. 13-184 (Feb. 10, 2023).

We continue to support the language in our initial comments: “we urge the [FCC] to adopt an expansive, but technology neutral approach that describes a range of firewalls.” CoSN, Funds for Learning and SETDA have identified some of the critical features and functions (included in our joint initial comments) that deserve to be supported by the E-rate program and we encourage the Commission to adopt policies that align with those recommendations.

Finally, the Commission has asked for comment on its legal authority to include cybersecurity expenses in the E-rate program. SHLB’s view is that the Commission is on strongest legal ground when it includes those cybersecurity expenses that directly maintain the very telecommunications and advanced services that the E-rate program was designed to support.⁷

Sincerely,



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⁷ We additionally note that the 5th Circuit Court of Appeals in *Consumers’ Research v. FCC* reiterated that 47 U.S.C. § 254(b) sets forth principles for the FCC to use as a base when setting its policies for advancing universal services. Here, the Court points to § 254(b)(7), stating that “[s]hould the FCC ever conclude that these principles were insufficient, the statute enables, and likely obligates, it to add principles ‘consistent with’ § 254’s overall purpose.” *Consumers’ Research*, No. 22-60008 at 8. Section 254(b)(7) provides that, in addition to the other enumerated principles, the Commission shall base policies to advance universal service on “[s]uch other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this chapter.” 47 U.S.C. § 254(b)(7).