

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

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

**OPPOSITION OF  
THE SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION,  
THE OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA, AND THE BENTON  
INSTITUTE FOR BROADBAND & SOCIETY  
TO THE PETITION FOR RECONSIDERATION FILED BY  
MAURINE MOLAK AND MATTHEW MOLAK**

The Schools, Health & Libraries Broadband Coalition (SHLB),<sup>1</sup> the Open Technology Institute at New America (OTI),<sup>2</sup> and the Benton Institute for Broadband & Society<sup>3</sup> (Collectively, *Public Interest Groups*) hereby submit this opposition to the Petition for Reconsideration filed by Maurine Molak and Matthew Molak (*Petitioners*) (*Molak Petition*)<sup>4</sup> of

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<sup>1</sup> The SHLB Coalition is a public interest coalition consisting of more than 300 member organizations. SHLB Coalition members include representatives of schools, libraries, health care providers and telehealth networks, state broadband offices, private sector companies, state and national research and education networks, consulting firms and consumer organizations. See <https://www.shlb.org/our-members> for a current list of SHLB Coalition members.

<sup>2</sup> 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/>

<sup>3</sup> 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.

<sup>4</sup> Maurine Molak and Matthew Molak, Petition for Reconsideration, *Addressing the Homework Gap Through the E-Rate Program*, WC Docket No. 21-31, (Jul. 31, 2024) (*Molak Petition*).

the Commission’s Report and Order and Further Notice of Proposed Rulemaking adopted on July 18, 2024 (*Report and Order*) in the above-captioned rulemaking proceeding (*Proceeding*) allowing E-Rate support for Wi-Fi hotspots to promote remote learning and eliminate the Homework Gap (*Hotspot Lending Initiative*).<sup>5</sup> The Public Interest Groups respectfully request that the Commission dismiss the Molak Petition for various reasons stipulated under section 1.429 of the Commission’s rules.

**I. THE COMMISSION SHOULD DISMISS THE MOLAK PETITION FOR FAILURE TO WARRANT FURTHER COMMISSION CONSIDERATION AS GOVERNED BY THE COMMISSION’S RULES.**

In 47 C.F.R § 1.429(l), the Commission sets forth the various circumstances in which it will dismiss a petition for reconsideration. The Commission should dismiss the Molak Petition as it meets *multiple* scenarios detailed in section 1.429(l) – specifically those described in 1.429(l)(1) – (3) – and thus does not warrant further consideration by the Commission.

The Commission should dismiss the Molak Petition as it relies on arguments that have been fully considered and rejected by the Commission within the same proceeding.<sup>6</sup> Petitioners assert that the Commission should rescind the Report and Order because neither 47 U.S.C. §§ 254(h)(1)(B) nor 254(h)(2)(A) grants it the legal authority to subsidize Wi-Fi hotspots with E-Rate funds.<sup>7</sup> As explained more fully below, the Commission already concluded that it maintains

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<sup>5</sup> *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 (rel. Jul. 29, 2024) (*Report and Order*).

<sup>6</sup> 47 CFR § 1.429(l)(3). As the Commission has previously stated, “petitions for reconsideration are not to be used merely to reargue points previously advanced and rejected.” *Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations*, Order on Reconsideration, MB Docket No. 19-3, 35 FCC Rcd 10180 ¶ 8 (2020) (FCC 20-121).

<sup>7</sup> See Molak Petition at 1-2.

legal authority under sections 254(h)(1)(B) and 254(h)(2)(A) to adopt the Hotspot Lending Initiative via the Report and Order, and rejects the specific arguments presented in the Molak Petition. Petitioners also state that the Report and Order enables “unsupervised social-media access by children and teenagers.”<sup>8</sup> While it does not appear that Petitioners present this statement as an additional argument for reconsideration of the Report and Order, we note that the Commission also analyzed and rejected this claim, also explained more fully below.

Additionally, the Commission should dismiss the Molak Petition because Petitioners fail to identify any material error, omission, or reason warranting reconsideration of their arguments alleging the Commission’s lack of statutory authority.<sup>9</sup> While the manner in which Petitioners present their issues makes it difficult to discern their arguments with certainty, the Molak Petition merely asserts its claims and does not raise *any* additional argument purporting that the Commission had either erred in its reasoning that the above-mentioned statutory provisions grants it legal authority, or that the Commission omitted or failed to consider certain facts or reasoning when making its determination.

Finally, the Commission should dismiss the Molak Petition because the merits of Petitioners’ argument does not meet the requirements of section 1.429 paragraphs (b)(1) through (3) of the Commission’s rules.<sup>10</sup> First, the Petitioners’ argument does not relate to events or circumstances which have changed or occurred since the Commission adopted the Report and Order. Instead, it relies on simple assertions that the Commission lacks legal authority to support off-campus Wi-Fi hotspots and service through E-Rate funding – an issue that Petitioners could

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<sup>8</sup> *Id.* at 1.

<sup>9</sup> 47 CFR § 1.429(1)(1).

<sup>10</sup> 47 CFR § 1.429(1)(2).

have asserted well before filing their petition for reconsideration, and in fact *did assert* in a different challenge they brought on a Section 254 matter regarding school bus Wi-Fi.<sup>11</sup> Second, it is highly unlikely that the Petitioners did not know of, or could not have learned of through ordinary diligence, the facts and arguments their petition now relies upon until after the Commission adopted the Report and Order. While Petitioners state that they did not participate earlier in the Commission’s Hotspot Lending Initiative rulemaking proceeding because “they did not learn of such proceedings until after the comment period had closed,”<sup>12</sup> this does not offer a reason as to how Petitioners could not have known or learned of their arguments, and the rulemaking proceeding in which to assert them, prior to the Commission adopting the Report and Order. As stated previously, Petitioners have been represented by sophisticated legal counsel with respect to a very much parallel challenge they brought on a Section 254 matter and are thoroughly familiar with the Commission’s E-Rate activities. The exercise of ordinary diligence should have been sufficient for them to have been aware of the proceeding. It appears inconceivable that Petitioners could not have learned of this proceeding through ordinary diligence from the time the Notice of Proposed Rulemaking was released on November 8, 2023, to when they filed their petition on July 31, 2024, almost nine months later.

Third, consideration of Petitioners’ arguments is not required in the public interest, because the Hotspot Lending Initiative aims to eliminate the Homework Gap through access to improved, reliable broadband at home and will provide tremendous educational value to many thousands of students and library patrons.

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<sup>11</sup> Opening Brief for Petitioners, *Molak v. FCC*, Doc. No. 69-1, Case No. 23-60641 (5th Cir. filed Apr. 2, 2024).

<sup>12</sup> *Molak* Petition at 1.

Accordingly, the Commission should dismiss the Molak Petition because: it relies on arguments that have been fully considered and rejected by the Commission within the same proceeding; it fails to identify any material error, omission, or reason warranting reconsideration; and it relies on arguments that do not meet the requirements of 47 CFR § 1.429(b)(1)-(3).

**II. THE COMMISSION ALREADY CONSIDERED AND REJECTED PETITIONERS' ARGUMENTS THAT SUPPORTING THE HOTSPOT LENDING INITIATIVE IS OUTSIDE OF THE COMMISSION'S LEGAL AUTHORITY.**

Although the Molak Petition is quite brief, Petitioners ask the Commission to rescind the Report and Order because they contend that the Commission lacks legal authority to subsidize Wi-Fi hotspots for off-campus use through the E-Rate program.<sup>13</sup> Specifically, they cite to 47 U.S.C. §§ 254(h)(1)(B) and 254(h)(2)(A), stating that these provisions do not provide the Commission with necessary statutory authority to extend E-Rate for off-campus use. To the contrary, as the Report and Order fully explains, the Commission's decision to support off-premises Wi-Fi hotspots and associated wireless service is wholly lawful and well within the Commission's powers under Section 254. In fact, the Commission spends considerable time analyzing its authority under both sections 254(h)(1)(B) and 254(h)(2)(A), and Petitioner does not present additional arguments that the Commission has not already rejected.

Petitioners first allege that section 254(h)(1)(B) "authorizes subsidies for 'telecommunications carriers' providing telecommunications services; it does not contemplate support for Internet service and connections, such as the Wi-Fi service and equipment at issue."<sup>14</sup> The Commission addressed this in the Report and Order, however, concluding that "the Commission expressly rejected the assertion that the support provided under section 254(h) of

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<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> *Id.* at 1.

the Communications Act is limited to telecommunications services when it concluded in the *First Universal Service Order* 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.”<sup>15</sup> It additionally concluded that section 254(h)(1)(B) “is not limited to telecommunications services but also authorizes support for the off-premises use of wireless Internet services” and “provides authority to support the Wi-Fi hotspot devices that are necessary to provide the wireless Internet services.”<sup>16</sup>

Petitioners also allege that section 254(h)(2)(A) “authorizes support for ‘elementary and secondary school classrooms,’ but the whole point of the Report and Order is to enable students to access Wi-Fi beyond the classroom.”<sup>17</sup> The Commission rejected Petitioners’ assumption here that support for elementary and secondary school classrooms only includes that which is tied to a physical location. It concluded that the statute “directs the Commission to establish rules to enhance access ‘for all public and nonprofit elementary and secondary school classrooms . . . and libraries’” and that “the text does not say to enhance access to services ‘at’ or ‘in’ school classrooms (or libraries), as would more naturally indicate a tie to a physical location.”<sup>18</sup>

Because the Commission already fully considered and rejected the Petitioners’ assertions on this issue, the Commission should reject Petitioners’ request to rescind the Report and Order.

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<sup>15</sup> Report and Order, ¶ 92.

<sup>16</sup> *Id.*

<sup>17</sup> Molak Petition at 1-2.

<sup>18</sup> Report and Order, ¶ 96.

### III. THE COMMISSION ALREADY CONSIDERED AND RESOLVED THE ASSERTION THAT THE ADOPTION OF THE REPORT AND ORDER ENABLES UNSUPERVISED SOCIAL MEDIA ACCESS.

Petitioners generally state that the Hotspot Lending Initiative via the Report and Order enables unsupervised social media access by children and teenagers.<sup>19</sup> While it does not appear that Petitioners present this issue as an argument for reconsideration of the Report and Order, we note that the Commission already considered and rejected Petitioners' meritless claim.

Petitioners fail to account for the various requirements mandated in the Hotspot Lending Initiative governing how students and library patrons must use Wi-Fi hotspots and associated wireless services while off-premises. First, consistent with the Commission's longstanding rules for any broadband service that is supported by E-Rate funding, the Report and Order mandates that schools and libraries must use off-premises Wi-Fi hotspots and wireless services primarily for *educational purposes*.<sup>20</sup> To ensure this criterion is met, the Commission requires schools and libraries to not only certify compliance with this rule (a requirement that is also already mandated for on-premises E-Rate supported services) but to also "maintain and—where necessary—update their acceptable use policies (AUPs) to clearly state that this off-premises use must be primarily for an educational purpose."<sup>21</sup> Schools and libraries are required to provide notice of such AUPs by publicly posting them,<sup>22</sup> and the Commission provides specific language that schools and libraries must include in their AUPs.<sup>23</sup> Schools and libraries are additionally

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<sup>19</sup> Molak Petition at 1.

<sup>20</sup> Report and Order, ¶ 48, citing 47 CFR §§ 54.503(c)(2)(ii)(A), 54.504(a)(1)(v).

<sup>21</sup> Report and Order, ¶ 48.

<sup>22</sup> *Id.* at ¶ 51.

<sup>23</sup> *Id.* at ¶ 48. For example, a school's AUP "must state that the use must be 'integral, immediate, and proximate to the education of students.'" *Id.*

required to certify that they have publicly posted their AUPs and may be asked to provide a copy and evidence of where it is posted upon request.<sup>24</sup> With the safeguards described herein in place (especially with respect to the additional layer of AUP requirements), the Commission concluded that it expects off-premises Wi-Fi hotspot use that remains consistent with its rules regarding educational use.<sup>25</sup>

Second, in addition to the safeguards mentioned above, schools and libraries purchasing Wi-Fi hotspots and associated wireless service with E-Rate funds must also ensure compliance with the Children’s Internet Protection Act (CIPA).<sup>26</sup> As the Commission notes, CIPA requires schools and libraries “to block or filter visual depictions that are obscene, child pornography, or harmful to minors across all sites, including social media.”<sup>27</sup> CIPA additionally requires “monitoring the online activities of minors and providing education about appropriate online behavior, including warnings against cyberbullying.”<sup>28</sup> With regard specifically to supervision over access to social media, the Commission additionally noted that “[s]chools and libraries can rely on Internet safety policies and technology protection measures to oversee what can be accessed by minors and restrict access to certain websites that are deemed inappropriate by their local community, including teachers and parents.”<sup>29</sup>

Accordingly, the Commission already considered arguments pertaining to unsupervised social media access via off-premises Wi-Fi hotspots and wireless services, and mandated

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<sup>24</sup> *Id.* at ¶ 51.

<sup>25</sup> *Id.* at ¶ 52.

<sup>26</sup> *Id.* at ¶ 99.

<sup>27</sup> *Id.* at ¶ 97.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at fn. 360.



multiple requirements throughout various sections of the Report and Order as a way to curb this risk.

Additionally, the Petitioners' statement here should also fail on the merits. The Commission's Hotspot Lending Initiative aims to close the Homework Gap by serving students and library patrons *who lack adequate broadband service at home* so they can complete schoolwork and other educational assignments. In fact, the Commission specifically adopted a budget mechanism that *limits* the amount of Wi-Fi hotspot funding so that schools and libraries are better able to target those students and patrons with the greatest need.<sup>30</sup> It follows, then, that the Hotspot Lending Initiative is aimed at a smaller pool of students and patrons who might not be able to afford, or simply lack access to, broadband service in their area, rather than providing unfettered Internet access to all students/patrons. Further, it is assumed that these students and library patrons will take hotspot devices home, where their activities can be supervised by parents/guardians. Broadband access at home allows parents/guardians the opportunity to better supervise their children's online activities. They are also afforded the opportunity to engage more directly, and more effectively, with their children's education by being able to monitor assignments and communicate with teachers.

#### **IV. CONCLUSION**

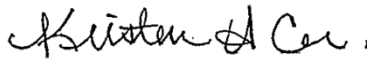


For the foregoing reasons, the Public Interest Groups respectfully oppose and ask the Commission to dismiss the Molak Petition. SHLB and OTI also note that they intend to submit their own petition for reconsideration of the Report and Order. This is not because they believe the Commission's action by adopting the Report and Order was unlawful, but rather because they believe the Commission erred in not allowing E-Rate funding to support functionally

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<sup>30</sup> *Id.* at ¶ 17.

equivalent hotspot devices and services outside of traditional mobile wireless carrier offerings. Because of the complexity of this issue, SHLB and OTI expect to file a petition for reconsideration at the end of the 30-day period allowed for filing such petitions, which falls on or before September 19, 2024.

Respectfully submitted,

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August 27, 2024

## **CERTIFICATE OF SERVICE**

I, Kristen Corra, hereby certify that on this twenty-seventh day of August, 2024, I filed the foregoing Opposition to the Petition for Reconsideration via ECFS in WC Docket No. 21-31. A copy was also provided to Petitioners' attorneys via electronic mail and USPS. Petitioners inexplicably failed to supply an email or postal address in their petition. Unable to serve them directly, service is being made through their counsel at Jones Day who is representing them in a related proceeding.

/s/ Kristen Corra  
Kristen Corra