

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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In the Matter of	)	
	)	
Modernizing the E-rate	)	WC Docket No. 13-184
Program for Schools and Libraries	)	
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_____	)	

**REPLY COMMENTS OF THE URBAN LIBRARIES COUNCIL**

Dated: September 30, 2014

## SUMMARY

The Urban Libraries Council (“ULC”) thanks the Chairman and the Commission for their leadership and continued focus on the important task of modernizing the E-rate program for the 21<sup>st</sup> Century. ULC believes that the Commission’s data-driven E-rate reform process will yield a modern, updated and fully-funded program that will serve the needs of all schools and libraries.

In reviewing the tremendous record developed in this proceeding, ULC requests that the Commission dedicate particular attention to the role and needs of the nation’s urban libraries. While limited in number, urban libraries serve a majority of the nation’s library patrons—especially the broadband needs of these patrons. Various data submitted in this proceeding confirms that without urban libraries, millions of individuals across the country would not be able to access the Internet.

As the primary doorway that millions use to enter today’s online society, the FCC must ensure that urban libraries have the E-rate funding they need to keep this door open. In particular, the Commission must reconsider the budget allocation method it adopted for library internal networks in the *E-rate Modernization Order*. A recent study commissioned by ULC confirms that this square footage metric would be highly inequitable to the nation’s urban libraries. The Commission must also significantly increase overall E-rate funding to ensure that urban libraries have the funding necessary to keep pace with the tremendous changes in connectivity demand and broadband infrastructure; changes that a resource-constrained E-Rate has struggled to address. Lastly, the Commission should act to ensure that filtering requirements imposed before the advent of smartphones and tablets do not stand in the way of libraries obtaining the E-rate funding they need to serve their communities.

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**COMMENTS OF THE URBAN LIBRARIES COUNCIL**

The Urban Libraries Council (“ULC”) hereby provides its initial comments pursuant to the Report and Order and Further Notice of Proposed Rulemaking issued on July 23, 2014 in the above-captioned proceeding seeking further comment on several issues of critical importance to reforming the E-rate program.<sup>1</sup>

**I. THE RECORD DEVELOPED IN THIS PROCEEDING JUSTIFIES RECONSIDERATION OF THE CATEGORY TWO BUDGET ALLOCATION METHOD FOR URBAN LIBRARIES**

A. New Data and Information Submitted Since Adoption of the E-rate Modernization Order Warrants Review by the Commission

The central role that libraries—especially large urban libraries—play in the daily broadband needs of millions of individuals across the country has been well documented in this proceeding. A number of initial commenters reiterated the significant need that urban libraries fill in providing broadband services in their communities. According to the Chicago Public Schools and Libraries, the Chicago Public Library (“CPL”) serves over 200,000 patrons per

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<sup>1</sup> See *In re Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (“*E-rate Modernization Order*”) (rel. July 23, 2014).

week and many of these patrons visit their local library to access broadband services. During 2013 alone, CPL provided over 2.8 million people with public computing sessions, 1.5 million WiFi sessions and had 7.4 million unique visitors to its website.<sup>2</sup>

These statistics are consistent with the analysis ULC submitted with its initial comments that concluded that 400 urban library systems in the country account for approximately 63% of all library visitors.<sup>3</sup> The resounding conclusion of this study was that the square footage metric adopted by the Commission in the *E-rate Modernization Order* would be highly inequitable to the nation’s urban libraries. For cities and other larger library systems (in the top 5% by usage or by size), the ULC study found that the square footage did not increase at a rate proportional to users—unlike rural, town and most suburban systems. Equally important, the square footage of the library was the worst predictor of WiFi costs for these libraries. This data-driven study stands in stark contrast to the superficial analysis the Commission used in adopting its square footage approach. Without providing any factual background or analysis, the Commission simply reasoned that square footage was a “reasonably accurate” method of setting budgets for library funding allocations.<sup>4</sup>

Throughout this entire proceeding, the Commission has repeatedly asserted its intention to undertake a data-driven approach to reforming the E-rate program. ULC has applauded these aspirations, and its members have responded with significant data and information. The economic study submitted by ULC in its initial comments is just the latest in a number of analyses that concludes, for the record, that the square foot budget allocation method adopted by

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<sup>2</sup> See Comments of the Chicago Public Schools, The Chicago Public Library and the City of Chicago, at p. 1 (filed Sept. 15, 2014) (“*Chicago Comments*”).

<sup>3</sup> See Comments of the Urban Libraries Council, Attachment A (filed Sept. 15, 2014).

<sup>4</sup> *E-Rate Modernization Order* at ¶ 98.

the Commission would significantly discriminate against urban libraries. The information provided by ULC and its members is exactly the type of data the Commission committed to review in reforming the E-rate program. Standing on its own, the ULC-sponsored analysis justifies reconsideration of the Commission's prior decision to establish only one method for allocating category two funds. It would be particularly unsettling if the Commission stood firmly by its square footage budget allocation method without considering the ULC study and its conclusions regarding the unfairness of this approach.

B. Urban Libraries Cannot Provide Sufficient Broadband Services Under the Square Footage Budget Allocation Method

Because urban libraries serve nearly two-thirds of all library visitors, the FCC must reconsider the budget allocation method it previously adopted to ensure that urban libraries can meet their broadband needs. Several commenters supported the notion of revising the budget allocation method for urban libraries. For instance, CPL noted that the square footage method should be discontinued in future years because it would limit CPL's ability to meet its broadband needs.<sup>5</sup> CPL rightly pointed out that while the \$2.30 funding metric may provide simplicity and sufficient funding for some library systems, it is grossly unfair to most urban libraries. As a result, it is unfair to the millions of library patrons needing robust wireless internal connectivity provided by the nation's urban libraries.

ULC member library systems previously submitted a broad array of data in this proceeding demonstrating that the \$2.30 per square foot budget allocation would not come close to meeting their needs. Additional analysis undertaken by a number of these systems since adoption of the *E-rate Modernization Order*, including those in Los Angeles, Seattle, Houston,

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<sup>5</sup> *Chicago Comments* at p. 2

Jacksonville, Kansas City and others, sheds more light on the level of unfairness. The analysis undertaken by these systems included detailed cost information on the category 2 infrastructure needed to provide internal broadband connectivity within their library buildings.

The analysis undertaken by the Seattle Public Library (“SPL”) confirmed that the Commission’s \$2.30 per square foot budget allocation would have left the library with an approximately \$1.25M shortfall in funding for the 663,000 square feet of library space it operated for the 2011-2014 timeframe. SPL estimates that its costs during this period actually were \$3.97 per square foot. Of particular importance, this funding shortfall is for the costs that SPL incurred in deploying its current internal infrastructure. These costs do not come close to the costs that SPL would incur in deploying the infrastructure that will be necessary to provide high-capacity internal broadband connectivity in future years.

C. The Commission Should Create Allocation Metrics That Serve All Libraries

In the *E-rate Modernization Order*, the Commission declined to adopt other funding alternatives for public libraries because it concluded that such metrics “may vary dramatically” in the funding they would ultimately provide to library applicants.<sup>6</sup> Contrary to the Commission’s reasoning, ULC believes that variation and funding flexibility are the precise concepts the E-rate program should embrace. The funding needs and unique circumstances of each category of library applicants justify a more flexible approach to allocating funding. The record in this proceeding confirms that an inflexible, one-size-fits-all approach to funding will not meet the needs of all applicant categories—especially large urban libraries. Indeed, the ULC-sponsored analysis concludes that certain applicants, especially urban libraries, should have

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<sup>6</sup> *E-rate Modernization Order* at ¶ 98.

the flexibility necessary to choose a funding allocation method that best suits their particular circumstances.

The Commission has a variety of alternatives at its disposal to ensure that libraries—no matter their size or location—receive the E-rate funding they need.

First, the Commission could base funding on the number of library visitors. Contrary to the Commission’s belief, ULC members have repeatedly stated that it would be administratively easy for them to track and report the number of individuals who access their buildings on a daily, monthly or yearly basis. This would be effectively the same as funding schools according to the number of students and teachers, which the Commission found appropriate. In adopting this metric for schools, the Commission concluded that “WiFi networks generally should scale linearly by...the number of students.”<sup>7</sup> WiFi networks in libraries operate in the same manner and scale linearly with the number of patrons who use the library’s internal broadband services. Applying the same metric for libraries as applies to schools, therefore, would ensure that E-rate funding is allocated on a non-discriminatory and consistent basis across schools and libraries.

The Commission could also allocate library funding on a per capita basis of the geographic territory served by a library system. A number of ULC member libraries already have collected the data necessary to determine their per capita costs of providing internal broadband services. Basing E-rate funding on a per capita basis would ensure that systems serving more populous territories have the funding they need to meet the more significant demands of these communities.

Lastly, the Commission could use square footage as a funding metric, but must significantly increase the \$2.30 cap for urban libraries. Based on extensive input from its

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<sup>7</sup> *Id.* at ¶ 97.

member systems, ULC previously advocated a \$4.00 per square foot funding amount. While this amount would not satisfy the needs of all urban library systems (some ULC members have calculated their per square foot costs well in excess of \$4.00), it would meet the funding needs of a majority of urban library systems and is consistent with the costs incurred by many ULC members for recent WiFi deployments.

## **II. THE RECORD CONFIRMS THAT SIGNIFICANT ADDITIONAL FUNDS FOR THE E-RATE PROGRAM ARE NECESSARY TO ALLOW SCHOOLS AND LIBRARIES TO SERVE THEIR COMMUNITIES**

### **A. Schools and Libraries Cannot Meet Their Broadband Needs Without Significant Additional Funding**

A broad array of parties filing initial comments noted that the E-rate program requires significant additional resources to ensure that schools and libraries can keep pace with the tremendous changes in connectivity demand and infrastructure; changes that a resource-restricted E-Rate has struggled to address. These parties noted that increased funding is necessary to ensure that “every student and library patron has the opportunity for personalized content, research, study, and assessment within the school or library.”<sup>8</sup> They also recognized that a significant funding increase “is long overdue in order to ensure there is a sufficient and predictable funding source to meet the needs of the nation’s schools and libraries.”<sup>9</sup>

The critical need for more E-rate funding can no longer be disputed, considering that 18 years into the E-rate program nearly 85% of libraries do not have access to high-speed fiber optic broadband connectivity.<sup>10</sup> The need for significant and additional E-rate funding for

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<sup>8</sup> Initial Comments of the Schools, Health & Libraries Broadband Coalition, at p. 8 (filed Sept. 15, 2014).

<sup>9</sup> Initial Comments of the State E-rate Coordinators Alliance, at p. 5 (filed Sept. 15, 2014).

<sup>10</sup> See Wireline Competition Bureau and Office of Strategic Planning and Policy, Staff Report, at pp. 11-12 (rel. August 12, 2014).

libraries was also made clear in the State Connectivity Profiles recently released by Commission staff. These profiles provide a summary of connectivity data for schools and libraries located in a diverse set of sample states.<sup>11</sup> The connectivity data contained in this report highlighted the pitiful state of library broadband connectivity around the country.

In California, for instance, less than 0.015% of the libraries in the state reported having at least 1 Gbps of connectivity to the building. Equally troublesome, approximately 0.2% of public libraries reported having at least a 100 Mbps of connectivity to the building. In Georgia, which recently transitioned to a new service model, only 1 of the 61 public library systems has 1 Gbps of connectivity—even after completion of the transition.<sup>12</sup> The connectivity of libraries in more rural states is even worse. In Kansas, less than 1% of all libraries have at least 60 Mbps of broadband connectivity to the building.<sup>13</sup> In Missouri, only 2.5% of libraries have at least 50 Mbps of broadband connectivity to the building, while over 71% have less than 5 Mbps of broadband connectivity to the building.<sup>14</sup>

The woeful status of broadband connectivity for the nation’s public libraries is not a result of a lack of demand for E-rate funds. In 2012 alone, E-rate requests for funding reached an all-time high of \$5.2 billion, more than double the amount of funding available. This tremendous demand also did not likely reflect actual need given that many schools and libraries

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<sup>11</sup> See *State Connectivity Profiles*, available at [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2014/db0919/DOC-329357A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0919/DOC-329357A1.pdf). (visited Sept. 29, 2014).

<sup>12</sup> See *id.* at p. 16.

<sup>13</sup> See *id.* at p. 18.

<sup>14</sup> See *id.* at p. 33.

did not apply for E-rate funds because of the complexity of the program and widespread understanding of the insufficiency of E-rate funds.<sup>15</sup>

Finally, the influx of Category 2 funding that the Commission adopted in the *E-rate Modernization Order* warrants an immediate increase in the overall size of the E-rate fund. A number of ULC members are beginning to review their broadband connectivity needs in light of the *E-rate Modernization Order*, but need to understand whether additional funds will be made available to them prior to moving forward. These systems are unable to design and deploy future-proof whole broadband networks in the absence of the certainty they need regarding future funding. Without this certainty, many schools and libraries may forgo the additional Category 2 funding.

B. Any Increase in E-rate Funds Cannot Come From Offsets Made to Universal Service Fund Programs

The Communications Act creates an independent mandate on the Commission to provide adequate funds to support the E-rate program. Under this mandate, the Commission must ensure that schools and libraries have “affordable” access to and use of certain services pursuant to a discount rate that the Commission determines is “appropriate and necessary...”<sup>16</sup> The Commission is furthermore required to adopt competitively neutral rules to “enhance...access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers and libraries....”<sup>17</sup>

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<sup>15</sup> See Initial Comments of the National Education Association at p. 3 (filed Sept 15., 2014) (noting that many schools likely did not apply for E-rate funding because of the “level of complexity and technical knowledge required.”)

<sup>16</sup> 47 U.S.C. ¶ 254(h)(2).

<sup>17</sup> *Id.*

Nowhere does the authorizing statute permit the Commission to undercut or trade off E-rate support against other legislative mandates, such as certain USF programs or support for people with disabilities. Each of these legislative mandates has its own distinctive legislative history and funding goals. Moreover, Congress did not permit the FCC to act on its own authority to trade off funding for one program against the others.

Some would have the Commission, on its own and without any mandate or authority from Congress, make these tradeoffs and favor the funding needs of schoolchildren or library patrons over the funding needs of rural telecommunications users or health care providers in remote areas.<sup>18</sup> These false choices are not permitted by the Commission's authorizing statute or by any other congressional authority and cannot be created whole cloth by the Commission.

### **III. THE ESL NO LONGER ACCORDS WITH THE GOALS OF THE E-RATE**

#### **A. The Commission Should Review Whether the ESL Remains Necessary**

Given that the Commission adopted a budget allocation method for schools and libraries in the *E-rate Modernization Order*, the Commission should review whether the ESL remains necessary. The ESL was originally adopted for applicants to use as a tool in determining what services and products are eligible for E-Rate support. The Commission repeatedly has noted its belief that a limited list of eligible services would help to ensure available funds are targeted and, therefore, available to more applicants.<sup>19</sup> In adopting the budget allocation methods for category 2 services in the *E-rate Modernization Order*, however, the Commission repeatedly noted its

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<sup>18</sup> See, e.g., *Commissioner O'Rielly's Blog Introduction and Views on E-Rate Reform* (rel. Feb 12, 2014) (noting that "any increase in the budget for E-Rate must be offset by reductions elsewhere within the federal universal service fund.")

<sup>19</sup> *E-Rate Modernization Order* at ¶ 121.

belief that such budgets would ensure that applicants have more flexibility in obtaining funding for internal connections.<sup>20</sup>

The Commission cannot have it both ways: it cannot claim to provide flexibility to E-rate applicants through budget allocation requirements while also limiting which specific network components applicants can purchase. The budget allocation methods adopted in the *E-rate Modernization Order*, if allowed to stand, arguably serve the purpose originally intended for the ESL. As such, the ESL should be significantly broadened to provide the new flexibility intended by the Commission.

Alternatively, the ESL could be eliminated entirely. ULC has discussed the ESL in detail with a number of its members, who have stated that the ESL is so confusing and limiting that they decided not to pursue E-rate funding. Instead of the confusing and piecemeal ESL, the Commission should focus the E-rate on funding “whole networks.” Under this approach, applicants would list in applications those network elements and services they intend to purchase and would certify that all elements and services will be used to provide broadband services. A number of commenters in this proceeding advocated that the Commission pursue a “whole network” approach to E-rate funding.<sup>21</sup> This method of allocating funding would greatly streamline and simplify the application and funding processes, enabling more schools and libraries to participate in the program.<sup>22</sup>

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<sup>20</sup> See *id.* at ¶¶ 88-104.

<sup>21</sup> See Comments of the American Library Association, at p. 15 (filed Sept. 15, 2014).

<sup>22</sup> While ULC appreciates the Commission’s efforts to simplify the E-rate program, much work remains to be done. For instance, it’s unclear at this point whether funding year 2014 category 2 expenses will be eligible for submission in the 2015 funding year as intended. The rules adopted for Category 2 budgets also are unclear and vague. Lastly, the application and funding rules for category 2 items could require applicants to return previously received funding (if unused) and then reapply for it in future years—though the application for the future funding could be due before an applicant knows how much funding has gone unused.

#### **IV. PERSONALLY-OWNED DEVICES SHOULD BE EXCLUDED FROM CIPA FILTERING REQUIREMENTS**

##### **A. CIPA Does Not Made Filtering of Personally-Owned Devices**

No party challenged ULC's position that excluding personally-owned devices from the filtering requirements is consistent with the specific language of the statute and would free libraries to seek E-rate funding they need to provide broadband connectivity and other services to support those devices. Several commenters agreed with ULC that requiring libraries to implement a filtering solution for devices brought into a library facility would contradict the specific provisions of the statute. CPL requested that the Commission "exclude personally-owned devices from filtering requirements in order to help libraries meet the growing demand for connectivity supporting personally-owned devices used on the library network."<sup>23</sup> Confirmation that personally owned devices are excluded from CIPA would free many library systems to seek E-rate funding they previously have forfeited while demonstrating to the Commission the true funding needs of libraries across the country.

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<sup>23</sup> *Chicago Comments* at p. 2.

**V. CONCLUSION**

ULC appreciates the Commission's continued focus on modernizing the E-rate program to ensure that it meets the needs of all applicants, including urban libraries. ULC strongly believes that equitable access to adequate E-rate funds across all types of public libraries is essential to building healthy communities across the United States.

Respectfully submitted,

URBAN LIBRARIES COUNCIL

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