

**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

**REPLY COMMENTS OF NORTH AMERICAN CATHOLIC EDUCATIONAL
PROGRAMMING FOUNDATION, INC. AND MOBILE BEACON**

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January 29, 2024

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I. Introduction and Summary.

NACEPF and Mobile Beacon support the Commission’s goal of expanding connectivity into students’, school staff members’, and library patrons’ homes. There is no gainsaying that the digital divide persists today, nor that it holds students back in reaching their educational goals. Indeed, the record in this proceeding reflects agreement that students, school staff, and library patrons face an unmet need for at-home connectivity.

The Commission’s proposal to make E-Rate funding available for off-premises connectivity for students and library patrons will provide an important new tool to help communities close the Homework Gap. In doing so, however, the Commission should take care not to impose unnecessarily prescriptive rules on how these services may be used, which may embed certain one-size-fits-all notions about how and when students learn. Rather, the

Commission should ensure that educators have as much flexibility as possible to deploy services tailored to individual students' needs. This flexible approach is especially critical to advancing the fundamental goals of Universal Service and the E-Rate Program in this era of online and hybrid learning, and is consistent with both the letter and spirit of the Telecommunications Act.

II. The Commission's Proposal Is Appropriately Scoped to Respond to An Unmet Need for Education-Related Internet Connectivity.

a. Commenters Agree That Students, School Staff, and Library Patrons Require At-Home Connectivity for Equitable Access to Learning Opportunities.

Multiple commenters in this proceeding observe that education has become increasingly digitized. Education & Libraries Networks Coalition (“EdLiNC”) supports E-Rate support for at-home connectivity as “reflective of much broader trends in K-12 education, with education no longer confined to classrooms and libraries.”¹ Ohio Information Technology Centers (“Ohio IT”) also observes the data-intensive nature of online learning today, noting that “Ohio students rely on digital resources to supplement and support their education. . . . Students and staff need access to online digital resources while off-campus, as well, to engage with supplemental educational materials, complete homework assignments and connect with one another.”² While this trend existed even before the COVID-19 pandemic, it was accelerated and expanded by the pandemic. As the Oakland Unified School District and #OaklandUndivided (“OUSD”) observe, “the onset of the pandemic and the subsequent digitalization of many activities connected to education—

¹ Comments of EdLiNC at 6, WC Docket No. 21-31 (filed Jan. 16, 2024) (“EdLiNC Comments”). *See also* Comments of Qualcomm Inc. at 2, WC Docket No. 21-31 (filed Jan. 16, 2024) (“Qualcomm Comments”) (“For decades and decades, schools have provided textbooks to all students, regardless of their income level, to support learning. Broadband connectivity and end-user devices are the 21st Century version of textbooks.”).

² Comments of Ohio IT at 2, WC Docket No. 21-31 (filed Jan. 16, 2024) (“Ohio IT Comments”).

including classes, homework, testing, remediation, Individualized Education Program meetings, parent-teacher conferences, etc.—only exacerbated [the] pre-existing digital divide.”³

Internet connection is essential for *equitable* access to educational opportunity. The Association of California School Administrators and the California School Boards Association (“ACSA-CSBA”) point to the need for “[s]tudents and educators [to] use technology at home and in the classroom to enable more equitable educational services online.”⁴ Smith Bagley, Inc. (“SBI”) also shares its experience that “providing Tribal schools and communities with Wi-Fi hotspots and Internet service through the ECF Program significantly increased educational opportunities for Tribal students. The standard books, pencils, and paper worksheets were replaced with charged computers, tablets, and the ability to use the Internet.”⁵

In light of this accelerating trend toward digitized learning, internet connectivity is not a luxury, but rather a necessity for learning today.⁶

³ Comments of OUSD at 2, WC Docket No. 21-31 (filed Jan. 16, 2024) (“OUSD Comments”). OUSD also calls attention to today’s “data-rich” learning environment “involving online videos, virtual group collaborations, and personalized learning programs.” *Id.* at 4.

⁴ Comments of ACSA-CSBA at 2, WC Docket No. 21-31 (filed Jan. 10, 2024) (“ACSA-CSBA Comments”).

⁵ Comments of SBI at 3, WC Docket No. 21-31 (filed Jan. 16, 2024). *See also* Comments of Schools, Health & Libraries Broadband Coalition and Open Technology Institute at New America at 2, WC Docket No. 21-31 (filed Jan. 17, 2024) (“SHLB and OTI Comments”) (“Students who do not have home Internet access often cannot complete their homework and cannot take advantage of online educational opportunities—from videos that teachers create to allow students to review a lecture at their own pace to educational supports, such as the educational website Khan Academy, that allow students to watch lectures on various subjects, practice math problems, or prepare for a college entrance exam.”).

⁶ *See* Comments of Cellular South Licenses, LLC d/b/a C Spire at 3, WC Docket No. 21-31 (filed Jan. 16, 2024) (“C Spire Comments”) (emphasis added) (“The manner in which students learn is no longer focused inside the physical classroom with books, pencils, and worksheets, but rather it has migrated to what appears on the screen in front of them. Much, if not most of today’s schoolwork takes place on the computer and broadband is no longer a tool or resource. *It is an essential requirement.*”); Comments of the Council of the Great City

This trend extends beyond schools—just as students and school staff rely on connectivity for education, so too do library patrons. The American Library Association (“ALA”) observes that “the needs of library patrons and students . . . rely more heavily on access to virtual and/or hybrid learning. Increasingly, library services occur outside the walls of the library building with e-books and other e-material, online author talks, virtual discussion groups, and more; therefore, internet access is essential to accessing the services libraries provide.”⁷

The record in this proceeding reflects the critical role that hotspot lending programs play in closing the digital divide for students, school staff, and library patrons. As the EveryLibrary Institute (“EveryLibrary Institute”) correctly observes, “hotspot lending in libraries is neither new nor reserved to pandemic times.”⁸ Rather, hotspot lending is a tried-and-true approach to narrowing the digital divide and supporting students during the ongoing trend toward digitized learning. From the ALA’s perspective, “Wi-Fi hotspot lending has been an increasingly important tool for libraries to address both persistent and intermittent digital gaps in [their] communities.”⁹ EveryLibrary Institute shares a similar experience: “Library patrons repeatedly

Schools at 1, WC Docket No. 21-31 (filed Jan. 16, 2024) (“CGCS Comments”) (emphasis added) (“Off-campus and remote connectivity that has long been needed for homework and other educational activities is now recognized as *an essential part of the education experience*, daily instruction, and blended learning for all students.”); Comments of National Association of Elementary School Principals at 1, WC Docket No. 21-31 (filed Jan. 16, 2024) (“NAESP Comments”) (emphasis added) (“Broadband *internet access is no longer a luxury but now a fundamental requirement* for a high-quality K-12 education. Whether it be a virtual or hybrid learning environment; students completing schoolwork at home; or families communicating with school contacts, fast and stable internet connectivity is essential for educational opportunity, equity, and achievement.”).

⁷ Comments of ALA at 1, WC Docket No. 21-31 (filed Jan. 16, 2024) (“ALA Comments”).

⁸ Comments of EveryLibrary at 2, WC Docket No. 21-31 (filed Jan. 16, 2024) (“EveryLibrary Comments”).

⁹ ALA Comments at 1. ALA also shares its experience that a broad range of communities benefit from library Wi-Fi hotspot lending programs, including “students who need to

and enthusiastically report that hotspots borrowed from their local public library allowed them to complete schoolwork, take courses through matriculated programs and through continuing education programs, and even teach K-12 classes or run study groups.”¹⁰

b. The Homework Gap Calls for an Inclusive Solution.

Given the evidence that hotspot lending programs can and do narrow the Homework Gap, the Commission should adopt an inclusive approach to Wi-Fi hotspot funding eligibility for students, school staff, and library patrons stuck on the wrong side of the digital divide.

Commenters offered practical solutions for how the Commission can do so.

The Commission Should Not Limit E-Rate Funding to ECF-Funded Devices. NACEPF and Mobile Beacon agree with commenters who caution that the Commission should not restrict E-Rate funding eligibility to devices already purchased and distributed through the ECF Program.¹¹ With ECF Program funding set to sunset, a certain number of devices have already been distributed into schools’ and libraries’ communities, and many students, school staff, and

complete homework after the library closes, individuals working on coursework after caretaking responsibilities, people without stable residences, and households who have multiple simultaneous internet users.” *Id.* at 2. It points to data showing that one-third of all public libraries reported hotspot lending programs in a 2020 survey, reflecting the broad popularity of hotspot lending programs. *Id.* at 3. ALA also offers a wealth of information about instances in which library administrators, when given the flexibility needed to distribute hotspots in accordance with the needs of their communities, established successful hotspot lending programs. *Id.*

¹⁰ EveryLibrary Comments at 2. *See also* EdLiNC Comments at 3 (“The home connectivity gap endured by K-12 students and educators is reflective of a larger Digital Divide that America’s public libraries have been on the front lines in addressing for many years – initially by providing access to computers and connectivity within their buildings and more recently by lending Wi-Fi hotspots and computing devices to their patrons.”).

¹¹ SHLB and OTI Comments at 28 (“[T]he Commission should not limit E-Rate eligibility to services associated with hotspots purchased using ECF program funds.”); OUSD Comments at 8 (“#OaklandUndivided and OUSD encourage the Commission to allow E-Rate to be used to fund hotspot devices and associated services regardless of whether those hotspots were purchased as part of ECF, provided by the school, or obtained another way.”).

library patrons will rely on those devices for continued connectivity. So, at a minimum, the Commission should extend E-Rate funding to the services necessary to keep ECF Program-funded devices functional, and to avoid abandoning the ECF Program’s investment and cutting off connectivity for students who are relying on that investment.

But the Commission should not *limit* funding to devices purchased through the ECF Program. Funding eligibility should extend to Wi-Fi hotspots and related services whether or not those devices were purchased through the ECF Program.¹² As OUSD points out, it makes little difference how the hotspot was purchased if it is not accompanied by the service needed to make it functional.¹³

The Commission’s Rules Should Be Sufficiently Flexible to Allow Educators and Library Administrators to Anticipate Reasonable Need. While NACEPF and Mobile Beacon recognize the need to protect against unreasonable warehousing of funded devices that are never used, there are legitimate reasons why schools and libraries would need to purchase a limited number of backup devices. While hotspots are generally very reliable, they do not last forever and a small number of devices can be expected to fail every year. If this happens in the middle of the academic year, for example, schools will need to provide a quick replacement¹⁴ to avoid stranding the student relying on that hotspot.¹⁵ To avoid disruption to education and resulting

¹² See OUSD Comments at 8.

¹³ *Id.* at 8–9.

¹⁴ Given the potential need for replacement within three years, NACEPF and Mobile Beacon do not support State E-Rate Coordinators’ Alliance’s (“SECA”) suggestion that the Commission should prohibit use of E-Rate funds to replace an ECF-funded hotspot until that hotspot has been used for at least three years. Comments of SECA at 5–6, WC Docket No. 21-31 (filed Jan. 17, 2024).

¹⁵ OUSD Comments at 9.

learning loss, educators and library administrators should be permitted to procure and keep a reasonable number of devices available to anticipate these needs.¹⁶

The Commission's Rules Should Accommodate the Legitimate Reasons a Loaned Device May Be Unused for a Certain Period of Time. In their opening comments, NACEPF and Mobile Beacon pointed to some reasons why a loaned device might not show consistent usage—for example, a student might use more bandwidth when studying for end-of-term exams, less bandwidth over the summer holiday, and more bandwidth again when engaging in summer reading homework and back-to-school prep.¹⁷ The record in this proceeding establishes that there are other valid reasons why a device could show low usage or fluctuate in usage throughout the year.

As OUSD explains, a student may not know how to use the hotspot or the hotspot may be served by an internet connection that is of insufficient speed and quality for educational purposes.¹⁸ In such a situation, the short-term non-usage of a device does not indicate a lack of demand for off-premises connectivity. Rather, it merely indicates a transient condition that a school or library should be allowed the opportunity to address to maximize the benefits to their communities. Given the many and diverse reasons why a funded hotspot may remain unused for certain periods of time, NACEPF and Mobile Beacon urge the Commission to adopt flexibility into any non-usage standards it may adopt.¹⁹

¹⁶ *Id.*

¹⁷ Comments of NACEPF & Mobile Beacon at 22, WC Docket No. 21-31 (filed Jan. 16, 2024) (“NACEPF Comments”).

¹⁸ OUSD Comments at 15.

¹⁹ *See also* Comments of T-Mobile at 6, WC Docket No. 21-31 (filed Jan. 16, 2024) (“T-Mobile Comments”) (“The Commission should consider the range of hotspot uses that do not correlate to consistent patterns of usage. As with book checkouts, which are often

The Commission Should Ensure That Hotspots Are Served by Sufficient Data and Throughput for Educational Purposes. Several commenters in this proceeding propose that each individual student should have access to their own individual hotspot.²⁰ NACEPF and Mobile Beacon agree that every student, school staff member, and library patron should individually have access to a device and service that meets their learning needs. As OUSD points out, every individual user will require connectivity with sufficient speed, throughput, and data allotment to meet their educational needs.²¹

NACEPF and Mobile Beacon encourage the Commission to focus on the broader underlying issue: instead of simply providing each learner with their own device, the Commission should instead ensure that each learner has access to a device and associated service that offers the data, speed, and throughput necessary to support that learner’s needs. Where the Commission can achieve this goal by funding single-user hotspots, it should do so. But where the Commission can also achieve this goal by funding multi-user hotspots—again, provided that *all* learners relying on that device have sufficient service quality to meet their educational needs—it

inconsistent throughout the year in public and school libraries, demand and checkout intervals for hotspots varies, especially during school breaks and holidays. . . . The Commission’s policies should be flexible to account for reasonable periods of non-usage[.]”); Comments of the Wisconsin Department of Public Instruction at 3, WC Docket No. 21-31 (filed Jan. 16, 2024) (“Wisconsin DPI Comments”) (“[W]e caution that setting hard standards on use may not reflect the real-world situations our schools and libraries confront. For example, schools may have a several week period of non-use when devices are transferred from one student to another. And libraries are always under the vagaries of patron demand which fluctuates on a regular basis.”). Instead of adopting E-Rate Central’s proposal that “[w]hatever the term, schools and libraries should be encouraged to seek the early return of devices not meeting targeted use goals,” Comments of E-Rate Central, New York State E-Rate Coordinator at 4, WC Docket No. 21-31 (filed Jan. 15, 2024), schools and libraries should instead be encouraged to inquire into the *reasons* for non-usage, and only request return of a device if it is not being and cannot be used.

²⁰ See, e.g., ALA Comments at 11; OUSD Comments at 4–6.

²¹ OUSD Comments at 4–6.

should do so.²² Provided this standard is met, the Commission should not adopt a blanket exclusion on multi-user hotspots from funding eligibility, nor should it require that multi-user hotspots be configured to permit only single-user access.

In this same vein, NACEPF and Mobile Beacon agree with commenters who observed that learning today requires online connectivity of sufficient speed and quality to meet educational needs. NACEPF and Mobile Beacon support OUSD’s suggestion that the Commission should encourage use of 5G hotspot technology where possible.²³ NACEPF and Mobile Beacon also support OUSD’s suggestion that participating service providers be required to engage in good faith monitoring of their service performance and make improvements to those performance results where practicable.²⁴

The Commission’s Rules Should Be Sufficiently Flexible to Permit Educators and Library Administrators to Work with the Service Providers Who Serve Their Geographic Area. As NACEPF and Mobile Beacon expressed in their opening comments, participating schools and libraries should be permitted to rely on multiple service providers to meet constituents’ connectivity needs in their area.²⁵

School stakeholders express support for this flexible and practical approach. The Council of the Great City Schools (“CGCS”), for example, points out that “a single service provider may not be able to provide service throughout a large school district’s geographic area” and asks the

²² See EdLiNC Comments at 8–9 (“[The Commission] should allow multi-user hotspot devices so long as they would not provide degraded connectivity services.”); NAESP Comments at 1 (supporting an approach that “allow[s] multiple-student households to use multi-user hotspots along with commensurate service capacity”).

²³ OUSD Comments at 6.

²⁴ *Id.* at 7.

²⁵ NACEPF Comments at 20.

Commission to “allow applicants to select multiple service providers for Wi-Fi hotspots and other internet access services that work best based on the geographic area of their students and staff.”²⁶

The Dallas Independent School District (“Dallas ISD”) shares a similar experience and preference for flexibility in choice of provider:

Variations in network coverage, performance, or cost within an applicant’s service area may necessitate the use of multiple carrier networks across the end-user population. Off-campus use may occur at multiple locations, such as at a primary residence, secondary residence, extra-curricular activity location, after-school care facility, or even student or family work location. Applicants should have the flexibility to choose the best carrier network(s) for their use case(s).²⁷

Libraries, like schools, can serve large geographic areas that are not being adequately served by a single provider. ALA observes that “it will be necessary for libraries and schools to be able to select multiple service providers to meet the needs of their communities” as “[s]ome service areas, in both rural and urban communities, are vast and therefore have coverage in certain areas from different providers.”²⁸ EveryLibrary Institute similarly observes that “[f]or many, enormous districts or regions and challenging geography mean their residents use entirely different cellular providers[.]”²⁹

As NACEPF and Mobile Beacon explained in their opening comments, the Commission should also consider how it can create synergies between the E-Rate Program’s extension of funding to Wi-Fi hotspots and its parallel Broadband Data Collection (“BDC”) mapping process.

²⁶ CGCS Comments at 4.

²⁷ Comments of Dallas ISD at 4, WC Docket No. 21-31 (filed Jan. 12, 2024) (“Dallas ISD Comments”). *See also* SHLB and OTI Comments at 29 (“[T]he Commission should allow school and library applicants to receive hotspot devices and service from multiple service providers simultaneously. . . . one provider might supply adequate service in a particular area of the community but fall short of meeting the remote learning needs for students and patrons in other areas.”).

²⁸ ALA Comments at 12.

²⁹ EveryLibrary Institute Comments at 3.

Because many schools and libraries serve large geographic districts that are not served by a single provider, E-Rate-funded hotspot loan programs may go through an iterative process to validate which service provider can offer service of sufficient speed and quality for learning purposes. The high demand for funded hotspot loan programs—with a *minimum* expected demand of at least 4.5 million devices based on ECF Program data—provides the Commission with an opportunity to draw on user experience to improve BDC mapping for Americans throughout the nation. NACEPF and Mobile Beacon encourage the Commission to consider how it can create synergies between these two initiatives, while still striking a balance with the need to ensure appropriate privacy protections for individuals and households and the need to reduce barriers to program participation.

The Commission should also consider whether additional flexibility in its cost-allocation requirements would benefit program participants. The Schools, Health & Libraries Broadband Coalition (“SHLB”) and the Open Technology Institute at New America (“OTI”) propose that the Commission facilitate a “Homework Gap ‘community use’ rule” by waiving application of the cost-allocation requirement for off-premises educational use.³⁰ NACEPF and Mobile Beacon encourage the Commission to consider whether it could introduce additional flexibility in such requirements, in keeping with the goal of reducing barriers to program participation for schools and libraries while also supporting educators and library administrators in selecting the framework that best serves their community’s needs.

The Commission’s Rules Should Support Year-Round Learning. The record reflects strong support for the notion that students can and do learn year-round. While NCTA – the Internet & Television Association (“NCTA”) adopts a blanket assumption that students may not

³⁰ SHLB and OTI Comments at 23–25.

be using funded devices over the summer and on other school breaks and holidays,³¹ schools’ and libraries’ experiences do not bear out this assumption.

To the contrary, summer connectivity is essential to guide continued learning. This is true for schools: OUSD observes that “the internet is essential for tackling summer learning assignments, fulfilling curricular prerequisites, recovering academic credits, participating in adaptive online learning programs . . . and other educational purposes.”³² This is equally true for libraries: ALA agrees that “libraries provide vital educational opportunities of all kinds year-round, and perhaps especially so during summer enrichment and supplemental programs.”³³ Other commenters point to the “growing need for summer school classes, guided online learning experiences, and the rising popularity of summer enrichment programs”³⁴ and the need to avoid the “‘summer slide’ [] phenomenon where students, especially low-income students, lose some of the academic gains made during the school year over the summer months.”³⁵

The Commission should heed the practical experience of schools and libraries and should extend E-Rate Program funding to support uninterrupted year-round learning.

The Commission Should Extend Funding Eligibility to Devices That Offer Equivalent Functionality to Wi-Fi Hotspots. NACEPF and Mobile Beacon urge the Commission to look beyond hotspots and consider what other devices offer similar functionality that can help close

³¹ Comments of NCTA – the Internet & Television Association at 7, WC Docket No. 21-31 (filed Jan. 17, 2024) (“NCTA Comments”).

³² OUSD Comments at 15–16.

³³ ALA Comments at 13.

³⁴ EdLiNC Comments at 15.

³⁵ T-Mobile Comments at 5–6.

the Homework Gap. Commenters support this practical and technologically neutral approach to E-Rate funding.³⁶

c. The E-Rate Program Should Work in Tandem with Other Commission Programs to Narrow the Homework Gap.

The Homework Gap Persists Despite Other Commission Programs. The Commission has previously acknowledged that “no one program or entity can solve [the homework gap] problem on its own.”³⁷ NACEPF and Mobile Beacon encourage the Commission to consider how the E-Rate Program can work in tandem with other Commission programs to narrow the Homework Gap. While other Commission programs—including the Affordable Connectivity Program (“ACP”) and the Rural Digital Opportunity Fund—seek to extend connectivity throughout the nation, it is clear that a significant unmet need for at-home connectivity persists today.

³⁶ See ALA Comments at 12 (“[I]n circumstances where Wi-Fi hotspots are not technically or cost effective, libraries and schools should be able to seek E-Rate funding for alternative strategies that provide functionally-equivalent service.”); Comments of Mississippi Center for Justice at 5, WC Docket No. 21-31 (filed Jan. 8, 2024) (“MCJ advises against the Commission limiting E-Rate support to Wi-Fi mobile hotspots and to instead consider alternatives for off-premise services. MCJ is concerned that Wi-Fi mobile hotspots alone would insufficiently address the connectivity needs for students participating in remote learning.”); CGCS Comments at 3 (“[E]ligible services should include additional connectivity options beyond Wi-Fi hotspots (wired internet, smartphone tethering, internal data cards, eSIM access on computing devices, etc.) that are necessary to support safe and appropriate remote teaching and learning.”); Qualcomm Comments at 3 (“With 4G LTE and 5G connectivity built right into the laptop, students can be online when there is no internet connection, in city apartments and in remote areas lacking wired broadband service.”); Wisconsin DPI Comments at 2 (offering “information on alternatives to wi-fi hotspots for internet activity”); SHLB and OTI Comments at 7 (“[T]he Commission should also allow the cost for equipment receiving the wireless signal to be eligible whether it is a cellular modem embedded in the end-user computing device or a Wi-Fi hotspot.”).

³⁷ *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report & Order, and Memorandum Opinion & Order, 30 FCC Rcd. 7818, 7831 ¶ 22 (2015).

Several commenters note that the ACP may close down in several months unless Congress provides significant additional funding.³⁸ If so, students, school staff, and library patrons who lack connectivity at home may be unable to access *any* ACP support to meet their needs. But even if Congress were to provide such necessary funding, it is clear that the ACP and other Commission programs alone cannot plug the Homework Gap. NACEPF and Mobile Beacon’s experience directly confirms this: demand for Mobile Beacon’s hotspot program has remained robust since its inception through the present, despite the Commission’s concerted efforts to close the Digital Divide and the Homework Gap through several programs. The record clearly demonstrates that the Homework Gap is a complex, persistent challenge that warrants an all-of-the-above approach that includes E-Rate funds for off-premises connectivity where students remain unserved.

NACEPF and Mobile Beacon also disagree with commenters who characterize E-Rate funding for Wi-Fi hotspots as a mere “stop gap measure.”³⁹ As the Commission acknowledged in its recent Declaratory Ruling, mobile connectivity is critical for learning,⁴⁰ and students should have seamless access to the connectivity they need for their education. The Commission should not focus on wired connections to the exclusion of wireless connectivity.

In that spirit, NACEPF and Mobile Beacon agree with commenters who point to funded Wi-Fi hotspots as *one of several* tools to close the Homework Gap. ALA explains that “Wi-Fi

³⁸ OUSD, for example, notes that the Affordable Connectivity Program “will end in a few months absent additional funding from Congress.” OUSD Comments at 3.

³⁹ See Comments of Advocates for the EMS Disabled at 2, WC Docket No. 21-31 (filed Jan. 8, 2024).

⁴⁰ *Modernizing the E-Rate Program for Schools and Libraries*, Declaratory Ruling, FCC No. 23-84, WC Docket No. 13-184, ¶ 9 & n.32 (rel. Oct. 25, 2023) (“School Bus Declaratory Ruling”).

hotspots are one tool in closing the digital divide; they provide thousands of students and library patrons needed connectivity, but they are not a permanent nor one-size-fits-all approach. In many cases, they are a complement or bridge to other programs[.]”⁴¹ Cellular South Licenses, LLC d/b/a C Spire similarly observes that “[w]hile Wi-Fi hotspots and home Internet services alone are not going to end the Digital Divide, they are effective tools to bridge the Homework Gap. . . . These devices have continued value and the capability to bridge the Homework Gap as the rest of the broadband industry works to fill the need through other initiatives.”⁴² The Commission’s proposal to include E-Rate funds as one of these tools is not duplicative, but rather keeps Commission programs working in synergy to meet the needs of unserved Americans.⁴³

d. The Commission’s Proposal Will Make Effective and Efficient Use of E-Rate Funds.

The Commission Should Avoid Over-Reliance on ECF Program Data. NACEPF and Mobile Beacon support the Commission’s goal of making effective and efficient use of E-Rate funds. In order to appropriately estimate the scale of funding need to reach the Commission’s objectives, the Commission should not over-rely on ECF Program data to assess demand and cost.⁴⁴

⁴¹ ALA Comments at 13.

⁴² C Spire Comments at 2, 6.

⁴³ See also ACSA-CSBA Comments at 2 (“Reaching all students at unserved and underserved locations is essential and will require a multifaceted strategy that includes Wi-Fi hotspots and expanded infrastructure.”); EdLiNC Comments at 7 (“EdLiNC reminds the Commission that not every household has access to sufficient broadband infrastructure to benefit from the proposed E-Rate support of Wi-Fi hotspots and related services. We urge the Commission to acknowledge that for many isolated rural areas, additional policy and investment will be required to close the Homework Gap[.]”).

⁴⁴ NACEPF Comments at 15–18.

Applicants faced considerable obstacles to applying for ECF Program support. These obstacles affected schools and libraries alike. For example, “[w]hile Dallas ISD did participate in the ECF program, the needs of students and staff are frequently changing. The specific scale and scope of ECF needs during the pandemic are not expected to be a predictor of future need.”⁴⁵ ALA similarly observes that not all eligible libraries chose to participate in the ECF Program due to “administration and complexity” issues that presented a barrier to participation.⁴⁶ ALA thus “anticipate[s] that additional libraries that did not participate in ECF will apply for funding for Wi-Fi hotspot lending.”⁴⁷ While ECF Program demand may set a floor for estimating E-Rate Program demand, it cannot be used to set a ceiling on anticipated demand. Instead, as set forth in NACEPF and Mobile Beacon’s opening comments and below, the Commission should look to educators and library administrators to assess the need within their communities.

The Commission Should Avoid Over-Reliance on Other Data Presented Without Context.

For the same reasons, NACEPF and Mobile Beacon urge the Commission not to over-rely on free and reduced price lunch data to identify unmet need. CGCS asserts that “[i]ncome levels are the strongest determinant of those students and families lacking home internet access” and suggests that the Commission “rely on existing free and reduced-price lunch (FRPL) data as the method to identify students who may need home internet access.”⁴⁸ However, while such data is certainly a helpful proxy in many instances, it is only *one* data point that indicates potential unmet need. As NACEPF and Mobile Beacon stated in their opening comments, there may be instances in which a household is ineligible for National School Lunch Program (“NSLP”)

⁴⁵ Dallas ISD Comments at 4.

⁴⁶ ALA Comments at 7.

⁴⁷ *Id.* at 12.

⁴⁸ CGCS Comments at 4.

enrollment but nonetheless has an unmet need for home internet connectivity.⁴⁹ Moreover, as the EveryLibrary Institute points out, such data may also be inapplicable to library patrons:

The NSLP . . . is inappropriate for libraries and should not in any way be an expectation of library implementations. Library patrons with legitimate educational needs are often adults seeking GED attainment, higher education degrees, non-credit bearing continuing education, certifications for advanced or specialized skills, and many other applications which align well with the E-Rate program’s purposes. These adults often do not have a child in the home, so the NSLP metric would be irrelevant.⁵⁰

NACEPF and Mobile Beacon urge the Commission to avoid over-reliance on any particular data source and to instead to rely on educators and library administrators to assess unmet need, drawing from diverse sources of relevant information. NACEPF and Mobile Beacon agree with T-Mobile’s observation that “schools and libraries—not the Commission—have insight into the actual connectivity needs of their students and patrons and are thus best positioned to determine how E-Rate can meet those needs.”⁵¹ The Commission should, as Ohio IT urges, “recognize that needs-based access is fluid and that the school and/or library should have flexibility to assess need for such resources on an on-going basis.”⁵²

III. The Commission’s Proposals Are Consistent with Statutory Requirements.

As the record confirms, there is a vast unmet need for educational connectivity to close the Homework Gap and to allow students to participate fully in modern educational opportunities. Using E-Rate funds to address this urgent need would be fully consistent with the statutory requirements for the E-Rate Program.

⁴⁹ NACEPF Comments at 18–19.

⁵⁰ EveryLibrary Comments at 6.

⁵¹ T-Mobile Comments at 7.

⁵² Ohio IT Comments at 4.

First, there is no reason to adopt a crabbed interpretation of Section 254(h)(2)(A) that would limit funding only to services that connect brick-and-mortar classrooms. The COVID-19 pandemic made clear to all what educators have long known: in today’s connected world, the “classroom” is as much a virtual space as a physical one. For this reason alone, it is clear that the Commission has the discretion to find that the statute’s use of the word “classroom” encompasses these virtual spaces as well as physical ones. While some may urge the Commission to limit itself to the most restrictive dictionary definition of the word “classroom,” the Commission’s proposals are in fact consistent with even this highly literal approach. For example, while “a room . . . where lessons take place” is certainly *one* definition of “classroom,” the word is also defined more broadly to mean, for example, “any place where one learns or gains experience.”⁵³

Indeed, the Commission has already determined that a broader interpretation is warranted to match current usage of the term as well as current policy needs: in determining that Wi-Fi service for school buses is eligible for E-Rate funding, the Commission explained 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.”⁵⁴

Even if a more antiquated definition of “classroom” were appropriate, the statute directs the Commission to enhance access to broadband services “*for . . . classrooms, health care providers, and libraries[.]*”⁵⁵ Thus, critically, the program is not limited merely to services

⁵³ *Classroom*, CollinsDictionary.com, <https://www.collinsdictionary.com/us/dictionary/english/classroom#:~:text=noun-,1.,one%20learns%20or%20gains%20experience> (last visited Jan. 25, 2024).

⁵⁴ School Bus Declaratory Ruling at n.32.

⁵⁵ 47 U.S.C. § 254(h)(2)(A) (emphasis added).

provided directly *to* these locations, but also to services that play an important role in the missions of these institutions. In this case, a Wi-Fi hotspot provided to students so that they can engage in hybrid learning is clearly a service *for* the classroom, in that it allows the classroom to connect to the student and vice-versa.

The Commission reached a parallel conclusion in determining that home broadband connectivity could be a qualifying service under Section 254(h)(2)(A) when it allows a health care provider to connect with a patient.⁵⁶ In that context, the Commission noted that connected care is becoming an increasingly important component of healthcare overall, but that the cost of home broadband connectivity is an obstacle that prevents many patients from enjoying the benefits of those services. Therefore, the Commission concluded, funding patients' home broadband connections enhances healthcare providers access to advanced services, and it is therefore within the scope of Section 254(h)(2)(A)—i.e., it found that these home broadband services are “for” healthcare providers.

Precisely the same pattern of facts holds with respect to students' access to classrooms and libraries: although hybrid learning is increasingly common, and students routinely require broadband connectivity to complete assignments, households often lack the broadband connectivity required to fully participate in these forms of education. Funding for off-campus Wi-Fi hotspots helps to remove this obstacle and, therefore, enhances the ability of libraries and classrooms to connect with these learners.

⁵⁶ Just as it covers services “for” classrooms and libraries in the educational context, Section 254(h)(2)(A) covers services “for” health care providers in the healthcare context. *See Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, Report and Order, 35 FCC Rcd. 3366, 3417–18 ¶¶ 87–88 (2020).

Enabling students to participate in hybrid learning, complete their homework, or participate in other educational opportunities clearly qualifies as an “educational purpose” under Section 254(h)(1)(b). The Commission has determined that a service is provided for an educational purpose when it is “integral, immediate, and proximate to the education of students or the provision of library services to library patrons[.]”⁵⁷ Here, there is extensive record evidence that high quality connectivity is often essential for students to fully participate in the modern classroom, but that high costs and other factors make this service inaccessible for many students.⁵⁸ Thus, the provision of Wi-Fi hotspots is “integral, immediate, and proximate” to those students’ ability to receive an education on equal footing with their peers. The educational purpose of this service could not be clearer.

The Commission notes that off-premises services may present “new concerns” regarding the proper use of devices because students will use them outside the immediate supervision of school or library staff.⁵⁹ Some commenters speculate that students will use the devices primarily for video games or social media, generalizing from data about American teenagers and the American public writ large.⁶⁰ However, these concerns overlook the role of parents and guardians in supervising their children’s schoolwork. For example, to be enrolled in off-premises services, a school or library could provide parents with an acceptable use policy. And as discussed below, technological solutions are also available that would allow the issuing

⁵⁷ *Schools and Libraries Universal Service Support Mechanism*, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208–09, ¶ 19 (2003).

⁵⁸ See Section II.a, *supra*.

⁵⁹ *Addressing the Homework Gap through the E-Rate Program*, Notice of Proposed Rulemaking, FCC No. 23-91, WC Docket No. 21-31, at ¶ 35 (rel. Nov. 8, 2023).

⁶⁰ Comments of ACA Connects – America’s Communications Association at 8–9, WC Docket No. 21-31 (filed Jan. 16, 2024).

institution to filter or limit access to non-educational content. While the Commission should refrain from mandating that educators use any single technique for ensuring educational use, it can be confident that educators have the tools they need to ensure that use of off-premises services satisfy the educational-use requirements.

Further, the Commission’s rules require the school or library purchasing the hotspots to certify that the devices and service will be used “primarily” for educational purposes—they do not require the FCC to dictate how educators should structure their programs and interact with students and families to satisfy this certification requirement.⁶¹ Thus, the FCC’s existing rules properly allow educators to determine how best to ensure that off-premises services are used for educational purposes.

IV. NACEPF and Mobile Beacon Agree That Funding Should Be Made Available on a Competitively Neutral Basis.

Some commenters highlight the need for the Commission’s funding policies to be “competitively neutral” as required by Section 254(h)(2)(A).⁶² In particular, NCTA argues that, by proposing to fund only a wireless service, the Commission’s proposal impermissibly favors one type of service over another.⁶³

NACEPF and Mobile Beacon agree that the Commission should avoid placing any unnecessary or unfair limitations on the technologies or business models that may be eligible for

⁶¹ 47 C.F.R. §§ 54.503(c)(2)(ii) (“A person authorized to both request bids and order services on behalf of the entities listed on an FCC Form 470 shall . . . certify under oath that . . . [t]he services the school, library, or consortium purchases at discounts will be used primarily for educational purposes[.]”); 54.504(a)(1) (“The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under oath that . . . [t]he services the school, library, or consortium purchases at discounts will be used primarily for educational purposes[.]”).

⁶² 47 U.S.C. § 254(h)(2)(A).

⁶³ NCTA Comments at 9–10.

funding. NACEPF and Mobile Beacon further agree that the Commission should not restrict funding only to LTE-based wireless hotspots, *ex ante*. As discussed above, funding should be available for services that use other technologies to provide equivalent functionality.

However, the Commission’s proposal to fund only wireless services and associated devices for off-premises connectivity is reasonably dictated by practical considerations: for service to be provided via a portable device, which can be lent out and managed by a school or library, it seems clear that service must be provided wirelessly. As NCTA notes, in the Universal Service context, the Commission has held that neutrality requires that a policy “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁶⁴ But it would not be “unfair” for the Commission to fund only wireless services when these are the only services capable of meeting the legitimate needs of the program.

V. CIPA Does Not Present a Technical Obstacle to the Commission’s Proposed Rules.

If the Commission determines that requirements of the Children’s Internet Protection Act (“CIPA”) apply to devices and service for off-premises educational connectivity, this need not be a substantial obstacle to the Commission’s efforts to provide off-premises connectivity to students. Schools and libraries can issue hotspots to students in compliance with their CIPA-mandated internet-safety policies.

⁶⁴ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, ¶ 47 (1997). See also NCTA Comments at 10.

For example, many hotspots and associated wireless services offer the capability to filter inappropriate content and block specific domains.⁶⁵ Schools could use these features to align the connectivity provided off-premises with any restrictions their policies may require for on-premises connectivity. Alternatively, schools could configure devices to access the internet via the school’s own network, using virtual private networking or similar technologies.

The Commission should not prescribe the use of a *specific* technology to ensure CIPA compliance, as individual schools’ internet-safety policies may vary. Different services and devices may also support different means of implementing these policies. For example, some schools may opt to use hotspots that lack onboard filtering capabilities and implement their internet-safety policies by routing all off-premises traffic through the on-premises educational network. Other institutions may not be configured to allow VPN access but can purchase hotspots that support onboard filtering. Or they may lack either of these capabilities but partner with a carrier that supports filtering at the service-provider level. Still other schools may arrive at different solutions altogether. What is critical is not the specific means of compliance, which the Commission is poorly situated to dictate, but continuing to ensure that schools are aware of their CIPA compliance obligations with respect to off-premises connectivity and continuing to certify their compliance with them.

⁶⁵ See, e.g., *Safeguards - Verizon Jetpack 4G LTE Mobile Hotspot - AC791L*, Verizon, <https://www.verizon.com/support/knowledge-base-211346/> (last visited Jan. 29, 2024). See also *Questions about Project 10Million?*, T-Mobile, <https://www.t-mobile.com/brand/project-10-million#:~:text=Yes%2C%20a%20content%20filter%2C%20Web,and%20what%20is%20not%20blocked> (last visited Jan. 29, 2024) (noting that “a content filter, Web Guard, is included with the hotspot plan”).

VI. Conclusion

NACEPF and Mobile Beacon appreciate this opportunity to comment on the Commission's proposal to expand E-Rate Program funding to Wi-Fi hotspots, similar devices, and associated service. The E-Rate Program will be most effective as a tool to narrow the Homework Gap if the Commission adopts an inclusive approach to funding eligibility that relies on educators' and library administrators' unique experiences with their communities' needs.

Respectfully submitted,

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January 29, 2024