Before the

Federal Communications Commission

Washington, D.C. 20554

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

Comments of WTA – Advocates for Rural Broadband

WTA – Advocates for Rural Broadband ("WTA")[1] hereby submits these comments in response to the Commission's Public Notice[2] seeking comment on several Petitions for Reconsideration[3] seeking clarification and/or reconsideration of select portions of the *E-rate Modernization Order*.[4] Specifically, WTA submits these comments to illustrate the need for reconsideration of the Commission's revision of the definition of "rural" for purposes of determining whether any given school or library district qualifies for the additional rural discount under the E-rate program.[5]

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[1] WTA – Advocates for Rural Broadband is a trade association representing more than 265 rural telecommunications providers offering voice, broadband and video services in rural America. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

[2] Federal Communications Commission, Petitions for Reconsideration of Action in Rulemaking Proceeding, 79 Fed. Reg. 60406 (Oct. 7, 2014).

[3] Petitions for Reconsiderations by West Virginia Department of Education (filed Sept. 18, 2014); State E-rate Coordinators Alliance (filed Sept. 18, 2014); Utah Education Network (filed Sept. 15, 2014); and joint Petition by NTCA and Utah Rural Telecom Association (filed Sept. 17, 2014) (collectively "*Petitions*").

[4] *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 (rel. July 23, 2014) ("*Report and Order*").

[5] The E-rate program provides different discount levels for urban and rural schools and libraries based on the percentage of students eligible for the National School Lunch Program. Rural schools and libraries receive an additional discount of between five to 10 percent beyond the discount available to urban schools and libraries. *See* United States Administrative Company, E-rate Urban-Rural Discount Matrix available at: http://www.usac.org/_res/documents/sl/pdf/samples/Discount-Matrix.pdf (last accessed Oct. 16, 2014).

WTA's members are rate-of-return regulated local exchange carriers ("RLECs") that serve some of the most rural, hard-to-serve communities in the country and are providers of last resort to those communities. RLECs remain deeply committed to their communities and strive to meet the broadband needs of the rural schools and libraries that many of their friends, families, and neighbors rely on for educational and community development purposes. Schools and libraries in many service areas of WTA members will be adversely impacted if the small towns and cities in which they are located are now considered to be "urban" for purposes of E-rate discounts. Accordingly, WTA submits these comments in support of the Petitions and urges expedited Commission action to reconsider the newly amended Section 54.505.

I. The Commission's *E-rate Modernization NPRM* properly proposed to exclude the Census Bureau's "urban cluster" classification from its rule modernizing the definitions of "rural" and "urban."

The Census Bureau classifications relied on by the Commission distinguish between two distinct categories of urban areas: "urbanized areas" (i.e., areas with 50,000 people or more) and "urban clusters" (i.e., areas with between 2,500 and 50,000 people).[6] Urban areas, according to the Census Bureau beginning with the 2000 census, are comprised of *both* urbanized areas and urban clusters.[7] Rural areas include all areas that are neither urbanized areas nor urban clusters.

The Commission recognized this distinction in its initial *E-rate Modernization NPRM* and posed the question of whether the "rural" designation should apply to only schools in Census

[6] *Report and Order* at ¶ 223; *see also* Census Bureau, 2010 Census Urban and Rural Classification and Urban Area Criteria, http://www.census.gov/geo/reference/ua/urban-rural-2010.html (last visited Oct. 15, 2014); Dep't of Commerce, Bureau of the Census, Urban Area Criteria for the 2010 Census, 76 Fed. Reg. 53030, 53039 (Aug. 24, 2011) ("*2010 Urban Area Criteria*").

[7] *See* Dep't of Commerce, Bureau of the Census, Urban Area Criteria for the 2000 Census, 67 Fed. Reg. 11663, 11667 (March 15, 2002) (amending the urban area criteria to include urban clusters in addition to urbanized areas); *see also* 2010 Urban Area Criteria, 76 Fed. Reg. at 53032 (noting that the Census Bureau created and implemented the concept of an urban cluster with the 2000 census to remedy perceived underbounding and overbounding of urban areas).

Bureau-defined rural areas or also to schools in urban clusters.[8] As proposed in the Commission's *E-rate Modernization NPRM*, Section 54.505(b)(3)(i) would provide that:

> "The Administrator shall designate a school or library as 'urban' if the school or library is located in an *urbanized area* as determined by the most recent rural-urban classification by the Bureau of the Census. The Administrator shall designate all other schools and libraries as 'rural.'"[9] (emphasis added)

The *NPRM* proposal was fully consistent with Census Bureau cautions regarding the use of its urban-rural classifications by agencies in non-statistical programs and its recommendations for appropriate modifications of such classification for specific programs.[10]

Although the *E-rate Modernization NPRM* proposed language for amended Section 54.505(b)(3)(i) that would limit urban classification for E-rate discount purposes to "urbanized areas," the text of the *E-rate Modernization Order* omitted any discussion of whether schools in urban clusters would continue to qualify for "rural" designation under the new rule. Nor did the *Order* include any analysis of the impact on rural schools and libraries the new definition of "urban" that includes urban clusters would have.

Petitioners rightly raised concerns about ambiguity and potential incongruence between the explicit wording of the initial version of Section 54.505(b)(3)(i) attached to the *E-rate Modernization Order* and the language contained in text of the *Order* and Census Bureau materials cited therein.[11] At the time that the subject Petitions were filed, it was not clear whether the Commission had expanded its definition of "urban" to include "urban clusters" as well as the larger "urbanized areas." The potential disparity between the rule, the *Order*, and the

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[8] *In re Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11380 ¶ 279 (2013) ("*E-rate Modernization NPRM*").

[9] *Id.*

[10] *2010 Urban Area Criteria*, 76 Fed. Reg. at 53030. See more detailed discussion beginning on p. 6 below.

[11] *Report and Order* at ¶ 223.

Census Bureau materials highlighted by Petitioners, albeit subtle, left open the possibility that many schools and libraries that currently qualify for the additional rural discount will lose the rural discount beginning in funding year 2015 as a result of a new classification as "urban" for purposes of the E-rate program due to those communities' current classification as urban clusters.

By Erratum dated October 10, 2014, however, the Wireline Competition Bureau changed Section 54.505(b)(3)(i) to indicate that "urban clusters" are indeed part of "urban" rather than "rural" areas for E-rate discount purposes.[12] The corresponding text of the *Order* was also amended by the Erratum and now more closely mirrors the definitions on the Census Bureau website in stating that "the Census Bureau defined urban areas as the densely settled core of census tracts or blocks that met minimum population density requirements (50,000 people or more for urbanized areas and 2,500 to 50,000 for urban clusters), along with adjacent territories containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core."[13] The *Order* provides that similar to the Census Bureau definitions, "'[r]ural' encompasses all population, housing, and territory not included within an urban area."[14] WTA believes that the Commission's original proposal in the *E-rate Modernization NPRM* to limit the scope of the revised rural/urban discount rule to "urbanized areas" as defined by the Census Bureau was correct, and that, in accordance with the public interest, the Commission should reconsider the disqualification of urban clusters from eligibility for the rural discount.

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[12] *In re Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Erratum, DA 14-1472, ¶¶ 28-30, 46 (Oct. 10, 2014) ("*Erratum*").

[13] *Report and Order* at ¶ 223; *see also Erratum* at ¶¶ 28-30.

[14] *Report and Order* at ¶ 223.

Because the Erratum's change in rural/urban classification will impact schools and libraries across the country and in many areas served by WTA members, and because the record prior to filing of the instant Petitions contains no analysis of the potential consequences of this change, WTA supports the subject petitions and requests that the Commission reconsider its action and expeditiously conduct the fact-based investigation that is necessary to protect the public interest and goals of the E-rate program.[15]

II. Rural schools and libraries across America risk additional financial hardship if "urban clusters" are ineligible for the additional rural discount.

As illustrated in the Petitions, the number of schools and libraries currently classified as rural that will likely lose the additional rural discount is significant and should give the Commission pause before moving forward to implement this definitional change in funding year 2015.[16] Similar to the impacts discussed by Petitioners, WTA members and the communities they serve are concerned with the prospect of losing eligibility for a discount that is vital to helping rural schools and libraries obtain and afford advanced telecommunications services.

For example, beginning in 2015, 12 of 31 schools and libraries in Wyoming currently served by a WTA member will be reclassified as "urban" for purposes of the additional E-rate discount due to their location in urban clusters. Three schools located in a community of approximately 3,400 in rural Washington will no longer be eligible for the additional discount due to classification as an urban cluster. Schools and libraries in Tularosa, New Mexico will likewise lose eligibility for the additional rural discount if urban clusters are deemed ineligible as "urban areas." Schools in Shelby and Conrad, Montana also risk losing the additional rural discount as a result of the change in classification. Up to 15 schools and libraries in Minnesota

[15] 47 C.F.R. § 1.429(b)(3).

[16] For example, NTCA and Utah Rural Telecom Association state that of 25 counties that previously qualified for the additional discount only five (5) appear to meet the new definition of "rural."

currently served by a WTA member risk losing the additional rural discount. At least six schools and libraries in Livingston, Texas will lose "rural" designation for purposes of E-rate. Libraries and up to 23 schools in Jackson and San Andreas, California risk losing the additional discount due to classification as "urban clusters" under the 2010 Census. Finally, this change will have a devastating impact on schools and libraries in some of America's most remote and rural communities in Alaska that are currently designated as urban clusters, including the communities of Barrow, Bethel, Ketchikan, Kotzebue, Nome, and Sitka.[17]

As a result of the change in the definition of "urban" to include urban clusters with populations of 2,500 to 50,000 people, schools and libraries across much of rural America face losing an additional E-rate discount that is vital to ensuring affordable telecommunications services at the same time as local school and library districts face budget shortfalls. As explained by Petitioners and in these comments, adopting the Census Bureau definitions will not serve the purposes of the E-rate program without the necessary modification or, at a minimum, a transition plan for communities to adjust their information technology budgets to account for the loss of the rural discount. Accordingly, the public interest in preserving the effectiveness of the E-rate program in helping rural schools and libraries obtain and afford advanced communications services requires that the Commission reconsider the change in rural/urban definitions before its implementation in funding year 2015.

III. The Census Bureau urged the consideration of modifications to the results of its urban-rural classification tailored to the purposes of the agency's program when the Bureau's classifications are used for non-statistical purposes.

[17] This listing of communities is by no means exhaustive, but rather merely illustrates the potential number of communities impacted by the Commission's decision. As Petitioners suggest, a fact-based, comprehensive analysis of the full impact should be undertaken before the change takes effect in funding year 2015.

The Census Bureau in its most recent explanation of the criteria for urban area categorization cautioned federal, tribal, state, and local government agencies in the voluntary use of its urban-rural classifications in a non-statistical program. Specifically, "the Census Bureau urges each government agency to consider permitting appropriate modifications of the results of implementing the urban-rural classification specifically for the purposes of its program."[18] Further, "the Census Bureau urges each agency to describe and clearly identify [any modifications] to avoid confusion with the Census Bureau's official urban-rural classification."[19]

In its *Order*, the Commission notes that using the Census Bureau classifications will avoid certain administrative challenges that would arise with the alternative National Center for Education Statistics ("NCES") classification system, including delays in obtaining rural/urban classification codes.[20] The Commission also asserts that the Census definition fully overlaps

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[18] *2010 Urban Area Criteria*, 76 Fed. Reg. at 53030. For example, Department of Agriculture Rural Utilities Service regulations implementing the Food, Conservation, and Energy Act of 2008 partially rely on the Census Bureau's classifications in defining rural as:

> "any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: **(i)** A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or **(ii)** An *urbanized area* contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an *urbanized area* means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau." (emphasis added) 7 C.F.R. § 1738.2.

Note also that Section 3(37) of the Communications Act defines "rural" for purposes of classifying rural telephone companies as an area that does not include either: (i) any incorporated place of 10,000 inhabitants or more (or any part thereof); or (ii) any incorporated or unincorporated territory included in an urbanized area as defined by the Bureau of the Census as of August 10, 1993. 47 U.S.C. § 153(44)(A).

[19] *2010 Urban Area Criteria*, 76 Fed. Reg. at 53030. The Census Bureau also refers to its classification system as "a baseline set of areas from which to work, as appropriate." *Id*. at 53037.

[20] *Report and Order* at ¶ 222.

with the geography defined by the NCES alternative as "rural."[21] However, only three paragraphs encompass the entirety of the Commission's discussion of its adoption and implementation of the Census Bureau classifications.[22] As Petitioners and WTA have explained, a definitional change that disqualifies schools and libraries in traditionally rural areas classified as urban clusters from eligibility for the rural discount will fail to take into account the immense diversity of American rural communities.

The initial *E-rate Modernization NPRM* indeed recognized the distinction made by the Census Bureau between "urbanized areas" and "urban clusters" and the potential for unintended impacts on schools in high-cost areas that might be classified as "urban clusters" according the Census data.[23] However, despite the fact that the Commission specifically asked in its initial *E-rate Modernization NPRM* whether the rural designation should apply not only to schools in rural areas but also those small-town schools located in "urban clusters," the *Order* is silent on this point. In fact, the *Order* omits any data or discussion whatsoever of the potential impacts on the E-rate program that adopting the Census Bureau classifications will have if the "rural" designation does not also allow for inclusion of urban clusters previously eligible for the rural discount. Nor does the *Order* include any recognition for the potential need for a transition for schools and libraries previously classified as "rural" that likely will lose a vital discount in already challenging economic times merely as a result of a change in designation under the Commission's rules stemming from efforts solely intended to modernize the E-rate program rather than make sweeping, substantive changes. As described by WTA and Petitioners, the real-world impacts and consequences of this definitional change warrant reconsideration by the

[21] *Id.* However, the Census Bureau's classifications are based on geographic data and often do not align with town, city, or county designations.

[22] *Report and Order* at ¶¶ 222-224.

[23] *E-rate Modernization NPRM* at ¶ 279.

Commission of whether it intended for schools and libraries in urban clusters to remain eligible for the additional rural discount or, at a minimum, the development of a transition plan to soften the blow to the already tightly constrained budgets of rural schools and libraries.

IV. Conclusion

The Commission was correct in its *E-rate Modernization NPRM* to acknowledge the potential negative and unintended impacts that a modernization of the rules to include "urban clusters" as "urban" for E-rate purposes would have on schools and libraries in communities with historically high costs for the provision of telecommunications services. To the extent that this issue was raised previously by the Commission, the public interest requires reconsideration of and/or modification to the classifications as encouraged by the Census Bureau to ensure that the spirit and purpose of the E-rate program and the additional rural discount (i.e., the provision of affordable telecommunications services to rural schools and libraries) are fulfilled and that rural schools and libraries retain the support they need, and have relied on since the inception of the E-rate program, to provide 21st Century communications technologies to their students and patrons.

Respectfully Submitted,

WTA – Advocates for Rural Broadband
By: /s/Derrick B. Owens
Derrick B. Owens
Vice President of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
derrick@w-t-a.org

By: /s/Patricia Cave
Patricia Cave
Director of Government Affairs
317 Massachusetts Avenue N.E., Ste. 300C
Washington, DC 20002
(202) 548-0202
patricia@w-t-a.org

By: /s/Gerard J. Duffy
Gerard J. Duffy, Regulatory Counsel
Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP
2120 L Street NW (Suite 300)
Washington, DC 20037
(202) 659-0830
gjd@bloostonlaw.com

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