

**Before the
Federal Communications Commission
Washington, DC 20554**

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

**REPLY COMMENTS OF THE HISPANIC TECHNOLOGY AND
TELECOMMUNICATIONS PARTNERSHIP (HTTP), LATINOS IN INFORMATION
SCIENCES AND TECHNOLOGY ASSOCIATION (LISTA), MINORITY MEDIA
AND TELECOMMUNICATIONS COUNCIL, NAACP, NATIONAL BLACK CAUCUS
OF STATE LEGISLATORS, NATIONAL COALITION ON BLACK CIVIC
PARTICIPATION, NATIONAL ORGANIZATION OF BLACK COUNTY OFFICIALS,
NATIONAL ORGANIZATION OF BLACK ELECTED LEGISLATIVE (NOBEL)
WOMEN THE RAINBOW PUSH COALITION AND THE NATIONAL ACTION
NETWORK**

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EXECUTIVE SUMMARY

The digital divide between students in low-income and minority schools and more affluent districts remains an unfortunate reality in our communities today. The Federal Communications Commission (“FCC”) has taken important steps through its E-rate reform process to address this disparity in access to high speed, high capacity broadband by shifting the priorities of the E-rate program, streamlining the E-rate application process, and accelerating the process by which applications for E-rate support are reviewed. Further challenges lie ahead, however, to ensure that all eligible schools and libraries, especially those with the greatest need, receive the funding they need to improve broadband connections both to the campus and in the classroom.

In particular, the Hispanic Technology and Telecommunications Partnership (HTTP), Latinos in Information Sciences and Technology Association (LISTA), Minority Media and Telecommunications Council (MMTC), NAACP, National Black Caucus of State Legislators (NBCSL), National Coalition on Black Civic Participation, National Organization of Black County Officials (NOBCO), National Organization of Black Elected Legislative (NOBEL) Women, the Rainbow PUSH Coalition and the National Action Network (collectively “MMTC”) urge the FCC to ensure that the E-rate fund can meet all present and future E-rate support needs of low-income schools and libraries. If the FCC maintains the distinction between priority one and priority two services, it should guarantee funding for internal connections for the highest discount rate schools. Any temporary increase in the funding cap should not result in an increase in the cost of telecommunications services for consumers, or endanger support for other Universal Service Fund programs such as Lifeline/Link Up.

The FCC should also reject changes to the discount rate, which will give rise to real

financial hardships for under-resourced schools, and will discourage participation by institutions that lack the budget to “buy in” to the E-rate program. Schools in which more than 20 percent of the student body is eligible for the National School Lunch Program should also have the option of seeking E-rate support based on an independent discount rate, rather than having to apply for support based on the discount rate of their district.

The *E-rate Report and Order* poses new budgeting challenges for libraries, and the FCC should base libraries’ discount rate on their poverty level, rather than square footage, which is an unreliable predictor of actual need. Libraries should be eligible for the discount rate of the school districts in which their main branch is located.

Finally, the FCC should not double the data retention period for eligible entities. The FCC should retain the current five-year document retention period for *de minimis* funding requests, to reduce the administrative burden on schools and libraries with small staffs and limited technology budgets.

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NATIONAL ORGANIZATION OF BLACK ELECTED LEGISLATIVE (NOBEL)
WOMEN AND THE RAINBOW PUSH COALITION**

I. INTRODUCTION

The Hispanic Technology and Telecommunications Partnership (HTTP), Latinos in Information Sciences and Technology Association (LISTA), Minority Media and Telecommunications Council (MMTC), NAACP, National Black Caucus of State Legislators (NBCSL), National Coalition on Black Civic Participation, National Organization of Black County Officials (NOBCO), National Organization of Black Elected Legislative (NOBEL) Women and the Rainbow PUSH Coalition (collectively “MMTC”) respectfully submit these reply comments in response to the *Further Notice of Proposed Rulemaking* (“*FNPRM*”) issued by the Federal Communications Commission (“FCC” or “Commission”) in this proceeding.¹ In the *FNPRM*, the FCC seeks comment on several issues raised in the *E-rate Report and Order* that merit further inquiry, including: (1) how to meet the future funding needs of the E-rate

¹ 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 (rel. Jul. 23, 2014) (“*E-rate Report and Order*” and “*E-rate FNPRM*”).

program;² and (2) how to ensure that E-rate support for libraries is sufficient going forward.³

Insuring that the future E-rate funding needs of both schools and libraries are met is especially important given the stark disparities in access to twenty-first century digital technologies that exist between low-income students and students of color in the nation's cities and students in more affluent districts. A 2013 study conducted by the Pew Research Center found "striking differences in the role of technology in wealthier school districts compared with poorer school districts."⁴ Schools and libraries play a critical role in providing access to high capacity broadband and digital technologies. A study in the fall of 2013 found that only fifty-seven percent of elementary schools and sixty-four percent of secondary schools have wireless broadband connections in all of their student classrooms, and over half of all school districts do not believe that the wireless networks in their school buildings have the capacity to handle a one-to-one student-to-device deployment.⁵ Improving access at school is critical, because only eighteen percent of teachers say that all or almost all of their students have access to the digital tools that they need at home, and teachers in the lowest income schools are "least likely to say their students have sufficient access to the digital tools they need, both in school and at home."⁶

Chairman Wheeler has stated that putting digital technology on each student's desk will be "a huge step towards vaulting the Digital Divide."⁷ The Mayor of the City of Los Angeles

² *E-rate FNPRM* at ¶¶ 268-270.

³ *Id.* at ¶¶ 298-300.

⁴ Pew Research Center, College Board & National Writing Project, "How Teachers Are Using Technology at Home and in Their Classrooms" at 2 (Feb. 28, 2013), *available at* http://www.pewinternet.org/~media/Files/Reports/2013/PIP_TeachersandTechnologywithmethodology_PDF.pdf (last accessed Sept. 19, 2014) ("*Pew Research Study*").

⁵ Education Networks of America et al., *Raising the BAR: Becoming Assessment Ready* at 21, *available at* http://www.cosn.org/sites/default/files/pdf/RaisingTheBAR_WhitePaper_singlepg.pdf (last accessed Sept. 19, 2014) (free registration required); Wireline Competition Bureau Seeks Focused Comment on E-rate Modernization, WC Docket No. 13-184, *Public Notice*, DA 14-308 ¶ 8 (rel. Mar. 6, 2014).

⁶ *Pew Research Study* at 3.

⁷ Prepared Remarks of Tom Wheeler, National Digital Learning Day, The Library of Congress at 2 (Feb. 5, 2014), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-325447A1.pdf (last accessed Sept. 19, 2014).

has put the challenge facing the E-rate program even more starkly, arguing that “[t]he effort to provide inner-city youth with broadband access, online resources and computing devices to ready themselves to be productive citizens with competitive skillsets represent[s] more than a worthy education priority—it should be considered one of the greatest civil rights challenges of our time.”⁸ The FCC has an opportunity, as part of its continuing efforts at E-rate reform, to meet this challenge directly and ensure a brighter and more connected future for low-income and minority communities throughout the country by ensuring the E-rate fund can meet all present and future funding needs; rejecting decreases in the discount rate for the neediest schools; basing the library discount rate on actual demand for broadband services, rather than building size; and retaining the current five year data retention period.

II. THE COMMISSION ADOPTS MANY POSITIVE REFORMS IN THE E-RATE REPORT AND ORDER

The Commission implements many positive reforms in the *E-rate Report and Order*, including adopting the overall goal of increasing the availability of high-speed, high-capacity broadband in schools and libraries, streamlining the application process for E-rate applicants, and accelerating the Universal Service Administrative Company (“USAC”) review process. These reforms will improve the E-Rate program and help ensure that our students and communities have the twenty-first century broadband connections they need to be a successful part of the future global economy.

The Commission’s most laudable reform is the overall shift in focus of the E-rate program to emphasize the need to support high-speed, high capacity broadband to schools and libraries.⁹ As FCC Commissioner Rosenworcel recently explained, today many schools that rely

⁸ Comments of the City of Los Angeles, WC Docket No. 13-184 at 4 (filed Sept. 15, 2014) (“City of Los Angeles Comments”).

⁹ *E-Rate Report & Order* ¶¶ 26-31.

on E-Rate funding are forced to access the Internet at speeds as low as 3 Megabits per second, which is slower than the speed of the average American household even though “in many cases, those schools have 200 times as many users.”¹⁰ Unsurprisingly, with speeds this slow, “too many schools do not have the capacity to offer” next-generation educational technologies such as high-definition streaming video, and are thus “unable to take advantage of the most innovative teaching tools.”¹¹

The Commission’s targets for high-speed Internet promise to correct this problem.¹² With a near-term goal of 100 Megabits per second per 1000 students and a long-term target of 1 Gigabit per second per 1000 students, students and teachers will have access to Internet speeds to prepare them to participate in an increasingly digital economy.¹³ Through this virtuous cycle, the Commission will help make “more bandwidth available at nationwide scale,” thereby “foster[ing] new opportunities for creative content, services, teaching tools, and devices— everywhere.”¹⁴

The FCC has also streamlined the E-rate application process, reducing the burden on the schools and libraries most in need of additional funding and least able to afford the additional staff, consultants, and legal counsel often needed to navigate the byzantine E-rate process.¹⁵ As the bipartisan non-profit Digital Promise explains, “[d]istricts across the country have called on the FCC to simplify and streamline the E-rate application process” – and the Commission’s *E-rate Report and Order* does just that.¹⁶ In particular, the Commission has put in place a

¹⁰ Remarks of Commissioner Jessica Rosenworcel, *Latino 2.0: Latinos in Tech Innovation and Social Media* (Sept. 16, 2014), available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0917/DOC-329442A1.pdf (last accessed Sept. 19, 2014) (“Rosenworcel Sept. 16 Speech”).

¹¹ *Id.*

¹² See *E-Rate Report & Order* ¶ 34.

¹³ See *id.*

¹⁴ Rosenworcel Sept. 16 Speech.

¹⁵ See *E-Rate Report & Order* ¶¶ 190-208.

¹⁶ Karen Cator, *Support a More Modern E-rate, Now and in the Future*, Digital Promise, available at

reformed application process for multi-year contracts, committed to speeding review of consortia applications, and eliminated unnecessary requirements.¹⁷ While these improvements will help all participants, these benefits will especially redound to smaller, less-well financed, and more rural schools and libraries, whose limited staffs may not have the knowledge or resources to manage the current application process.¹⁸

Finally, accelerating the USAC review process and requiring that all funding commitments and denials are issued by September 1 of each funding year will increase the predictability of E-rate support, which will encourage participation by eligible entities, particularly those that need funding the most.¹⁹ The American Association of Libraries has reported that “one of the most frustrating aspects of the E-rate program for library applicants is that many are not notified by USAC that they have been funded (or not) by the July 1 start of the funding year.”²⁰ While the FCC’s reforms do not guarantee funding decisions by that earlier date, they do squarely address the problems faced by eligible institutions waiting for indeterminate decision dates. Similarly, members of consortia have reported problems with the lengthy time to review consortia applications, explaining that it is difficult to go eighteen to twenty-four months without a funding commitment, with some institutions finding that it was actually more cost-effective to procure services individually than wait for E-rate support.²¹

<http://www.digitalpromise.org/blog/entry/support-a-more-modern-e-rate-now-and-in-the-future> (last accessed Sept. 19, 2014).

¹⁷ See Rosenworcel Sept. 16 Speech.

¹⁸ See Comments of the Association for Rural & Small Libraries, WC Docket No. 13-184 at 4-5 (filed June 6, 2014); see also Comments of the Education and Library Networks Coalition, WC Docket No. 13-184 at 4-5 (filed Apr. 7, 2014) (explaining that allowing priority one applicants seeking recurring services to submit multi-year applications would save time for current applicants and become an inducement to participate for those schools that are eligible but elect not to participate because of the time consuming nature of annual priority one applications).

¹⁹ *E-rate Report and Order* ¶ 59, ¶¶ 254-55.

²⁰ Comments of the American Association of Libraries, WC Docket No. 13-184 at 5 (filed Sept. 16, 2013).

²¹ Comments of the State of Arkansas, WC Docket No. 13-184 at 8-9 (filed Mar. 6, 2014).

Instituting a hard deadline and accelerating the review process will address these problems and promote availability of the E-rate program where it is most needed.

III. THE FCC SHOULD ENSURE THE E-RATE FUND CAN MEET ALL PRESENT AND FUTURE FUNDING NEEDS

Although the reforms initiated by the FCC are important first steps, significant challenges remain. The most critical of these is ensuring that E-rate support is available to meet all present and future funding needs for the neediest schools and libraries. As a critical first step, the FCC should eliminate the distinction between category one and category two services. If the FCC retains this distinction, however, it should guarantee funding for category two services for the highest discount rate schools. The only way to ensure adequate funding for E-rate services for the neediest schools and libraries in the future is to temporarily raise the funding cap, although this must be accomplished without imposing an additional burden the Universal Service Fund.

Even under the FCC's revised funding structure, the continued distinction between category one and category two funding creates inherent uncertainty, as schools have no way of knowing if their category two requests will be funded from year to year.²² In particular, because funding for internal connections such as Wi-Fi is considered a category two service, requests for this support is inconsistently granted, and then only to applicants at the highest discount rates.²³ A prioritized funding structure creates inherent uncertainty in technological planning, because schools and libraries have no way of knowing if their category two requests will be funded from year to year, and additionally sets up a roadblock to deploying internal connections in school buildings.²⁴

²² See Comments of the Minority Media and Telecommunications Council, WC Docket No. 13-184 at 16 (filed Nov. 16, 2013).

²³ See *id.*

²⁴ See Comments of the Minority Media and Telecommunications Council, WC Docket No. 13-184 at 3 (filed Apr. 7, 2014) ("MMTC April 7 Comments").

Under the current E-rate program requests for priority two support, including Wi-Fi, are granted inconsistently and then only to applicants with the highest discount rates.²⁵ Many commenters agree that the Commission needs to adopt comprehensive program reforms to ensure “long-term stable and adequate funding of *both* high-speed broadband and internal connectivity.”²⁶ A recent FCC staff report notes the likelihood that demand for category one services providing connectivity to school and library premises will continue to grow,²⁷ leading one commenter to express concern that in the future, “school districts with more than 20% of their students eligible for the National School Lunch Program may not see even a dime of [category two] E-Rate money by 2020.”²⁸

If the FCC maintains the distinction between category one and category two services, we urge the FCC to guarantee funding for category two services for the highest discount rate schools. As Chairman Wheeler has noted, in 2013, for the first time ever, no funding was available to support internal connections after funds for priority one services were allocated.²⁹ This means that out of the \$2.4 billion the FCC spent last year on the E-rate program, no funds were allocated to providing Wi-Fi for even the neediest schools.³⁰ The *E-rate Report and Order* establishes a “target” of \$1 billion per year for internal connections; however, this funding is contingent on untested program efficiencies, and the FCC acknowledges that this support could

²⁵ See Comments of the Minority Media and Telecommunications Council, WC Docket No. 13-184 at 16 (filed Sept. 16, 2013) (“MMTC Sept. 16 Comments”).

²⁶ See, e.g., Comments of Hewlett-Packard Company, WC Docket No. 13-184, CC Docket No. 02-6 at 1 (filed Sept. 15, 2014).

²⁷ See Wireline Competition Bureau & Office of Strategic Planning and Policy Staff Report, WC Docket No. 13-184 at 18 (rel. Aug. 12, 2014).

²⁸ See Comments of the Education and Library Network Coalition, WC Docket No. 13-184 at 5 (filed Sept. 15, 2014).

²⁹ Remarks of Tom Wheeler, Chairman, Federal Communications Commission, Council of Chief State School Officers Legislative Conference at 2 (Mar. 17, 2014), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0317/DOC-326083A1.pdf (last accessed Sept. 19, 2014).

³⁰ *Id.* at 2.

be withdrawn if it threatens to strain the overall E-rate budget.³¹ A lack of committed funding for category two services will perpetuate the current problem faced by eligible institutions, which are unable to balance their technology budgets because they cannot predict the amount of E-rate funding for internal connections from year to year.

An overwhelming number of commenters have suggested that the only way to ensure that E-rate funding will be available for the most under-resourced schools and libraries in the future is to raise the funding cap.³² As the FCC notes, the E-rate cap was not adjusted for inflation between 1998-2010 and so has long been artificially suppressed.³³ The State E-rate Coordinators' Alliance observes that the E-rate program "has the dubious distinction of being the only universal service mechanism that has been underfunded almost since its inception," and forecasts a deficit of over \$4 billion by 2019 under the direction outlined by the FCC in the Report and Order.³⁴ Commenters have proposed a number of solutions to the problem of the inadequate E-rate cap. The State Consortia Group asks that, at a minimum, the FCC increase the cap by the inflation factor for each program year,³⁵ while the State of California recommends

³¹ *E-rate Report and Order* ¶ 78.

³² *E-rate Report and Order* ¶ 269; see Comments of AASA: The School Superintendents Association, WC Docket No. 13-184 at 2-3 (filed Sept. 15, 2014) ("Raising the program cap would support not only the original goals of connectivity, but also facilitate expansion of the program's focus to broadband and streamlining the application process, as well as support the changes adopted in the July 2014 order."); Comments of the National Education Association, WC Docket No. 13-184 at 2-4 (filed Sept. 15, 2014) (recommending a "permanent doubling of the E-rate cap") ("NEA Comments"); Comments of the Education and Libraries Coalition, WC Docket No. 13-184 at 1-2 (filed Sept. 15, 2014) ("[T]he E-Rate's annual funding cap, essentially unchanged from its inception, is grossly inadequate to fund the bandwidth increases so many schools and libraries require."); Comments of the California Department of Education, WC Docket No. 13-184 at 2 (filed Sept. 15, 2014) (noting that California's unfunded priority two requests were over \$578 million) ("California Dept. of Ed. Comments"); see also Comments of Cisco Systems, Inc., WC Docket No. 13-184 at 2 (filed Sept. 15, 2014); City of Los Angeles Comments at 4; Comments of Mayors Bill de Blasio (New York City), Charlie Hales (Portland, OR) and Martin Walsh (Boston), WC Docket No. 13-184 at 2 (filed Sept. 15, 2015) ("Mayors' Comments"); Comments of the State of Nebraska Office of the Chief Information Officer, WC Docket No. 13-184 at 6 (filed Sept. 15, 2014); Comments of the Schools, Health & Libraries Broadband Coalition, WC Docket No. 13-184 at 8 (filed Sept. 15, 2014); Comments of the State E-rate Coordinators' Alliance, WC Docket No. 13-184 at 4-5 (filed Sept. 15, 2014) ("SECA Comments"); Comments of the Urban Library Council, WC Docket No. 18-184 at 8-10 (filed Sept. 15, 2014) ("ULC Comments").

³³ *E-rate Report and Order* ¶270.

³⁴ SECA Comments at 4-5.

³⁵ Comments of the State Consortia Group, WC Docket No. 13-184 at 2 (filed Sept. 15, 2014).

increasing the funding cap to \$4 to \$5 billion.³⁶ Commissioner Rosenworcel has also been vocal in her support of an E-rate cap increase.³⁷ The mayors of Boston, New York City, and Portland, Oregon have urged the FCC to at a minimum adopt Commissioner Rosenworcel’s suggestion to index current funding levels to inflation to ensure the program’s purchasing power, and ideally “go beyond this” to make “sizeable additional investments in a program that has only grown in importance” since it was first established.³⁸ As the Council of Great City Schools has noted, “efficiencies and service changes are not sufficient for the E-rate [program] to meet the necessary technology needs throughout the country.”³⁹

MMTC has previously expressed its support for a temporary increase in the E-rate cap, provided that the Commission ensures that the allocation of funding for E-rate does not negatively impact Universal Service Fund monies available to support the Lifeline/Link Up programs, which are critical mechanisms to ensure that the poorest members of our community have access to telecommunications services.⁴⁰ If the Commission does increase the E-rate cap to ensure funding for internal connections to provide broadband in classrooms, the additional funds should be targeted to support accelerated high-capacity broadband deployment, including internal connections, in low-income and rural schools.

Although MMTC agrees that more funding for E-rate is needed, it is critical that an increase in the cap not lead to an increase in prices for consumers on other digital and mobile

³⁶ California Dept. of Ed. Comments at 2.

³⁷ See Rosenworcel Sept. 16 Speech (“[T]he bigger problem is that the E-Rate fund—which provides \$2.4 billion a year in support—has barely been adjusted for inflation since the program began. That’s cruel. It has cut down the purchasing power of schools by roughly \$1 billion per year, cutting short the good that an updated E-Rate can do. We need to fix this—because we can’t expect to out educate and out innovate the world if we do it on a budget frozen in the age of dial-up.”).

³⁸ Mayors’ Comments at 2.

³⁹ Council of Great City Schools Comments at 2-3.

⁴⁰ MMTC Sept. 16 Comments at 8.

services.⁴¹ In particular, minorities and low-income people are disproportionately high consumers of mobile services, and any increases in the USF to fund expansion of the E-rate program could slow their adoption of and access to high speed broadband.⁴² Although more robust E-rate support is important, as Commissioner O’Rielly has warned, carriers must not be allowed to increase consumer bills to compensate for an increased contribution rate.⁴³

IV. THE FCC SHOULD REJECT CHANGES TO THE DISCOUNT RATE

The E-rate Report and Order introduces a significant increase in the contribution rate for all eligible entities for category two services from ten to fifteen percent, effective in the 2015 funding year.⁴⁴ The FCC also adopts mandatory district-wide discount rates, instead of allowing schools to determine their discount rates individually.⁴⁵ The FCC should maintain the current category two discount rate, and retain the option for schools with more than 20 percent of their student population eligible for the National School Lunch Program (“NSLP”) to establish their discount rate separately from their district.

The National Education Association has argued that increasing the contribution rate will erode the E-rate program’s core principle of “*equitably* distributing discounts on advanced telecommunications and Internet services to applicants *based on need*.”⁴⁶ The Alliance for Excellent Education appreciates that the Commission did not choose to adopt an even higher minimum contribution rate of 20, 25, or 30 percent as recommended by some E-rate NPRM commenters, but expresses concern that this change requires *only* the poorest schools, libraries,

⁴¹ *See id.* at 9-10.

⁴² *See id.* at 10.

⁴³ *Cf.* Dissenting Statement of Commissioner Michael O’Rielly, *E-Rate Report and Order*, (noting that it is “even more imperative to establish an overall budget for USF so that consumers that pay fees on their phone bills to support USF are not further burdened by the FCC”).

⁴⁴ *E-rate Report and Order* ¶ 82.

⁴⁵ *Id.* ¶ 210.

⁴⁶ NEA Comments at 6 (emphasis original).

and districts to pay more for E-rate services.⁴⁷ A five percent reduction in the discount rate for all schools will give rise to real financial hardship for under-resourced institutions. It will also be counterproductive, because it will serve to discourage participation by schools that lack the budget to “buy in” to the E-rate program. The Commission’s goal should be to encourage applications for both category one and category two E-rate support by all eligible entities, rather than increasing barriers to broadband connectivity.

Similarly, for schools where more than 20 percent of the student body is eligible for the NSLP, the FCC should reject the requirement that schools use a single district-wide discount rate, rather than calculating and using building-by-building discount rates.⁴⁸ In the *E-rate Report and Order* the FCC itself notes that this change could increase the risk that schools and libraries in high poverty neighborhoods could be deprived of priority two funding because they will be grouped with higher-resource schools in the same district.⁴⁹ As the FCC notes, several commenters have expressed concern about transitioning to calculating discount rates on a district-wide basis, noting that this could deprive schools and libraries in high poverty neighborhoods of category two funding.⁵⁰ The FCC dismisses that concern by stating that the revised E-rate program will provide predictable support for internal connections; however, as discussed above,⁵¹ the Commission’s proposed funding for category two services going forward depends on efficiencies, rather than earmarks. Schools in low-income neighborhoods of generally affluent school districts should not be required to sacrifice their eligibility for scarce E-rate resources when the only reward is administrative convenience. Although the FCC states that E-rate applicants find the current building-by-building discount calculation confusing and time-

⁴⁷ Comments of Alliance for Excellent Education, WC Docket No. 13-184 at 7 (filed Sept. 15, 2014).

⁴⁸ *E-rate Report and Order* ¶ 210.

⁴⁹ *Id.* ¶ 215.

⁵⁰ *See id.* (citing commenters).

⁵¹ *See supra* Section III.

consuming, it should allow each school to choose whether to apply based on an individual discount rate, or to submit its application based on the district-wide rate.

V. THE REPORT AND ORDER POSES NEW BUDGETING CHALLENGES FOR LIBRARIES

The Report and Order establishes a pre-discount budget for libraries of \$2.30 per square foot over five years.⁵² This artificial limit is insufficient to allow libraries, and especially small, heavily used urban institutions, to satisfy the needs of their patrons. The FCC should instead consider adopting a budget based on the poverty level of the library, and libraries should be eligible for the discount rate of the school districts in which their main branch is located. If the Commission maintains a square foot metric, significantly increase the budgeted amount.

There is little doubt that libraries in both urban and rural low-income areas have a pressing need for increased funding for both category one and category two services. As the American Library Association notes, half of all of America's public libraries report having connection speeds of less than 10 Mbps, which is just one percent of the FCC's goal, and the majority of libraries do not have a fiber connection.⁵³ Urban library systems account for 63 percent of all library visitors in the U.S., and these patrons tend to be lower-income or disadvantaged individuals unable to gain high speed broadband through other means.⁵⁴ Sixty-two percent of libraries report that they are the only source of free access to computers and the Internet in their communities, and low-income households are significantly more likely than their higher-income households to view libraries as "very important" to them.⁵⁵ Nearly twenty

⁵² *E-rate Report and Order* ¶ 98. The *E-rate Report and Order* would similarly limit weighted discount rates for consortia involving libraries based on square footage. *Id.* at ¶ 288.

⁵³ Comments of the American Library Association, WC Docket No. 13-184 at 7 (filed Sept. 15, 2014) ("ALA Comments").

⁵⁴ ULC Comments at 2.

⁵⁵ Pew Internet & American Life Project, "Library Services in the Digital Age" (Jan. 22, 2013) at 18-19, available at http://libraries.pewinternet.org/files/legacypdf/PIP_Library%20services_Report.pdf (last accessed Sept. 19, 2014).

percent of rural libraries report download speeds of 1.5 Mbps or less, and fewer than four percent have speeds of 100 Mbps or higher, while over one quarter of urban libraries still have speeds less than 10 Mbps.⁵⁶ Libraries provide critical after-school broadband access for students, and enhance general community Internet access; as such, libraries should be eligible for the same E-rate support as schools.⁵⁷

To ensure an equitable distribution of E-rate funds, the Commission should base libraries' E-rate budgets on their poverty level, rather than on the square footage of their buildings. Libraries should be able to apply for E-rate support based on the discount level of the school district in which the library has its main branch. As MMTC has previously noted, the cost of providing internal broadband connectivity is a function of both building size and the number of users, as well as other environmental factors.⁵⁸ Urban libraries are generally smaller and more heavily used than their suburban counterparts, and would be seriously and disproportionately impacted by a size-based limitation on E-rate support for the provision of Wi-Fi.⁵⁹ Allocating E-Rate funding based on a limited metric such as square footage “would be grossly unfair to the millions of patrons of the nation’s urban libraries,” many of whom are “disproportionately low-income, unemployed or underemployed.”⁶⁰ The Urban Library Council (“ULC”) recent conducted a study to determine the impact of imposing a budget of \$2.30 per square foot, and found that “the square footage metric would be highly inequitable to the nation’s

⁵⁶ *Id.* at 8.

⁵⁷ MMTC April 7 Comments at 13.

⁵⁸ See Letter from David Honig, President, MMTC, to Tom Wheeler, Chairman, Federal Communications Commission, WC Docket No. 13-184 at 1 (filed Jul. 7, 2014).

⁵⁹ *Id.* at 1.

⁶⁰ Letter from John M. Beahn, Counsel to Urban Libraries Council, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184 at 1 (filed July 7, 2014); see also Letter from Tim Kambitsch, Executive Director, Dayton Metro Library, to Tom Wheeler, Chairman, Federal Communications Commission, WC Docket No. 13-184 (filed July 7, 2014); Letter from Jon Worona, Manager of Technology and Innovation, The San Jose Public Library, to Tom Wheeler, Chairman, Federal Communications Commission, WC Docket No. 13-184 (filed July 7, 2014); Letter from Melinda S. Cervantes, Executive Director, Pima County Public Library, to Tom Wheeler, Chairman, Federal Communications Commission, WC Docket No. 13-184 (filed July 7, 2014).

urban libraries.”⁶¹ In particular, ULC found that for urban and other larger library systems, square footage was the worst predictor of Wi-Fi costs, because square footage did not increase in a rate proportional to users.⁶² The City of Chicago agreed, noting in its comments that the “per capita and per-square foot model is not conducive to making investments in technology infrastructure or for paying for recurring services,” and urging the FCC instead to “take into consideration historical usage and reasonable expectations for future needs” when allocating resources.⁶³

If the FCC retains square footage as the metric for determining libraries’ E-rate budgets, MMTC agrees with ULC that funding should be no less than \$4.00 per square foot.⁶⁴ Although this budget would still disproportionately favor large suburban libraries, it would come closer to meeting the actual funding needs of urban and low-income institutions, and would allow libraries to improve the services they offer to the neediest communities.

VI. THE FCC SHOULD NOT DOUBLE THE DATA RETENTION PERIOD FOR ELIGIBLE ENTITIES

In the Report and Order, the FCC extends the mandatory document retention period for eligible entities from five to ten years.⁶⁵ Although the FCC argues that electronic storage of documents can dramatically reduce the cost of document storage and retention, establishing digital storage databases can pose a significant hardship to schools with limited staff and resources.

MMTC agrees with the American Library Association that the FCC should consider

⁶¹ ULC Comments at 4.

⁶² *Id.* at 5.

⁶³ Comments of the Chicago Public Schools, The Chicago Public Library, and the City of Chicago, WC Docket No. 13-184 at 2 (filed Sept. 15, 2014).

⁶⁴ ULC Comments at 7.

⁶⁵ *E-rate Report and Order* ¶ 262.

retaining the current five year retention period for *de minimis* funding requests under \$5,000.⁶⁶ Given the FCC's progress in combatting waste, fraud and abuse in the E-rate program, there is no need to expand the document retention period for relatively small funding amounts, and extending the retention period will only create an additional deterrent to participation in the program.

VII. CONCLUSION

The FCC has made considerable progress in reforming the E-rate program to support its goal of increasing the availability of high-speed, high-capacity broadband to schools and libraries. To ensure that all eligible institutions feel the positive effects of these reforms, the Commission must ensure that the E-rate fund is able to meet all present and future funding needs. The Commission should reject changes to the discount rate that will impose additional burdens on low-income schools, and allocate E-rate support to libraries based on the number of patrons they serve, rather than their square footage. Finally, the Commission should maintain the current five-year document retention requirement for *de minimis* funding requests.

Respectfully submitted,

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⁶⁶ ALA Comments at 21.

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