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October 22, 2014

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Commissioner Michael O'Rielly

WC Docket No. 13-184

Federal Communications Commission
445 12th Street, SW 20024
Washington, DC

Dear Chairman Wheeler and Commissioners,

The Utah Governor's Office of Economic Development's (GOED) would like to support the Utah Education Network's (UEN) Petition for Reconsideration and the Utah Rural Telecom Association (URTA)/The Rural Broadband Association(NTCA)'s Petition for Clarification and/or consideration in response to the Federal Communications Commission's (FCC) E-Rate program rural definition, which was re-defined in the *Modernizing the E-Rate Order Program For Schools and Libraries* (Order) released in July 2014.

In the FCC's Order, the commission re-defines what classifies as rural areas using geographic units defined for the 2010 Census. This new rural classification would be detrimental to providing services to rural Utah schools because many rural school districts covering vast distances will now be deemed urban because they contain district offices and/or schools in communities with populations greater than 2,500 residents. Additionally, this rule penalizes rural libraries when the main administrative branch is located in an urban area.

Under the Order's definition, only school districts and libraries in five counties in the state would appear to meet the new definition of "rural," compared to the school districts in 25 counties that previously qualified for the additional rural discount. This action would disqualify 310 "rural" Utah schools and district buildings. The previous E-Rate urban/rural classifications were already sufficient to manage the E-Rate program, as it is more reasonable to consider communities of 25,000 or more as urban, not those with populations as low as 2,500.

Additionally, considering the phasing out of E-rate discounts for voice services and the financial impacts of that action, small rural districts should not be additionally penalized by the urban classification.

We feel that a petition for reconsideration is also valid because the proposed rules preceding the July Order did not suggest that communities as small as 2,500 in population would be considered urban. Affected parties did not have the opportunity to comment on this issue, nor were these issues, which were substantial, considered or voted upon by the full commission.

In support of UEN and URTA, GOED recommends the FCC reconsider the definition of urban areas under the new E-Rate Order. Reducing funding support to such school districts and libraries simply because their some of their facilities sit within a small populous cluster would appear to undermine, if not defeat the purpose of providing an additional rural discount in the first instance.

URTA is an association representing several independent Utah telephone companies whose facilities serve to provide technologically advanced telecommunications services in the rural areas of Utah, while UEN works with providers across Utah to provide reliable broadband Internet connections to Utah's public schools, colleges, universities, libraries and charter schools.

Currently, UEN connects approximately 95 percent of K-12 public schools, and city and county libraries, which include many facilities in rural areas of the state. These rural areas include connections to over 340 of Utah's schools and district buildings, which serve 136,000 students in Utah.

GOED appreciates the opportunity to respond to help strengthen the implementation of the E-Rate program. This program is critical to continue to connect schools and libraries to meet the growing demand of technology. GOED strongly urges the FCC to consider the aforementioned comments to achieve the desired outcomes of the E-Rate program.

Sincerely,

Val Hale
Executive Director, Governor's Office of Economic Development

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	)	

PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF NTCA-THE RURAL BROADBAND ASSOCIATION AND THE UTAH RURAL TELECOM ASSOCIATION

Pursuant to section 1.429 of the rules of the Federal Communications Commission (the "Commission"),[1] NTCA–The Rural Broadband Association and the Utah Rural Telecom Association[2] (the "Associations") seek clarification, or to the extent necessary, reconsideration, of the Commission's July 23, 2014 *Order* in the above-captioned proceeding. This request is presented specifically with respect to the Commission's revision of the definition of "rural" for purposes of determining whether any given district or system of anchor institutions qualifies for an additional rural discount under the E-rate program.[3]

In the first instance, the Associations seek clarification that the explicit text of the rule adopted by the Commission to revise the definition of "rural" schools and libraries prevails over

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1 47 C.F.R. § 1.429.

2 NTCA represents nearly 900 rural rate-of-return regulated local exchange carriers. All of NTCA's members are full service local exchange carriers and broadband providers, and many of its members provide wireless, video, satellite, and long distance and other competitive services to their communities. Utah Rural Telecom Association ("URTA") is an association representing 12 independent companies whose facilities serve to provide technologically advanced telecommunications services in the rural areas of Utah. The facilities of the URTA members provide schools, libraries, health care facilities, businesses and residential customers with landline telecommunications services, high speed broadband services, and wireless backhaul services, permitting rural Utah to connect to other businesses, residents and the internet.

3 *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (*Order*), at ¶¶ 222-224.

ambiguous and potentially conflicting language in the text of the *Order* and on Census Bureau materials linked via the *Order*. In particular, the Associations seek to confirm: (1) that the Commission purposefully intended by its explicit reference only to "an urbanized area" in revised Section 54.505(b)(3)(i) of the Commission's rules to incorporate *only* that specific term, as is defined by the Census Bureau, in identifying whether a given school or library is rural or urban; and further (2) that the Commission conversely did not intend to include "urban clusters" (which are not mentioned in the revised rule) as a component of the definition by which a given school or library would be characterized as urban. In the alternative, if the Commission indeed intended to sweep "urban clusters" within its definition of "urban" despite including only the specific defined term "urbanized area" in the rule itself, the Associations request reconsideration of this determination and urge the Commission to consider alternatives that provide for reasonable transitions from current support levels and more appropriately recognize the rural nature of many small towns that dot the landscape of rural America.

I. BACKGROUND

In the *Order*, the Commission indicated a desire to "modernize" the definition of rural schools and libraries for purposes of the E-rate program by reference to "relatively new" Census data and annual adjustments in urban boundaries.[4] The Commission also concluded that "any school district or library system that has a majority of schools or libraries in a rural area . . . will qualify for the additional rural discount."[5] The changes to reflect these decisions were captured in

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4 *Id.* at ¶ 223.

5 *Id.* at ¶ 224.

revised Section 54.505 of the Commission's rules. With respect in particular to the first modification, the Commission promulgated the following rule:

> (i) 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.[6]

The phrase "urbanized area" is a specially defined term in Census Bureau parlance. Specifically, an "urbanized area" is a place "of 50,000 or more people."[7] An "urbanized area" is but one type of "urban area," which is a term separately defined by the Census Bureau.[8] The express reference in the rule as promulgated is to an "urbanized area" – the rule does *not* refer to "urban areas," which would consist of both "urbanized areas" *and* "urban clusters."

Despite the clear reference to an "urbanized area" in the rule adopted by the Commission, the language used in the underlying *Order*, however, is unclear and could be read to contradict the explicit text of the rule. Rather than referencing "urbanized areas," the *Order* text appears to refer more broadly to "urban areas" – and at one point in particular states that rural areas for purposes of the E-rate program going forward will encompass "all population, housing, and territory not included within an urban area."[9] The inconsistency between this text from the *Order* and the explicit and specific use of a different, clearly defined term in the language of the rule itself – and also the potential for possibly unintended and still-unidentified precipitous shifts in E-rate support

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6 47 C.F.R. § 54.505(b)(3)(i) (emphasis added).

7 *See* https://www.census.gov/geo/reference/urban-rural.html.

8 *See id.* ("The Census Bureau identifies two types of urban areas:
- Urbanized Areas (UAs) of 50,000 or more people;
- Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.")

9 *Order* at ¶ 223.

for individual schools and libraries arising out of changes to the definitions of "rural" and "urban" – give rise to the instant Petition.

II. DISCUSSION

The Commission should clarify in the first instance that the use of "urbanized area" in the text of Section 54.505(b)(3)(i) was specifically intended to exclude "urban clusters" (*e.g.*, small rural towns of perhaps several thousand residents) from the definition of "urban" for purposes of the E-rate program. There are many schools and libraries located in relatively small towns that dot the landscape of rural America and serve populations in the outlying areas. Reducing support to such schools and libraries in fulfilling their missions for rural residents simply because their physical facilities happen to sit within a somewhat more populous cluster would appear to undermine, if not defeat, the purpose of providing an additional rural discount in the first instance.

Moreover, it is not at all clear whether and to what degree the Commission has analyzed the transitional impacts of moving from the current definition of "rural" to one based upon either "urbanized areas" or "urban areas" as defined by the Census Bureau. Indeed, there is no discussion or analysis whatsoever in the *Order* of the possible effects of the proposed change (regardless of how one ultimately interprets it), and no consideration appears to have been given to whether any transition might be necessary to avoid disrupting reasonable existing expectations regarding levels of E-rate support. Unfortunately, the multi-prong test employed by the Commission – referring both to an individual institution's rural status and the status of the majority of other institutions within the applicable district or system – makes it difficult to assess precisely the effects of either type of change, as the Associations have access to neither individual school or library addresses nor a listing of which schools or libraries sit within which districts or systems. But it is at least clear as a directional matter that treating schools and libraries in relatively small rural towns as urban could result in significant shifts in E-rate support for those institutions.

For example, through consultation with member companies (who have in turn been consulting with the Utah Education Network), the Associations understand that school districts in only 5 counties in that state would appear to meet the new definition of "rural," as compared to school districts in 25 Utah counties that previously qualified for the additional rural discount. One such county, Kane, is nearly 4,000 square miles in scope, with an average density of 1.8 persons per square mile – and yet, it appears that based upon the characterization of a majority of the schools under the new rule, Kane County schools might not qualify for the additional rural discount. As another example, initial estimates obtained by members in Oklahoma from library contacts in that state indicate that up to 116 seemingly rural libraries could become "urban" under the revised definition depending upon how it is read, leading many of those to lose access to the additional rural discount depending upon the characterization of other libraries in the same systems.

These reflect just a few examples of potential effects of the changed definitions, and to be sure, more analysis is needed to understand and validate the precise impacts on school districts and library systems across the country. But even these preliminary reviews make clear that counting schools and libraries in small rural towns as "urban" for purposes of the E-rate program is likely to result in significant shifts in support flows in still-unidentified and presumably unintended ways. Any such flash-cut results would appear contrary to the announced intent of the Commission in first proposing to revise the "rural" definition, when it stated: "As we seek comment on this proposed change in definition, it is not with the intent to reduce discounts to certain rural schools but rather to ensure that the funds are targeted appropriately."[10]

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[10] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for our Future*, GN Docket No. 09-51, Notice of Proposed Rulemaking, FCC 10-83 (rel. May 20, 2010), at ¶ 37; *see also Rural Health Care Support Mechanism*, WC 02-

The Commission should therefore clarify and confirm that the text of Section 54.505(b)(1)(iii) – which references "urbanized areas," but not "urban areas" – was indeed intended to exclude "urban clusters" from the definition of "urban" notwithstanding any ambiguity to the contrary arising out of the text in the underlying *Order*. In the alternative, if the Commission indeed intended to sweep "urban clusters" within the scope of this rule despite referencing only "urbanized areas" in the rule itself, the Associations request reconsideration of this determination and urge the Commission to provide greater visibility (with data) to stakeholders regarding the consequences and impacts of different options for defining "urban" and "rural" areas, and to consider alternative approaches that more appropriately recognize the rural nature of many small towns that dot the landscape of rural America and that provide for more reasonable transitions in connection with any changes in support that may result.

60, Order, DA 14-1042 (rel. July 23, 2014), at ¶¶ 6-9 (discussing changes to the definition of "rural" within the Rural Health Care program and adopting a multi-year transition plan to provide recipient health care providers "with notice and sufficient time to determine whether their status as a 'rural' site will change, and to address any implications of this in their business operations").

III. CONCLUSION

For the foregoing reasons, the Associations respectfully request that the Commission grant this Petition.

Respectfully submitted,

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Dated: September 17, 2014

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

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

UTAH EDUCATION NETWORK PETITION FOR RECONSIDERATION OF THE RURAL DEFINITION OF THE E-RATE PROGRAM

Parties to this Petition:

Bear River Association of Governments
Five County Association of Governments
Mountainland Association of Governments
Six County Association of Governments
Southeastern Utah Association of Local Governments
Uintah Basin Association of Governments

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I. INTRODUCTION

The Utah Education Network ("UEN") respectfully submits this Petition for Reconsideration in response to the Federal Communications Commission's ("FCC" or "Commission") July 23, 2014, E-rate Order ("Order").[1] By state statute, UEN provides reliable broadband Internet connections to public schools, colleges, universities, libraries, and charter schools in the state. Utah's land area is 82,170 square miles ranking as the 12th largest state with persons per square mile 33.6 as compared to the national average of 87.4 (*2010 Census*). UEN enriches the lives of

[1] Modernizing the E-rate Program for Schools and Libraries, WC Docket No. 13-184, *Report and Order of Further Notice of Proposed Rulemaking*, FCC 14-184 (rel. July 23, 2014) ("*Modernizing the E-Rate Program*").

students, educators, and citizens by bridging obstacles of time and distance in a largely rural state covering vast distances and mountainous terrain. UEN's interactive video conferencing system (IVC) connects thousands of students and educators at more than 940 locations at public schools, applied technology centers and college campuses. UEN provides access to K-12 instruction, college-level classes, and curriculum across vast terrain otherwise not available to students and educators in rural communities.

UEN's network connects approximately 95% of K-12 public schools, major city and county library systems, and many rural public libraries (over 20). UEN provides broadband connections with local telecom partners at over 340 rural schools and district buildings. As of October 2013, approximately 24% of the Utah student K-12 school population, or over 136,000 students, attended rural schools.[2] Until the July 2014 Order, Utah had 25 of 29 counties that were considered "rural" under E-rate program rules.

II. RECONSIDERATION OF NEW RURAL DEFINITION

Pursuant to the adoption of the FCC's new definition of urban/rural for purposes of the E-rate program, we specifically request the FCC to clarify and/or reconsider the following rule adoption:

> For the 2010 Census, 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), along with adjacent territories of at least 2,500 people that link to the densely settled core. "Rural" encompasses all population, housing, and territory not included within an urban area. Therefore, beginning with funding year 2015, schools and libraries located in areas that are not located in urban areas, as defined by the most recent decennial Census, will be considered rural for the purposes of the E-rate program.[3]

The US. Census The Census Bureau identifies two types of urban areas:

- Urbanized Areas (UAs) of 50,000 or more people;
- Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.

Is it the intent of the FCC to define Urban Clusters as Urban Areas? UEN presents in this filing a major problem with this definition with as many as 310 Utah rural schools losing "rural" E-rate program status.

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[2] Utah State Office of Education K-12 Schools Enrollment Data, Oct. 2013

[3] *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (*Order*), at ¶¶ 222-224.

As stated in UEN comments submitted to the E-rate NPRM in July 2013, UEN maintains that the previous urban/rural classifications were sufficient to manage the E-rate program[4].

It is difficult for UEN to ascertain the full impact of the E-rate program changes. The Order's new definition changes 25 rural counties with 340 schools and district buildings with previous E-rate eligibility as "rural" to only five (5) rural counties with 30 schools. With the Order phasing out funding for voice services, these districts and schools will be facing a major challenge. It is clear that the Order adversely impacts Utah's rural schools and libraries and UEN as a state network consortium serving them.

Due to the lack of clarity in the Order and directing USAC to release a future web tool for E-rate applicants to determine their urban or rural status for all locations, UEN remains unclear about the urban/rural status of all schools, districts, and libraries we serve. Based on the 2010 Census information and the Order[5], our assessment shows such places as San Juan County School District, with a district office in Blanding, Utah (now designated as an Urban Cluster) and serving students in highly remote areas of Monument Valley *(figure 1)* and Navajo Mountain, to be classified as urban. We also note that the U.S. Census Tool referenced in the Order does not produce any meaningful results for applicants to determine or verify their rural/urban status.

Figure 1: Monument Valley Utah—
An Urban Area?

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[4] *Utah Education Network Comments Related to the E-rate Notice of Proposed Rulemaking*, FCC 13-100 (rel. July 2013, page 14).

[5] *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (*Order*), at ¶¶ 222-224.

Figure 2: Snowville Elementary: Enrollment 38; Town Population 167

UEN's analysis of the Order's inclusion of Urban Clusters in the classification of schools and libraries demonstrates that the Order goes too far in that many rural schools covering vast distances will now be deemed urban due to their proximity and inclusion with district offices and schools that are in communities with populations greater than 2,500 residents.

For example, Snowville Elementary School is located in a town with a population of 167 (2010 Census). According the Order's new rural definition, Snowville Elementary is now considered an urban school. Snowville is a community that currently struggles with obtaining basic cell phone service for public safety emergencies. Snowville Elementary is connected to UEN via a broadband Ethernet connection (part fiber, part microwave).

Figure 3: Coalville Utah, Summit County

Another example of a truly rural school district is Kane County in Kanab, Utah. Kane County has four school buildings located in Kanab (Urban Cluster) and a total of four school buildings located in Big Water (population 472), Orderville (population 576), and Lake Powell (29 students). The new order deems a tie of rural/urban locations to be classified as urban.

Additionally, UEN's sees significant problems with the adoption of the following rural rule for public libraries:

> For the sake of simplicity, library systems that have branches or outlets in more than one public school district should use the address of the central outlet or main administrative office to determine which public school district the library system is in, and should use that public (district) located in the school district's discount rate when applying as a library system or on behalf of individual libraries within that system.[4]

This rule penalizes rural libraries when the main administrative branch is located in an urban area. For example, Coalville Public Library is located in Summit County, Utah, with a town population of 1,363 *(see Figure 3)*. Since the main branch of the County Library System is located in Park City, under the new Order, Coalville Library is now considered urban.

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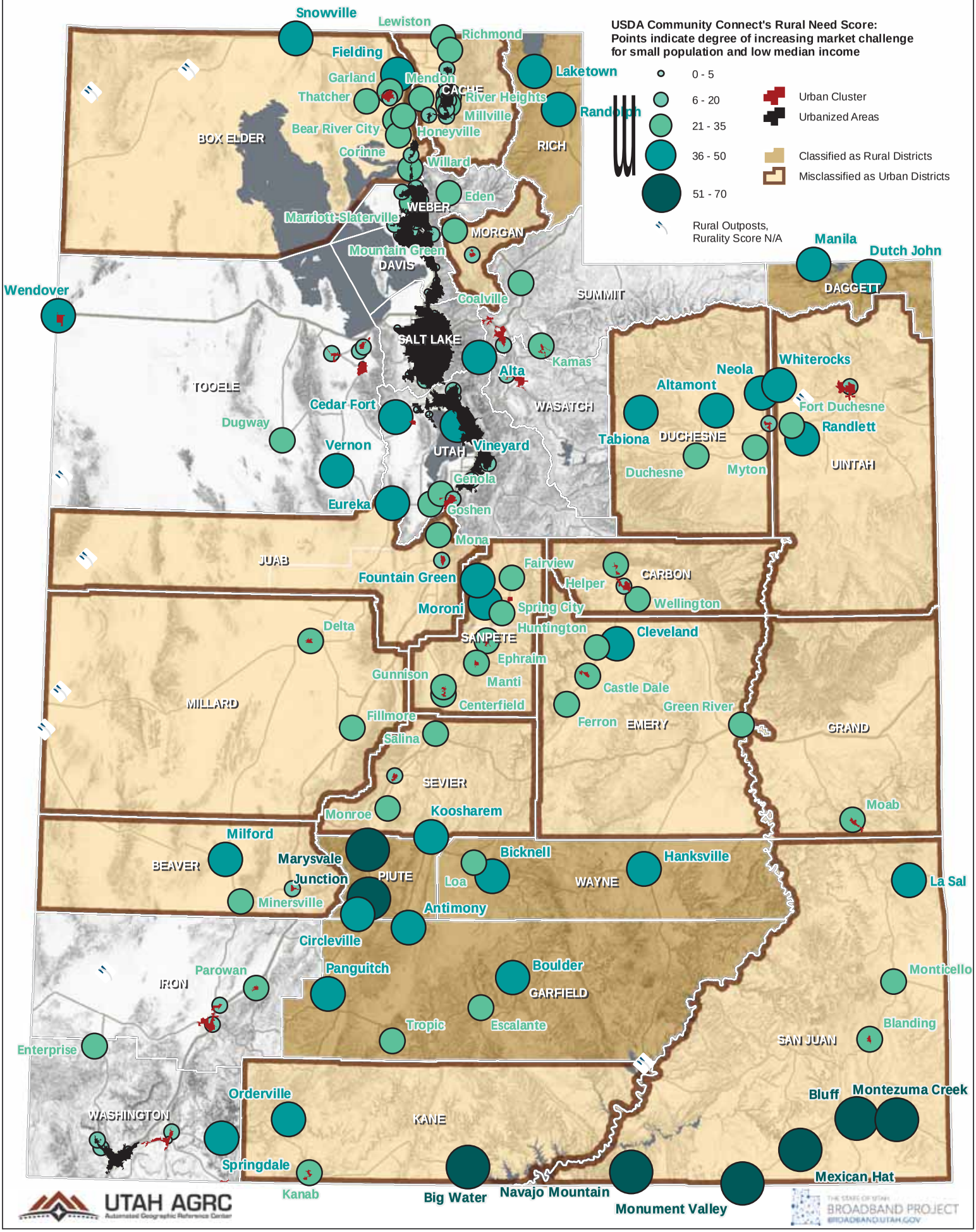
4 *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (*Order*), at ¶ 217.

III. MAP of RURAL CLASSIFICATION ANALYSIS

UEN is submitting a map produced by the Utah Automated Geographic Reference Center (AGRC) that demonstrates the significant challenges faced by Utah's rural residents. The map is based on metrics derived from the USDA's Community Connect Program for rurality (population) and economic need (median household income to state median income). The larger dots on the map represent the most rural populations in Utah. The back and red clusters show Urbanized Areas and Urban Clusters per the 2010 Census. The map also shows, **in light tan**, those rural counties which have *lost* rural designation under the Order and are now misclassified as urban.

IV. CONCLUSION

For the above reasons, UEN recommends that the FCC clarify the definition of Urban Areas under the Order, noting that a large majority of Utah's rural schools and libraries are misclassified as urban with the current definition. If the definition of Urban Areas is inclusive of Urban Clusters, then we request the FCC reconsider the definition of urban schools and libraries under the Order.

Utah School Districts: Rural Classification Analysis