

**§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.**

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(1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6 a.m. and 2 a.m., Monday through Sunday. \* \* \*

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**Thomas P. Smith,**

*Chief, Operations and Regulatory Division.*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[WC Docket No. 21-31; FCC 23-91; FRS ID 185870]

**Addressing the Homework Gap Through the E-Rate Program**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) initiates a proceeding to address the ongoing remote learning needs of today's students, school staff, and library patrons through the E-Rate program and to ensure the millions who have benefitted from the Emergency Connectivity Fund program support do not fall back onto the wrong side of the digital divide once the program ends.

**DATES:** Comments are due on or before January 8, 2024 and reply comments are due on or before January 22, 2024. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. You may submit comments, identified by WC Docket No. 21-31, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the

Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See* FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities:* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

**FOR FURTHER INFORMATION CONTACT:**

Molly O'Connor [molly.oconor@fcc.gov](mailto:molly.oconor@fcc.gov) in the Telecommunications Access Policy Division, Wireline Competition Bureau, 202-418-7400 or TTY: 202-418-0578. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Addressing the Homework Gap through the E-Rate Program, Notice of Proposed Rulemaking (NPRM) in WC Docket No. 21-31; FCC 23-91, adopted November 1, 2023 and released November 8, 2023. The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street NE, Washington, DC 20554 or at the following internet address: <https://www.fcc.gov/document/fcc-proposes-e-rate-support-wi-fi-hotspots>.

**I. Introduction**

1. High-speed internet is critical to educational equity, economic opportunity, job creation, and civic engagement. Since its inception, the Federal Communications Commission's (Commission) E-Rate program has supported high-speed, affordable internet services to and within school and library buildings, and has been instrumental in providing students and library patrons with access to the essential broadband services that are required for next-generation learning. But advances in technology have changed the modern learning environment to increasingly employ interactive online education tools that can be used anywhere, at any time, allowing students to develop the digital skills needed to prosper in the 21st Century. The ongoing proliferation of innovative digital learning technologies and the need to connect students, teachers, and library patrons to jobs, life-long learning, and information have led to a steady rise in the demand for broadband connectivity both inside and outside of school and library buildings. In response to those needs, the Commission proposes and seeks comment on updates to the E-Rate program to ensure the program is equipped to support the ongoing remote learning needs of today's students, school staff, and library patrons.

2. In recent years, the demand for connectivity beyond school and library buildings became a crisis when the COVID-19 pandemic disrupted operations and caused schools and libraries across the country to temporarily close their doors. Millions of students caught in the "Homework Gap"—*i.e.*, students unable to *fully* participate in educational opportunities because they lack broadband connectivity in their homes—suddenly found themselves unable to participate in education *at all*. Library patrons who relied on their local libraries for remote learning opportunities and internet access suddenly experienced a loss of these critical services when most, if not all, library buildings closed their doors by the summer of 2020. However, even before the COVID-19 pandemic, the Homework Gap affected somewhere between 8.5 to 16 million K-12 students, leaving 15% of U.S. households with children ages six to seventeen lacking a high-speed internet connection at home and approximately one in four households without high-speed internet access. Although the E-Rate program helped approximately 98% of the K-12 schools and districts in the country meet the Commission's

connectivity goals by 2018 by providing support for broadband connections to and within schools, and approximately 12,000 distinct libraries from across the nation receive E-Rate support each year for broadband connections to and within libraries, the increasing shift to online and remote instruction highlighted the need to connect the millions of students, school staff, and library patrons who had no at-home broadband connectivity. To address this longstanding critical need, Congress created the Emergency Connectivity Fund (ECF), which allowed the Commission to create the nation's first ever federal program designed to address the Homework Gap by providing funding for connected devices, Wi-Fi hotspot devices, broadband connections, and other eligible equipment and services for students, school staff, and library patrons in need for use at locations outside of their school or library.

3. Over the past two years, the ECF program's funding of internet access services through Wi-Fi hotspots has enabled significant progress in expanding digital learning, addressing digital and educational equity, and closing the Homework Gap by providing students, school staff, and library patrons with access to broadband connections. Schools in Oakland, California reported that they nearly closed the Homework Gap for their students through the use of ECF-funded Wi-Fi hotspots and internet access services. Libraries, like the Boston Public Library, established ECF-funded Wi-Fi hotspot lending programs to provide the hotspot equipment and monthly mobile broadband services needed to connect thousands of their most vulnerable residents to library resources. These are just two examples of the many ways that schools and libraries across the nation have relied on ECF support to fulfill the remote learning needs of their students, school staff, and library patrons who otherwise lacked access to these resources.

4. Following three successful application filing windows and more than two years of funding broadband services for students, school staff, and library patrons with unmet needs, ECF funding is nearly fully obligated, and the program will sunset on June 30, 2024. As the Commission approaches the sunset of the ECF program, the Commission has committed more than \$123 million for the purchase of Wi-Fi hotspot devices and nearly \$1.3 billion for the associated services to provide off-premises broadband connectivity to students, school staff, and library patrons who otherwise would lack

sufficient broadband access needed to fully engage in remote learning. Building on its experience with the ECF program, the Commission now reexamines the E-Rate program and seeks comment on proposals and potential actions the Commission could take to support the needs of students, school staff, and library patrons who risk losing access to essential broadband connections necessary to engage in educational opportunities once the ECF program sunsets.

5. In the *NPRM*, the Commission initiates a proceeding to address the ongoing remote learning needs of today's students, school staff, and library patrons through the E-Rate program and to ensure the millions who have benefitted from ECF program support do not fall back onto the wrong side of the digital divide once the program ends. Specifically, the Commission proposes to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and wireless internet services that can be used off-premises. The Commission proposes to find that the off-premises use of Wi-Fi hotspots and internet services by students, school staff, and library patrons for remote learning and the provision of virtual library services constitutes an educational purpose as defined by the Commission and enhances access to advanced telecommunications and information services for schools and libraries. The Commission also seeks comment on how to adapt the E-Rate program to reflect the virtual nature of today's modern educational environment. Additionally, the Commission seeks comment on the applicability of the Children's internet Protection Act (CIPA) requirements and the off-premises use of E-Rate-supported hotspots and services. In considering whether to support the off-premises use of Wi-Fi hotspots and internet access services, the *NPRM* seeks to balance the need to modernize the E-Rate program to support today's technology-based learning environment with the need to ensure the limited E-Rate funding remains available for its primary purpose of providing connectivity to schools and libraries, and is protected from potential waste, fraud, and abuse.

## II. Discussion

6. The Commission proposes to modernize the E-Rate program in recognition of the technologically advanced educational needs of students, school staff, and library patrons that persist even when they are not physically at their school or library, by making the off-premises use of Wi-Fi

hotspots and services eligible for E-Rate support. Broadband access is proven to improve individuals' educational outcomes, while lack of access has been shown to severely hamper educational opportunities. Yet, for years, the adoption of broadband connectivity in today's educational settings has outpaced the adoption of broadband connectivity in the homes of students, school staff, and library patrons throughout the country. As a result, students, school staff, and library patrons who lack adequate access to broadband connectivity are left further and further behind. Over the course of the last two years, the ECF program has bridged some of the gap between individuals with home broadband access and individuals caught on the wrong side of the digital and educational divide. Schools and libraries have maximized their limited ECF funding by establishing Wi-Fi hotspot lending programs, and ensuring that as many students, school staff, and library patrons in need as possible had access to broadband connectivity outside of the school or library building. With ECF support, approximately 6,800 schools, libraries, and consortia of schools and libraries purchased Wi-Fi hotspot devices and associated services, and were able to provide much-needed mobile broadband connectivity through ECF-funded Wi-Fi hotspots to more than 1.1 million students, school staff, and library patrons who otherwise lacked internet access services sufficient to engage in remote learning. In the *NPRM*, the Commission seeks to continue supporting ECF-funded broadband connectivity and proposes to allow E-Rate support to fund the off-premises use of Wi-Fi hotspots and services to ensure that the students, school staff, and library patrons who lack broadband connectivity remain supported after the ECF program sunsets. The Commission also seeks comment on how the it can implement funding for the off-premises use of Wi-Fi hotspots and services within existing E-Rate program processes, what actions are necessary to safeguard these critical funds from any potential waste, fraud, or abuse, and its authority to adopt the measures described in the *NPRM*.

### A. Making Off-Premises Use of Wi-Fi Hotspots and Services Eligible for E-Rate Support

7. The Commission proposes to permit schools and libraries to receive E-Rate support for Wi-Fi hotspots and services that can be used off-premises by students, school staff, and library patrons, finding that these services serve a critical educational purpose and

enhance the ability of students, school staff, and library patrons to access advanced telecommunications and information services. The Commission seeks comment on this proposal and, if adopted, how best to implement the proposed measures in a manner that ensures that schools and libraries target their students, school staff, and library patrons who lack internet access, while simultaneously protecting limited E-Rate funds. In particular, the Commission seeks information and data from schools and libraries that have used Wi-Fi hotspots and services for remote learning and/or implemented Wi-Fi hotspot lending programs to provide service to students, school staff, and library patrons who would otherwise lack broadband access outside of their school or library.

#### 1. Equipment and Service Eligibility

8. In proposing to make Wi-Fi hotspot devices eligible for E-Rate support, the Commission seeks comment on what devices should be covered. In the ECF program, a Wi-Fi hotspot is defined as a device that is capable of (a) receiving advanced telecommunications and information services; and (b) sharing such services with a connected device through the use of Wi-Fi. For the E-Rate program, the Commission proposes to limit eligibility to Wi-Fi hotspots receiving mobile services and seek comment on whether this is the right approach. Are there any devices that perform the same functions as a Wi-Fi hotspot that are not covered by this definition and that should be included? Conversely, is the ECF program's definition of Wi-Fi hotspot overinclusive and could it encompass devices that go beyond the intended purpose of meeting the remote learning needs of students, school staff, and library patrons with unmet need? The Commission encourages commenters to provide specific examples of any equivalent or similar equipment and/or services, or equipment and/or services that should be considered ineligible. Should Wi-Fi hotspots be treated as internal connections, as the State of Colorado has argued? The Commission notes that in defining the scope of E-Rate program eligibility for internal connections, the Commission has previously declined to support "computers and other peripheral equipment" because it found that only equipment that is an essential element in the transmission of information is eligible (e.g., internal connections). The Commission seeks comment on whether Wi-Fi hotspot devices are "peripheral equipment" or if they serve the necessary transmission function

contemplated by the Commission to be considered internal connections, like wireless access points.

9. Consistent with the ECF program, the Commission also proposes to limit Wi-Fi hotspot device eligibility to Wi-Fi hotspots for individual users. The Commission proposes to treat as ineligible multi-user hotspot devices or smartphones. The Commission seeks comment on this proposal. Additionally, the ECF rules limited support to the purchase of one Wi-Fi hotspot device per student, school staff member, or library patron. Should the Commission similarly adopt a per-user limitation in the E-Rate program or consider a per-household limit? What should that limit be? Is an individual Wi-Fi hotspot capable of connecting more than one user at a time without degrading the quality of the connectivity or compromising connectivity altogether? In considering whether to impose some limit, the Commission seeks to balance the goals of administrative ease, such as implementing a simple one-per-household limit, with the needs of all households, including multi-student households. Some sources state that Wi-Fi hotspot devices have a useful life of three to five years. In commenters' experience, is this the typical length of the useful life of Wi-Fi hotspots? If the Commission funds Wi-Fi hotspots, should the Commission limit their eligibility to purchases made once every three years or adopt some other eligibility timeframe? The Commission seeks comment on these questions and request that commenters provide any available supporting data.

10. With respect to wireless internet access services, the Commission proposes to limit the use of services to those that can be supported by and delivered with Wi-Fi hotspots provided to an individual user (as opposed to multi-user hotspots). Pursuant to this proposal, schools and libraries would be able to seek E-Rate support for commercially available internet access services (e.g., a data plan) that will be used on any individual user Wi-Fi hotspot, including E-Rate- or ECF-funded hotspots, previously purchased hotspots, and/or student-, staff member-, or patron-owned hotspots. The Commission seeks comment on this proposal. The Commission also seeks comment on the quality of internet access services that should be eligible for support through the E-Rate program. For example, should the Commission adopt minimum service standards? The Commission invites input on the level of service that is needed to support remote learning, based on the direct

experiences of providing Wi-Fi hotspots to students, school staff, and library patrons during the pandemic. Should the Commission limit support to just the off-premises use of the recurring internet access services needed for remote learning (and not the Wi-Fi hotspot equipment)? The Commission expects this limitation could allow schools and libraries with existing Wi-Fi hotspot lending programs to continue to lend or check-out a portable Wi-Fi hotspot device with a mobile broadband connection to students, school staff, or library patrons for off-premises access to the internet. If the Commission decides not to make Wi-Fi hotspot devices eligible, how should the Commission address Wi-Fi hotspot devices that are bundled with services? Are there benefits or disadvantages if the Commission limits E-Rate support to only services, and does not include Wi-Fi hotspot devices as eligible for support? Should the Commission limit eligibility to the services associated with the Wi-Fi hotspots purchased using ECF program funds? Would this limitation help to ensure E-Rate support is directed to students, school staff, and library patrons who are expected to lose their connectivity when the ECF program sunsets? Are there other issues or concerns the Commission should consider when determining how to fund Wi-Fi hotspot devices and/or services? For example, how should leased or bundled equipment and service packages offered by providers be treated and should they be eligible for E-Rate support? The Commission seeks comment on these questions.

#### 2. Cost-Effective Purchases

11. Next, the Commission seeks comment on how to ensure schools and libraries purchase the most cost-effective service offering(s) when selecting Wi-Fi hotspots and services for students, school staff, and library patrons who lack access to broadband. Are the requirements to pay the non-discounted share of costs and conduct competitive bidding sufficient incentives to prevent wasteful spending? The Commission also seeks comment on the anticipated costs of the Wi-Fi hotspots and services if provided on a program-wide basis. The Commission encourages schools, libraries, and other stakeholders to provide in their comments specific information about the devices and services purchased through the ECF program or with other funding, the costs, the device and service parameters, any steps they have taken to ensure the sufficiency of the service, and any steps they have taken to lower costs

associated with Wi-Fi hotspots and service. The anticipated costs should consider and describe any secondary components, such as additional hotspot features, different bandwidth capabilities, and any reasonable fees incurred with the purchase of Wi-Fi hotspots and services.

12. The Commission next ask about cost-control mechanisms. Should the Commission adopt a cap on the amount of costs that will be considered cost-effective for Wi-Fi hotspots and/or monthly services, and if so, should the Commission rely on ECF program data to establish a cap for a Wi-Fi hotspot provided to an individual user? For services, the Affordable Connectivity Program (ACP) provides discounts of up to \$30 per month towards internet service (or up to \$75 per month for eligible households on qualifying Tribal lands). Are these reasonable caps on what the Commission might consider cost-effective for monthly service? Should the Commission use different amounts for the monthly reimbursement of these services in the E-Rate program, and if so, what amounts should be used? If the Commission adopts caps on the amounts considered cost-effective for monthly services, should those caps be regularly updated, and if so, what mechanism should the Commission use to make those updates? What requirements should the Commission implement to ensure service providers in these underserved areas provide the most cost-effective services to eligible schools and libraries if a higher amount is allowed for support? The Commission seeks comment on these questions.

13. Relatedly, under the Commission's E-Rate rules, applicants are required to conduct fair and open competitive bidding when requesting funding for eligible services. The competitive bidding requirements are a cornerstone of the E-Rate program and are critical to ensuring that applicants obtain the most cost-effective offering available. However, the Commission recognizes that there may be challenges associated with conducting competitive bidding for off-premises wireless services that can be used from multiple locations. How can the Commission ensure applicants conduct fair and open competitive bidding for off-premises wireless services while also ensuring students, school staff, and library patrons can access those services from locations other than their school or library? For instance, in geographically large districts, a single service provider may not be able to provide service throughout the school's or library's service area. Should the Commission allow applicants to select multiple

service providers for Wi-Fi hotspots and services based on the geographic area(s) of their students, school staff, and library patrons? How can the Commission ensure that applicants select the most cost-effective service offerings? Are there competitively-bid state or other master contracts available for schools and libraries to purchase Wi-Fi hotspot devices and services for off-premises use? Are there any other issues that schools and libraries may encounter during their competitive bidding processes for Wi-Fi hotspots and services to be used off-premises that the Commission should also consider?

#### *B. Funding and Prioritization*

14. Based on its experience funding Wi-Fi hotspots and services through the ECF program, the Commission tentatively finds that taking this step toward addressing the educational needs of millions of students, school staff, and library patrons caught in the digital and educational divide is also technically feasible and economically reasonable, consistent with section 254(h)(2)(A) of the Communications Act. The Commission estimates that approximately 4.5 million students, school staff, and library patrons received mobile broadband service and/or hotspots through the ECF program for the 2021–2022 school year, with an average cost of approximately \$294 per user per year. The Commission seeks comment on this estimate, and any data and numerical evidence that can be used to support or update its estimate. Given that the demand for E-Rate program funding has consistently fallen below the program's funding cap in recent years, the Commission believes the cost of funding Wi-Fi hotspots and services for off-premises use could be accomplished within the E-Rate program's existing budget, and the potential increase in program disbursements would result in a substantial benefit to students, school staff, and library patrons stuck on the wrong side of the digital and educational divide, and in the Homework Gap across the country. The Commission seeks comment on its tentative conclusion.

15. Commenters are also invited to address whether the number of students, school staff, and library patrons that received mobile broadband service through Wi-Fi hotspots in the ECF program provides an accurate basis for estimating demand if the Commission permits mobile broadband service and Wi-Fi hotspots for off-premises use to be funded with E-Rate support, particularly given that not all E-Rate participants applied for the ECF

program, and other federal or state funding may have also been used for this purpose during the pandemic. The Commission requests additional information on whether there are schools and libraries that did not apply for ECF support that would apply for E-Rate support for the off-premises use of Wi-Fi hotspots and services. In addition, the Commission seeks comment on whether the ECF program's \$294 estimated average cost per user provides an accurate basis for estimating the potential cost to the E-Rate program of supporting Wi-Fi hotspots and mobile broadband service for off-premises use, provided the Commission reduces that amount by the average discounted share that will be paid by schools and libraries. Is this estimated cost too high, given the ECF program was an emergency program and there were not program-specific competitive bidding rules, unlike for the E-Rate program, which requires competitive bidding and for applicants to select the most cost-effective service offering using prices of the eligible services as the primary factor? How should the Commission account for the average three-year lifespan of Wi-Fi hotspot devices and the fact that many users will be able to continue to use devices funded through ECF after the sunset of the program, as well as funded through the other state and federal programs? For example, how can the Commission prevent parties from replacing ECF-funded Wi-Fi hotspots with new Wi-Fi hotspots funded through the E-Rate program before the ECF-funded equipment reaches its end-of-life (EOL)? Could the FCC manage the potential costs to the E-Rate program by establishing limits on the amount of support dedicated to the off-premises use of Wi-Fi hotspots and services? The Commission seeks comment on these questions.

16. The Commission acknowledges that there are some circumstances where Wi-Fi hotspots and services may not meet the connectivity needs of all students, school staff, and library patrons caught in the Homework Gap. The Commission also acknowledges that some schools and libraries used ECF funding for other remote learning solutions, such as building their own fixed wireless networks, and may also seek to use E-Rate funding to continue providing connectivity to their students, school staff, or patrons after the ECF program sunsets. While the Commission recognizes that there may be other off-premises uses that may meet the definition of an educational purpose, these solutions also have the potential to be extremely costly to fund with the

very limited E-Rate support and could be duplicative of funding made available through other state and federal programs. The Commission seeks comment on these conclusions. The Commission believes that taking this initial, incremental step to fund Wi-Fi hotspots and services for off-premises use strikes the right balance and is consistent with its universal service goals. The Commission also believes its proposal can be accomplished without excessive cost to the E-Rate program or significant administrative delay. The Commission therefore proposes to limit the scope of the *NPRM* to the off-premises use of Wi-Fi hotspots and services because the Commission is mindful of its obligation to be a prudent, responsible steward of the limited E-Rate funding and its statutory directive to establish rules only to the extent it is “economically reasonable” to do so. The Commission invite comment on this proposal. Recognizing that there may be circumstances where there is either no commercially available mobile service or the existing service is insufficient to allow students, school staff, or library patrons to fully engage in remote learning, the Commission seeks comment on whether the Commission should consider alternatives for off-premises services funded through the E-Rate program in such limited circumstances and what alternatives should be considered. For example, should the Commission permit schools and libraries to use existing E-Rate-funded networks to connect students, school staff, or library patrons off-premises in the narrow instances where commercially available mobile broadband is not a viable option (*e.g.*, due to geographic challenges or cost)? The Commission also seeks comment on how the Commission should determine there is no commercially available service, or existing service is insufficient to support remote learning and how to ensure the alternative solutions are the most cost-effective way of providing service to students, school staff, and library patrons who otherwise are not able to fully engage in remote learning.

#### 1. Prioritization

17. If the Commission makes students’, school staff members’, and library patrons’ off-premises use of Wi-Fi hotspots devices and services eligible, what category of service should these devices and services be? Under the current Eligible Services List, wireless internet services are category one services and are eligible under limited circumstances. Should the Commission therefore consider Wi-Fi

hotspots to be network equipment necessary to make category one wireless internet services functional? If the Commission determines that Wi-Fi hotspots are comparable to internal connections as the State of Colorado suggests, should these devices be considered category two services?

18. Based on the Commission’s experience in the ECF program and other publicly available information, the Commission anticipates that its proposal to fund the off-premises use of Wi-Fi hotspots and services will result in an increase in E-Rate funding requests. In the event that E-Rate program demand exceeds its annual funding cap, the Commission seeks comment on how requests for the off-premises use of Wi-Fi hotspots and services should be prioritized. Are there measures the Commission should consider to ensure that E-Rate funding remains available for the currently-eligible category one and category two services that are needed by schools and libraries? Should these requests be prioritized after services and equipment needed to bring connectivity *to* and *within* schools and libraries (*i.e.*, category one and category two services) are funded? Should the Commission prioritize requests for services associated with the Wi-Fi hotspots purchased using ECF program funds? Will funding the off-premises use of Wi-Fi hotspot devices and services have any impact on other pending E-Rate-related eligibility requests, such as expanding basic firewall services to include advanced or next-generation firewall services? Are there other ways to limit the financial impact of supporting the off-premises use of Wi-Fi hotspots and services? For example, should the Commission consider an overall budget for these new off-premises services? Should there be an annual funding cap for the amount of support that is available for the off-premises use of Wi-Fi hotspots and services? If so, what should the funding cap be? Should it be indexed to inflation? Alternatively, would a per-student limit, like the one used for category two funding budgets, help to ensure the limited E-Rate program support is distributed equitably to schools and libraries across the various discount rates? Should the Commission implement these changes on an interim basis and subsequently assess whether to implement a permanent rule change based on its interim experience? The Commission seeks comment on these proposals and questions.

#### 2. Unmet Need

19. The Commission also recognizes that there are insufficient E-Rate funds to support Wi-Fi hotspots and services for every student, school staff member, and library patron across the nation. Therefore, how can the Commission prioritize support for students, school staff, and library patrons who do not have internet access at home? In the ECF program, the Commission limited support to students, school staff, and library patrons without internet access services sufficient to engage in remote learning. Through its experience in the ECF program, the Commission understands that schools and libraries have faced challenges in determining which parts of their population needed access to Wi-Fi hotspots and services for the upcoming funding year. The Commission therefore seeks comment on administratively feasible ways to ensure the E-Rate program prioritizes support for Wi-Fi hotspots and services for use by students, school staff, or patrons who would otherwise lack access to internet access services.

20. The ECF program limited support for eligible equipment and services to students, school staff, or library patrons with unmet need, and, because it was an emergency COVID-19 relief program, schools and libraries were required to provide only their best estimate of unmet need during the application stage. However, because the E-Rate program is not an emergency program, there is time for schools and libraries to determine the actual number of students, school staff, and library patrons with unmet needs. The Commission seeks comment on whether the Commission should adopt more stringent unmet needs requirements for the E-Rate program than it adopted for the ECF program. For example, should the Commission require schools and libraries to conduct and submit as part of their funding requests a survey or other documentation that substantiates their student and school staff, or patron population who has current unmet needs? Would such a requirement raise any privacy concerns (*e.g.*, insofar as such surveys would be intended to elicit information from potentially lower-income children, families, and individuals)? If this requirement would create privacy risks for students, families, and patrons, how could the Commission mitigate those risks (*e.g.*, via data minimization, anonymization, or deidentification)? For example, would it be possible for schools and libraries to conduct such surveys without collecting any personally identifiable information (PII) from

students, staff, or patrons, and what burdens would such a collection place on school and library resources? If schools and libraries would need to collect PII, should the Commission requires that all such information be removed from the survey results when submitted with funding requests?

21. Are there other ways that the Commission can ensure it focuses and targets the limited E-Rate program support to only students, school staff, and library patrons who currently lack broadband access—and who cannot afford it—so that the E-Rate program does not support services for students, school staff, or library patrons who already have broadband connectivity at their homes? For example, should the Commission restricts the support of off-premises use of Wi-Fi hotspots and services to students whose parent or guardian certifies that they lack broadband at home and who are eligible for the free or reduced-price lunch program (also known as the National School Lunch Program or NSLP)? Are there any other school nutrition programs that a student's parent or guardian should be able to use to demonstrate eligibility under this approach, such as the School Breakfast Program? What burdens could conditioning support on NSLP participation impose on school administrators and/or students? If the Commission declines to use NSLP for determining eligibility, what other measures could be taken to ensure the limited E-Rate support is directed to the students with the greatest need? For school staff and library patrons, are there similar or alternative requirements that the Commission should consider to ensure that E-Rate support is used towards existing unmet needs and to prevent waste, fraud, and abuse of the program? The Commission seeks comment on these questions and how to best target E-Rate funding to only students, school staff, and library patrons with the greatest need.

22. The Commission further seeks comment on whether there are certain school populations, such as Head Start and pre-kindergarten students, for whom the risks may outweigh the benefits of providing E-Rate support for the off-premises use of Wi-Fi hotspots and services. For example, studies show that children under the age of 5 should limit internet access to one hour or less per day and are harmed if exposed to longer periods of use. The Commission proposes that the Head Start program, which provides early learning and development for pre-school children from the ages of 3 to 5, and pre-kindergarten students should be

determined to be ineligible to receive E-Rate support for off-premises use of Wi-Fi hotspots and services. The Commission notes that Head Start and/or pre-kindergarten education facilities serving this particular age group may be eligible for E-Rate funding for broadband connectivity to and within their facilities, if determined to be elementary schools under their applicable state laws. Further, parents and guardians of Head Start students may be eligible for home internet access services through ACP because Head Start is an income-based program and, to qualify, a family must be at or below the federal poverty level, or participate in a federal government assistance program. The Commission seeks comment on this proposal and other measures the Commission should take to ensure that the E-Rate program's limited support is targeted to students, school staff, and library patrons with the greatest need, as there is insufficient funding to support the off-premises use of Wi-Fi hotspots and services for every student, school staff member, and library patron.

### C. Program Safeguards

23. The Commission is mindful of its obligation to protect the Universal Service Fund (USF) and the USF programs from waste, fraud, and abuse, and take seriously its duty to be a careful steward of E-Rate program funds. The Commission is similarly committed to ensuring the integrity of the E-Rate program and identify below potential tools at its disposal to ensure that the E-Rate program's funds are used for its intended purposes, *i.e.*, to enhance and enable access to broadband services for educational opportunities for schools and libraries nationwide. The Commission seeks comment on what safeguards the Commission should consider imposing to protect the constrained E-Rate funds from waste, fraud, and abuse, and to prevent the imposition of unnecessary costs on the program.

#### 1. Educational Purpose

24. The Commission first seeks comment on how to ensure that the off-premises use of Wi-Fi hotspots and services is primarily for educational purposes, consistent with the Commission's rules and section 254(h)(1)(B) of the Communications Act. The COVID-19 pandemic demonstrated the educational benefits of providing critical broadband connections to students, school staff, and library patrons and highlighted their reliance on interactive and collaborative remote learning outside the physical school or

library building. The Commission recognizes that the use of eligible services on school or library property typically occurs under the supervision of school or library staff; whereas, the off-premises use of these services presents new concerns about ensuring the proper use of the E-Rate-funded equipment and services that are not directly supervised by the recipient of the funding. In balancing these benefits and concerns, the Commission therefore seeks comment on what safeguards should be imposed to mitigate the risk of off-premises non-educational use of E-Rate-supported Wi-Fi hotspots and services.

25. Currently, E-Rate participants are required to certify on program forms that supported services will be used primarily for educational purposes. The Commission seeks comment on whether requiring schools and libraries to certify on their forms that E-Rate support is being used primarily for educational purposes is sufficient to protect against improper use or if additional guardrails should be imposed to ensure that services are used "primarily for educational purposes." For example, libraries that used ECF funding to connect their patrons through Wi-Fi hotspot lending programs are required to provide patrons with a copy of their eligible use policy and collect signed statements from patrons confirming that they would otherwise lack access to the equipment or services necessary to meet their educational needs. Should the Commission adopt a similar requirement in the E-Rate program and require schools and libraries to provide copies of their eligible use policies and collect signed documentation of user compliance from patrons, school staff members, or parents/guardians of students to ensure the E-Rate-funded Wi-Fi hotspots and services are used solely by the intended recipient and serve an educational purpose? How can the Commission ensure that the off-premises Wi-Fi hotspots and services are being used as intended by the individual student, school staff member, or library patron for educational purposes, and E-Rate funding is not being used to provide broadband connectivity for the whole family, for which there are more appropriate funding sources available, like the ACP? Should the Commission require schools and libraries, as a condition of receiving E-Rate support for off-premises use, to include certain minimum requirements in their eligible use policies, or limit the duration of time a student, school staff member, or library patron can use the hotspot at home? Should, for example,

schools and libraries be required to restrict access to the off-premises use of Wi-Fi hotspots and services to students, school staff, and patrons with appropriate credentials? What would constitute appropriate credentials? Should there be an annual verification process to establish continuing need and eligible use for students and school staff before the start of each school year? Should the documentation signed by users include a notice of potential consequences if a Wi-Fi hotspot is used improperly, including the return of the device and revocation of the associated service? Are there other actions that the Commission could take to help ensure the appropriate use of the E-Rate-funded Wi-Fi hotspots and services? The Commission seeks comment on these questions.

26. If the Commission extends support to the off-premises use of Wi-Fi hotspots and services, the Commission expects the support would be subject to the audits and reviews currently utilized in the E-Rate program (*e.g.*, Beneficiary and Contributor Audit Program (BCAP) audits, Payment Quality Assurance (PQA) audits, and Payment Integrity Assurance (PIA) reviews and Selective Reviews (SR) of the FCC Form 471). Are the current E-Rate audit and application/invoice review mechanisms sufficient to ensure that off-premises Wi-Fi hotspots and services are actively being used by eligible users primarily for educational purposes? Should the Commission increase the number and frequency of random or targeted audits in the first few years of support as a means of detecting and preventing improper payments for Wi-Fi hotspots and services that are not needed, are not being used, are being used to provide home broadband connectivity to an entire family, or are not being used primarily for an educational purpose? Are there other issues, such as privacy concerns, or changes the Commission should consider for audits and reviews related to funding requests and disbursements for off-premises use of Wi-Fi hotspots and services? For example, because it is presumed to serve an educational purpose when the services are used on school or library property, how should the Commission verify that the off-premises use of E-Rate-funded Wi-Fi hotspots and services are being used for educational purposes? Are there mechanisms or tools available that would allow for verifying compliance with E-Rate rules regarding the off-premises use of supported Wi-Fi hotspots and services that would *not* require review of users'

online activities, browsing history, etc.? If not, should users receive advance notice that their use of an E-Rate-supported Wi-Fi hotspot and service is subject to audit, which may include review of their online activities and browsing history to verify compliance with the Commission's rules? The Commission seeks comment on these questions.

27. The Commission also seeks comment on what other requirements should be imposed to ensure schools and libraries are not requesting funding for more Wi-Fi hotspots and services than are necessary to meet the needs of only students, school staff, and library patrons who lack access to broadband and are used for educational purposes. For instance, schools and libraries may allow the community to use E-Rate-funded services from on-premises locations during non-operating hours, subject to certain conditions to ensure students always have the first priority to use the supported services and to protect against the waste, fraud, and abuse of the funds. Are there similar conditions that the Commission should impose on the off-premises use of Wi-Fi hotspots and services to ensure applicants are not requesting excess services for non-educational purposes like video games or non-educational streaming services, and that students, school staff, and library patrons are receiving first priority in the use of school or library resources? Are there incidental uses that should be permissible, like telehealth appointments or filling out government forms, that would not result in a greater demand on E-Rate funding? The Commission seeks comment on these questions and invite input on what steps schools and libraries have taken to ensure the off-premises use of ECF-funded Wi-Fi hotspots and services were used only by the intended individual(s) and for educational purposes.

## 2. Usage

28. If the Commission makes off-premises use of Wi-Fi hotspots and services eligible, how can the Commission prevent the warehousing of Wi-Fi hotspots and reimbursement for unused equipment and/or services? Are there ways to prevent the purchase of "back-up" Wi-Fi hotspots, *e.g.*, hotspots purchased in anticipation of loss, breakage, or additional unmet need? Should the Commission adopt numerical criteria to assess usage: *e.g.*, should usage below a weekly, monthly, or quarterly threshold of X hours be treated as "non-usage"? Should the Commission require participants to

provide evidence of usage and/or strengthen the certification requirements surrounding non-usage? For example, should the Commission require the submission of data usage reports (*i.e.*, reports on the *amount* of data used, not the *substance* of the usage) with requests for reimbursement to demonstrate the Wi-Fi hotspots and services were used by students, school staff, and library patrons as intended for the time period being invoiced to the E-Rate program? Should there be different usage requirements applicable to schools and libraries? How does the Commission avoid having the E-Rate program pay for service to Wi-Fi hotspots during the summer, when students may not be using the devices? For example, should E-Rate support for schools be limited to only nine months per school year to prevent the E-Rate program from covering the costs of unused devices and/or services during the summer? Should the certifications regarding non-usage in the ECF program be strengthened for the E-Rate program? How should the certifications be strengthened, and how could a school, library, or service provider demonstrate compliance with the certification requirements? The Commission seeks comment on these questions.

29. The Commission also seeks comment on how schools, libraries, and service providers should address non-usage issues. If the monthly usage report indicates that certain hotspot devices are not being used by the student, school staff member, or library patron, should the school or library be required to terminate the service to that device? Should the service provider be responsible for notifying the school or library which devices had no usage on a monthly basis and be required to terminate the service? Should there be a cure or notification period to allow the student, school staff member, or library patron to restart use of the services or should the services be terminated after there is a month of no usage? The Commission seeks comment on what requirements should be implemented to ensure usage of the devices and services and what actions the school, library, or service provider should be required to take to address any non-usage issues related to their students, school staff, or library patrons.

30. The Commission also seeks comment on how the Administrator should handle non-usage issues related to off-premises Wi-Fi hotspots and services. If a school or library cannot demonstrate the Wi-Fi hotspots and services were used by the intended individual, should their request for reimbursement be denied, and the

Administrator be directed to reduce the committed funding amount by the same amount to prevent this funding from being disbursed in the future? Should schools and libraries be required to notify the Administrator if their service provider submits invoices for Wi-Fi hotspots or services that the school or library knows are not being used by its students, school staff, or library patrons, because, for example, the device has not been distributed yet? Should the Administrator be directed to seek recovery from a service provider that invoices the program for Wi-Fi hotspots and services that were not in use during the reimbursement period? Should the Commission also prohibit service providers from invoicing applicants for periods of non-usage? If there is evidence of non-usage of the off-premises Wi-Fi hotspots and/or services, should schools and libraries be required to file an FCC Form 500, or other post-commitment request, to reflect the actual periods of time that the Wi-Fi hotspots and services were in use by their students, school staff, or library patrons? Should E-Rate participants that improperly received E-Rate support for unused Wi-Fi hotspots and/or services not be eligible to request E-Rate support for off-premises Wi-Fi hotspots and services in future funding years? Or should the school or library be required to reduce their funding requests by the amount of funding related to the unused Wi-Fi hotspots and services in future funding years? The Commission seeks comment on these questions and ways to ensure the off-premises Wi-Fi hotspots and services are actually being used for their intended purpose of providing broadband connectivity to students, school staff, and library patrons who lack access and are used for educational purposes.

### 3. Duplicative Funding

31. The Commission seeks comment on what safeguards are necessary to prevent duplicative funding for the same off-premises Wi-Fi hotspots and/or services across the federal universal service programs and other funding programs, including federal, state, Tribal, or local programs. For example, the ACP provides discounts to help low-income households pay for the home broadband service and connected devices needed for critical activities like work and school. However, a household may justifiably receive support from multiple universal service programs at the same time: for instance, a household may receive a Lifeline-supported discount on mobile broadband and voice service for a cellular phone that a parent takes with them to work, while

separately receiving support for a Wi-Fi hotspot to help a child in that same household complete their homework on a school-issued laptop. How can the Commission ensure that funding sought for internet access services through the E-Rate program will not be duplicative of funding received through other programs, like the ACP, for home internet access, while recognizing that a household may permissibly benefit from multiple federal universal service programs simultaneously? If schools and libraries already provide off-premises access for their students, school staff, and patrons through ECF or other sources of funding, should those schools and libraries be prohibited from using E-Rate support for that same purpose? For example, how does the Commission ensure that schools and libraries that have purchased Wi-Fi hotspots with ECF support do not purchase new hotspots with E-Rate support prior to the end of the useful life of the ECF-funded hotspots? To help us assess this issue, the Commission asks commenters to identify any ECF support or other sources of funding currently being used by schools or libraries to subsidize off-premises access for students, school staff, and library patrons that would eliminate or reduce the need for E-Rate-supported Wi-Fi hotspots. Would a certification by the school or library be sufficient to indicate that E-Rate support is only being sought for eligible students, school staff, or library patrons and the school or library does not already have access to Wi-Fi hotspots purchased with ECF support or other sources of funding? The Commission seeks comment on how to prevent duplicative funding between E-Rate, ECF, and other funding programs, including federal, state, Tribal, or local programs.

### 4. Recordkeeping

32. The Commission's rules currently requires schools and libraries to retain all documentation related to the application, receipt, and delivery of eligible services received through the E-Rate program for at least ten years after the last date of the delivery of services. The Commission proposes to apply existing E-Rate recordkeeping requirements to funding provided for the off-premises use of Wi-Fi hotspots and services. The Commission seeks comment on this proposal and whether additional recordkeeping requirements should be imposed for these purposes. For example, while both the E-Rate and ECF rules require applicants to maintain inventories of equipment purchased with the programs' support, ECF rules require applicants to maintain specific

information in their equipment and service inventories for each device or service purchased with ECF support and provided to an individual student, school staff member, or library patron. For each hotspot purchased with ECF support, a school or library must maintain the device make/model, the device serial number, the name of the person to whom the device was provided, and the dates the device was loaned out and returned to the school or library. Each ECF-funded service inventory must include the type of service provided, the broadband plan details (*i.e.*, upload and download speeds and the monthly data cap), and the name of the person to whom the service was provided. Should the Commission adopt these inventory requirements in the E-Rate program for the off-premises use of Wi-Fi hotspots and services? For Wi-Fi hotspot lending programs, should the Commission consider library-specific inventory rules?

33. The Commission seeks comment on any other issues related to maintaining documentation to demonstrate compliance with E-Rate rules and certifications. Related to the Commission's unmet need inquiries, should applicants be required to maintain records of students', school staff members', or library patrons' unmet needs, and if so, what types of records should be required (*e.g.*, surveys)? If the Commission requires schools and libraries to retain new records regarding unmet needs containing PII, how can the Commission address any privacy risks to students, families, school staff, and patrons? Related to its non-usage requirements inquiries, the Commission notes that service providers would be required to retain and produce monthly usage reports for off-premises Wi-Fi hotspots and services funded through the E-Rate program under its current rules. Should applicants be required to request and retain monthly usage reports from their service providers as well? Are there other recordkeeping requirements for the off-premises use of Wi-Fi hotspots and services that should be considered by the Commission?

### D. Legal Authority and Other Outstanding Issues

34. Several stakeholders have argued that the Commission should, and has the authority to, clarify that the E-Rate program may support off-premises solutions like Wi-Fi hotspots for extending connectivity to students', school staff members', and patrons' homes. For example, the Schools, Health & Libraries Broadband (SHLB)

Coalition argued that section 254(h)(1)(B) of the Communications Act does not prohibit the provision of E-Rate support for off-premises services; rather, it simply requires a demonstration by E-Rate participants that the off-premises use of eligible equipment and services primarily serves an educational purpose. Additionally, Apple posited that the Commission should determine that equipment and services that support remote learning, like Wi-Fi hotspots, are eligible for E-Rate support because they “enhance . . . access to advanced telecommunications and information services” for schools and libraries under section 254(h)(2)(A) of the Communications Act. The Commission tentatively concludes, consistent with the recent *Wi-Fi on School Buses Declaratory Ruling* and the Commission’s past determinations regarding the off-campus use of certain E-Rate services, that the Commission has authority under section 254 of the Communications Act to permit eligible schools and libraries to receive E-Rate support for Wi-Fi hotspots and wireless internet services that may be used off-premises. The Commission seeks comment on its tentative conclusion and the scope of the Commission’s relevant legal authority, including the applicability of CIPA requirements.

35. First, the Commission tentatively concludes that such Wi-Fi hotspot and wireless internet services that may be used off-premises and are targeted for use by students and educators constitute services that are “provide[d] . . . to elementary schools, secondary schools, and libraries,” and thus may be supported pursuant to section 254(h)(1)(B) of the Communications Act when used “for educational purposes.” The Commission seeks comment on this tentative conclusion, including that the reference to “elementary schools, secondary schools, and libraries” does not constrain us from supporting off-premises use of such services for educational purposes. The Commission also seeks comment on whether and under what circumstances the off-premises use of wireless services, and the Wi-Fi hotspots needed to deliver such services, by students, school staff, and library patrons at locations other than at a school or library constitutes an educational purpose under section 254(h)(1)(B) of the Communications Act. Taking into consideration the lack of a reliable broadband connection at some students’, school staff members’, and library patrons’ homes, and the increasing need for connectivity in today’s technology-based educational environment that extends learning

beyond a school or library building (e.g., for virtual classes, electronic research projects, homework assignments, virtual library resources, and job or government assistance applications), as well as its experience connecting students, school staff, and library patrons using ECF-funded Wi-Fi hotspots and services, the Commission specifically proposes that the off-premises use of mobile wireless services and the Wi-Fi hotspots needed to deliver such connectivity is integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services. The Commission seeks comment on this proposal and invite commenters to provide specific examples of how Wi-Fi hotspots and services used off-premises serve an educational purpose. As discussed in greater detail above, the Commission also seeks comment on the necessary safeguards to ensure that this off-premises use is primarily for educational purposes, consistent with its rules and section 254(h)(1)(B) of the Communications Act.

36. Next, the Commission seeks comment on whether supporting Wi-Fi hotspots and services is consistent with the Commission’s precedent permitting certain off-premises uses of other E-Rate-funded services. Although prior off-premises uses permitted by the Commission were limited to telecommunications services, the Commission has expressly rejected the assertion that the support provided under section 254(h) of the Communications Act is limited to telecommunications services. Specifically, in the *First Universal Service Order*, 62 FR 32862, June 17, 1997, the Commission concluded that section 254(h)(1)(B) through section 254(c)(3) of the Communications Act authorizes universal service support for telecommunications services and additional services such as information services. Furthermore, in the *Wi-Fi on School Buses Declaratory Ruling*, the Commission concluded that the provision of support for Wi-Fi on school buses fit squarely within its authority under section 254(h)(1)(B) to designate “‘services that are within the definition of universal service under subsection (c)(3),’ which itself authorizes the Commission to designate non-telecommunications services for support under E-Rate.” To the extent section 254(h)(1)(B) of the Communications Act encompasses additional services, such as information services, does the Commission have a basis to authorize support under that subsection for

wireless Internet access services needed for the off-premises use of Wi-Fi hotspots?

37. The Commission also seeks comment on how the Commission should reconcile the authority provided under section 254(h)(1)(B) of the Communications Act to support certain “services” with the fact that Wi-Fi hotspots are physical devices needed to provide those services. In the *First Universal Service Order*, for example, the Commission specifically concluded that “it can include ‘the information services’ e.g., protocol conversion and information storage, that are needed to access the Internet, as well as *internal connections*, as ‘additional services’ that section 254(h)(1)(B), through section 254(c)(3), authorizes us to support.” Consistent with that precedent, the Commission tentatively concludes that the Commission has authority under section 254(h)(1)(B) through section 254(c)(3) of the Communications Act to support the Wi-Fi hotspot devices that are needed for the off-premises use of the broadband services. The Commission invites comment on its tentative conclusion.

38. Further, the Commission tentatively concludes that providing E-Rate support for the off-premises use of Wi-Fi hotspots and services “enhance[s], to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms . . . and libraries” consistent with section 254(h)(2)(A) of the Communications Act. Funding the off-premises use of Wi-Fi hotspots and services will help provide the broadband connectivity necessary to support the ability of schools and libraries to facilitate remote learning for students, school staff, and library patrons who lack access when they are away from school or library premises and will allow schools and libraries to provide digital educational resources at anytime from anywhere. Therefore, the Commission believes the action proposed today will enhance schools’ and libraries’ access to advanced telecommunications and information services under section 254(h)(2)(A) of the Communications Act. The Commission seeks comment on this interpretation.

39. The Commission also tentatively concludes that this proposal is consistent with the Commission’s exercise of its authority under section 254(h)(2)(A) of the Communications Act to establish the Connected Care Pilot Program and in its recent Declaratory Ruling clarifying that use of Wi-Fi

services on school buses is an educational purpose and, therefore, can be eligible for E-Rate support. In establishing the Connected Care Pilot Program, the Commission found that providing support for patients' home broadband connections expanded health care providers' digital footprints for purposes of providing connected care services and allowed health care providers to serve more patients through the pilot program, thus enhancing eligible health care providers' access to advanced telecommunications and information services. Similarly, in the recent *Wi-Fi on School Buses Declaratory Ruling*, the Commission found that "the use of Wi-Fi on school buses to aid the many students who lack robust internet access at home similarly enhances eligible schools' and libraries' access to advanced telecommunications and information services." Would funding Wi-Fi hotspots and services to provide off-premises connectivity to students, school staff, and library patrons who lack access similarly enhance eligible schools' and libraries' access to advanced telecommunications and information services? The Commission seeks comment on its tentative conclusion.

40. *Off-Premises Limitations.* In tentatively concluding that providing E-Rate support for off-premises use of Wi-Fi hotspots and services is consistent with section 254(h)(2)(A) of the Communications Act, the Commission also seeks comment on how today's modern educational environment has evolved for the purposes of enhancing affordable access to 21st Century broadband services capable of supporting today's digital learning. The Commission has long recognized the evolving nature of educational technology, noting in the 2010 National Broadband Plan that "[o]nline educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries." Over a decade later, and in the wake of nationwide school and library shutdowns, the need for connectivity for remote learning has become only more pronounced. There is little doubt that advances in technology have enabled students to continue to learn well after the school bell rings, including from their homes or other locations like, for example, youth centers. Today's learning settings have evolved, and learning now occurs outside of the school or library building,

increasing the need to have broadband connections for educational success. As such, the Commission seeks comment on its tentative conclusion that the reference in section 254(h)(2)(A) of the Communications Act to "elementary and secondary school classrooms . . . and libraries" extends to student, school staff, and library patron homes, given that today's educational environment clearly extends outside of the physical school or library building. Does the modern student, school staff member, or library patron require internet access outside of school or library premises to achieve their educational goals? Is there data showing the extent to which certain educational activities take place in both the physical on-premises classroom and other off-premises locations? What about the extent to which students are required to do homework or engage in remote learning beyond school or library premises? The Commission invites commenters to share their experiences with the increasingly virtual nature of the modern educational environment and how evolving technologies have changed education.

41. As noted, Congress did not define "classrooms" for the purposes of section 254(h)(2)(A) of the Communications Act. In the *First Universal Service Order*, the Commission concluded that the statutory reference to "classrooms" demonstrated that Congress intended to fund service to each individual classroom but did not define the term. More recently, the Commission determined that "in today's world, teaching and learning often occur outside of brick and mortar school buildings and thus 'classroom' may be interpreted more broadly," which may include, for example, school buses. The Commission seeks comment on whether the Commission should adopt a definition of "classrooms" for the purposes of the E-Rate program and what would be an appropriate definition to adequately cover the modern learning environment. Do homes and other off-premises locations (*i.e.*, community centers, after-school centers, etc.) function as "virtual classrooms" within the meaning of "classrooms" as used in section 254(h)(2)(A) of the Communications Act, particularly after the COVID-19 pandemic? Furthermore, in establishing universal service support for schools and libraries, Congress explained that the intent of the support authorized under subsection (h)(2) is to "enhance the availability of advanced telecommunications and information services to public institutional telecommunications users" and to

ensure "Americans everywhere" have access "via schools and libraries." The Commission seeks comment on whether interpreting "classroom" to mean an in-person, on-premises setting would bar any intended Americans from benefiting from supported advanced telecommunications and information services. Alternatively, would a broader interpretation of "classrooms" to include locations other than the school or library and that focuses on the intended beneficiaries' (*i.e.*, "Americans everywhere") ability to access educational services, rather than the exact location of the services, be consistent with Congress's intent? Relatedly, if the Commission adopts a broader interpretation of "classrooms", is there a definition that strikes a balance between ensuring access to educational services in this evolving learning environment while also establishing boundaries to ensure that the off-premises use of E-Rate-supported services remains the exception to the general presumption that activities that occur on library or school property serve an educational purpose? The Commission emphasizes that any determination of support for off-premises use of E-Rate-supported services will still be subject to the relevant statutory requirements discussed herein, including that the Commission first finds that the off-premises provision of such services serves an educational purpose pursuant to section 254(h)(1)(B), and enhances, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services under section 254(h)(2)(A) of the Communications Act. The Commission seeks comment on whether these limitations are sufficient to ensure that E-Rate funding is being used for its intended purposes.

42. *The Children's Internet Protection Act (CIPA).* The Commission seeks comment on the applicability of the Children's Internet Protection Act (CIPA) when connecting to internet made available by E-Rate-funded Wi-Fi hotspots and services. Congress enacted CIPA to protect children from exposure to harmful material while accessing the internet from a school or library. In enacting CIPA, Congress was particularly concerned with protecting children from exposure to material that was obscene, child pornography, or otherwise inappropriate for minors (*i.e.*, harmful content). CIPA prohibits certain schools and libraries from receiving funding under section 254(h)(1)(B) of the Communications Act for internet access, internet service, or internal

connections, unless they comply with specific internet safety requirements. Specifically, CIPA applies to schools and libraries “having computers with internet access,” and requires each such school or library to certify that it is enforcing a policy of internet safety that includes the operation of a technology protection measure “with respect to any of its computers with internet access.” Schools, but not libraries, must also monitor the online activities of minors and provide education about appropriate online behavior, including warnings against cyberbullying. The Commission tentatively concludes that the requirements of CIPA would apply to school- or library-owned computers being used off-premises if the school or library receives internet service, internet access, or network connection services or related equipment (including Wi-Fi hotspots) funded through the E-Rate program, and seek comment on this conclusion.

43. In the ECF program, the Commission found that the purchase of hotspots would qualify as the purchase of network equipment for internet access, internet service, or internal connections, and would trigger CIPA compliance for the purchasing school or library only if used with any school- or library-owned computers. Similarly, other ECF-funded recurring internet access or internet services (if any) used off-premises triggers CIPA compliance if used with any school- or library-owned computer. On the other hand, the Commission determined for the ECF program that CIPA does not apply to the use of any third-party-owned device, even if that device is connecting to a school’s or library’s ECF-funded hotspot or other ECF-funded internet access or internet service. The Commission seeks comment on whether this is the appropriate interpretation of CIPA with regard to E-Rate-funded Wi-Fi hotspots and services used off-premises as discussed further below.

44. At the time of CIPA’s enactment, schools and libraries primarily owned one or two stationary computer terminals that were used solely on-premises. Today, it is commonplace for students, school staff, and library patrons to carry internet-enabled devices onto school or library premises and for schools and libraries to allow third-party-owned devices access to their internet and broadband networks. In view of the changes in technology and the wider range of internet-enabled devices in circulation today, the Commission seeks comment on whether its current interpretation of CIPA’s applicability to computers owned by schools or libraries that receive E-Rate-

funded internet service, internet access, or internal connections achieves CIPA’s intended purpose of protecting minors from exposure to harmful content while accessing internet services provided by a school or library. Are students or library patrons able to access content that is obscene, child pornography, or harmful to minors through E-Rate-funded internet or internal connections when they use their own (*i.e.*, third-party) computers or devices? What steps can the Commission take to ensure that E-Rate funding is not being used to facilitate minors’ access to harmful content, including when using third-party-owned devices to connect to E-Rate-funded internet access, internet service, or internal connections? The Commission also understands that many mobile broadband service providers include network-level filtering in their service offerings and that many schools and libraries already deploy network-level technology protection measures. The Commission seeks comment on whether it can and should require or encourage filtering and other technology protection measures to be implemented at the network-level to ensure that minors are not accessing harmful content through E-Rate-funded internet access, internet service, or internal connections. The Commission invites input from commenters on their experiences implementing and using network-level protections to protect minors from accessing harmful content.

45. The Commission also invites comment on the scope of the Commission’s authority to impose requirements on third-party-owned devices pursuant to CIPA. For example, the Commission seeks comment on whether the requirement in section 254(h)(5)(B)(i) of the Communications Act that requires schools to certify that their internet safety policy “includes monitoring the online activities of minors” could be construed to extend to third-party-owned devices, notwithstanding other language in CIPA that suggests that its applicability is limited to school- or library-owned computers. Should monitoring the online activities of minors requirement apply to third-party-owned devices that use or access E-Rate-funded internet access, internet service, or internal connections? Is that interpretation consistent with Congress’s intent “to protect America’s children from exposure to obscene material, child pornography, or other material deemed inappropriate for minors while accessing the internet from a school or library receiving Federal Universal Service assistance for provisions of

internet access, internet service, or internal connection”? The Commission seeks information about current practices that would assist the Commission in formulating policies that reflect the importance of CIPA protections in the context of more modern uses of the internet services supported by E-Rate.

46. The Commission also seeks comment on how CIPA’s requirements are being met remotely and whether the Commission’s existing CIPA-related rules adequately cover off-premises use. What measures are ECF recipients taking to comply with CIPA when providing ECF-funded hotspots for use on school- or library-owned computers? How are libraries balancing CIPA requirements and the needs of library patrons who rely on E-Rate-funded internet access or internal connections for remote learning and other E-Rate approved uses (*e.g.*, job searching)? The Commission seeks comment on these questions and whether there may be other circumstances it has not considered related to the application of CIPA to the proposals in the *NPRM*.

47. Finally, the Commission acknowledges there are privacy concerns related to certain CIPA requirements, particularly as it relates to library patrons’ data that is often subject to various federal and/or state privacy laws. The Commission seeks comment on these privacy-related issues and encourage commenters to be specific about how CIPA can be applied to ensure minors who are using E-Rate-funded Wi-Fi hotspots and services are protected from harmful online content, as intended by Congress. The Commission also seeks comment on any privacy-related implications if network-level filtering or other technology protection measures are required for third-party-owned devices that access E-Rate funded internet or internal connections.

#### *E. Promoting Digital Equity and Inclusion*

48. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and

accessibility, as well the scope of the Commission's relevant legal authority.

### III. Procedural Matters

49. *Regulatory Flexibility Act.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the Addressing the Homework Gap through the E-Rate Program, Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

50. The Commission's E-Rate program provides support to schools and libraries, allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. The primary objectives of the NPRM are to address the remote learning needs of today's students, school staff, and library patrons and to help close the country's digital and educational divide (sometimes referred to as the Homework Gap), particularly once ECF program funding for off-premises broadband connectivity ends on June 30, 2024. To achieve these objectives, the NPRM proposes to make the off-premises use of Wi-Fi hotspots and services by students, school staff, and library patrons who would otherwise be unable to engage in remote learning eligible for E-Rate support.

51. The Commission seeks comments on its proposal to address the Homework Gap through the E-Rate program. Based on the Commission's experience gained through the ECF program, its prior record, and other data sources, the Commission believes that there are significant benefits and need for the proposed rules in continuing to fund the off-premises use of Wi-Fi hotspots and services for students, school staff, and library patrons who would otherwise be unable to fully engage in remote learning. The NPRM requests comments on multiple ways to implement funding for the off-premises use of Wi-Fi hotspots and services within the existing E-Rate program processes, including eligibility limits and how to prioritize requests for off-premises Wi-Fi hotspots and services to

help balance service needs with limited E-Rate funding. It also seeks comments on how to ensure cost-effective purchases and the potential challenges associated with conducting competitive bidding for off-premises Wi-Fi hotspots and services. Additionally, the NPRM seeks comments on what actions are necessary to safeguard these critical funds from potential waste, fraud, or abuse, for example, how to ensure the off-premises Wi-Fi hotspots and services are being used by the intended recipient and serve an educational purpose. The Commission also seeks comment on modifying the recordkeeping requirements to require applicants to maintain equipment and service inventories for off-premises Wi-Fi hotspots and services purchased with E-Rate support. Furthermore, the NPRM seeks comments on how to protect minor online users from harmful content.

52. The proposed action is authorized pursuant to sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201–202, 254, 303(r), and 403.

53. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

54. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

55. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

56. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

57. Small entities potentially affected by the rules herein include Schools, Libraries, Wired Telecommunications Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Telephony, Wired Broadband internet Access Service Providers (Wired ISPs), Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs), internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.

58. The potential rule changes discussed in the NPRM if adopted, could impose some new or modified reporting, recordkeeping, or other compliance requirements on small entities. The NPRM proposes to apply existing E-Rate recordkeeping requirements to funding provided for the off-premises use of Wi-Fi hotspots and services and seeks comment on

whether additional recordkeeping requirements should be imposed, such as the requirement in the ECF program to maintain detailed equipment and service inventories for each device or service purchased with ECF support and provided to an individual student, school staff member, or library patron. The proposed actions would require schools and libraries to maintain inventory records of the Wi-Fi hotspot device make/model, the device serial number, the name of the person to whom the device was provided, and the dates the device was loaned out and returned to the school or library; and for services, the type of service provided, the broadband plan details (*i.e.*, upload and download speeds and the monthly data cap), and the name of the person to whom the service was provided. To ensure the equipment and services are being used, the *NPRM* also seeks comment on whether applicants and/or service providers should be required to retain and produce monthly usage reports for Wi-Fi hotspots and services funded through the E-Rate program.

59. Additionally, regarding the Commission's proposal to prioritize for students, school staff, and library patrons that lack internet access outside of school or library premises, the *NPRM* asks whether applicants should be required to determine and maintain records of students', school staff members', or library patrons' unmet need by, for example, conducting surveys. Although, new recordkeeping requirements may be implemented if the proposals in the *NPRM* are adopted, most of the recordkeeping would be similar to what most applicants, including small entities, are already familiar with and currently undertaking for the E-Rate and ECF programs.

60. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the *NPRM* seeks comment will require small entities to hire professionals to comply. The information the Commission receives in comments, including, where requested, cost information, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *NPRM*.

61. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has

considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

62. In the *NPRM*, the Commission takes steps to minimize the economic impact on small entities of the proposed changes to the E-Rate program on which it seeks comment. Absent the proposed action, schools and libraries receiving ECF program support may no longer be able to provide the broadband connectivity needed to engage in remote learning to their students, school staff, and library patrons once the program ends. The *NPRM* therefore proposes to make the off-premises use of Wi-Fi hotspots and services eligible for E-Rate funding to support remote learning for students, school staff, and library patrons with unmet needs, which, if adopted, will reduce the burden on applicants, including small entities, who seek to provide students, school staff, and library patrons the off-premise broadband connectivity needed for educational success. This proposal will also lessen the administrative requirements of cost-allocating certain portions of services used off-premises from applicants' funding requests. The *NPRM* also seeks comment relevant to small entities, including entities in remote areas, by asking how to conduct competitive bidding for off-premises wireless services delivered to multiple locations.

63. Additionally, the *NPRM* invites commenters to suggest other measures or alternatives the Commission should consider to best implement E-Rate funding for Wi-Fi hotspots and internet services for off-premises use. This may result in proposals from small entities that lessen the economic impact of the proposed changes to the E-Rate program, and increase their participation. The Commission expects the information received in the comments to allow it to more fully consider ways to minimize the economic impact on small entities and explore additional alternatives to improve and simplify opportunities for small entities to participate in the E-Rate program.

64. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules.* None.

65. *Paperwork Reduction Act.* This document seeks comment on possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

66. *Providing Accountability Through Transparency Act.* Consistent with the Providing Accountability Through Transparency Act, Public Law 118–9, a summary of this document will be available on <https://www.fcc.gov/proposed-rulemakings>.

67. *Ex Parte Rules—Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules, the *NPRM* shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section

1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. Ordering Clauses

68. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted*.

69. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Hotspots, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch, Secretary.

For the reasons set forth above, the Federal Communications Commission proposes to amend part 54 of title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend section 54.504 by adding paragraphs (a)(1)(x) through (xiii), and adding paragraph (f)(6) to read as follows:

§ 54.504 Requests for services.

- (a) \* \* \*
(1) \* \* \*

(x) If requesting support for Wi-Fi hotspots and service for use off-

premises, the school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack internet access service sufficient to engage in remote learning.

(xi) If requesting support for Wi-Fi hotspots and service for use off-premises, the library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement (physically or electronically) that the library patron would otherwise lack access but for the use of equipment and/or service provided by the library.

(xii) If requesting support for Wi-Fi hotspots and service for use off-premises, the school, library, or consortium is not seeking support and reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other federal, state, Tribal, or local funding, or providing duplicative equipment and/or services to a student, school staff member, or library patron.

(xiii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.516(a)(3).

\* \* \* \* \*

(f) \* \* \*

(6) If requesting reimbursement for Wi-Fi hotspots and service for use off-premises, the service provider will provide the school, library, or consortium with notice if a student, school staff member, or library patron has not used the equipment and/or service within the past [30] days and will not willfully or knowingly request reimbursement or invoice the school, library, or consortium for eligible equipment and/or services that were not used. The service provider shall provide the school, library, or consortium with monthly usage data upon request.

■ 3. Amend Section 54.516 by revising paragraph (a)(1), adding paragraph (a)(3), and revising paragraph (b) to read as follows:

§ 54.516 Auditing and inspections.

(a) \* \* \*

(1) Schools, libraries, and consortia. Schools, libraries, and any consortium that includes schools or libraries shall retain all documents related to the application for, receipt, and delivery of supported services for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request. Any other document that

demonstrates compliance with the statutory or regulatory requirements for the schools and libraries mechanism shall be retained as well. Subject to paragraph (a)(3) of this section, schools, libraries, and consortia shall maintain asset and service inventory records for a period of 10 years from the last date of service or delivery of equipment.

\* \* \* \* \*

(3) Asset and service inventory requirements. Schools, libraries, and consortia shall keep asset and service inventories as follows:

(i) For equipment purchased as components of supported category two services, the asset inventory must be sufficient to verify the actual location of such equipment.

(ii) For each Wi-Fi hotspot provided to an individual student, school staff member, or library patron, the asset inventory must identify:

- (A) The device or equipment make/model;
(B) The device or equipment serial number;

(C) The full name of the person to whom the device or other piece of equipment was provided; and

(D) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(iii) For mobile wireless services provided through Wi-Fi hotspots to individual students, school staff, or library patrons, the service inventory must contain:

(A) The type of service provided (i.e., mobile wireless);

(B) The service plan details, including upload and download speeds and any monthly data cap; and

(C) The full name of the person(s) to whom the service was provided.

(b) Production of Records. Schools, libraries, consortia, and service providers shall produce such records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the FCC, or any local, state, or federal agency with jurisdiction over the entity. Where necessary for compliance with Federal or state privacy laws, E-Rate participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identifiable information from

a student who has reach age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

\* \* \* \* \*

[FR Doc. 2023-26033 Filed 12-6-23; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

[WT Docket No. 16-239; FCC 23-93; FR ID 188661]

#### Amateur Radio Service Rules To Permit Greater Flexibility in Data Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) adopted a Further Notice of Proposed Rulemaking (FNPRM) that proposes to remove the baud rate limitation in the 135.7-137.8 kHz (2200 meter band), 472-479 kHz (630 meter band), the very high frequency (VHF) bands, and the ultra-high frequency (UHF) band in the amateur radio service. The VHF bands with baud rates are the 6 meter band (50.1-51.0 MHz), (51.0-54.0 MHz); 2 meter band (144.1-148.0 MHz); and the 1.25 meter band (222-225 MHz). The UHF band with a baud rate is the 70 centimeter band (420-450 MHz). Additionally, the FNPRM proposes to maintain the existing bandwidth limitations in the Commission's rules for these VHF/UHF bands and seeks comment on the appropriate bandwidth limitation for the 2200 meter and 630 meter bands.

**DATES:** Comments due on or before January 8, 2024; reply comments due on or before January 22, 2024.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 16-239, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <https://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Nellie Foosaner of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-2925 or [nellie.foosaner@fcc.gov](mailto:nellie.foosaner@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, in WT Docket No. 16-239; FCC 23-93, adopted on November 13, 2023, and released on November 13, 2023. The full text of this document is available for public inspection online at <https://docs.fcc.gov/public/attachments/FCC-23-93A1.pdf>.

#### Synopsis

1. On November 13, 2023 the Commission adopted a Report and Order eliminating the baud rate applicable to certain amateur radio bands and implementing a 2.8 kHz bandwidth limitation in the applicable bands. There are multiple bands in the amateur radio service that have baud rate limitations and were not discussed in the Notice of Proposed Rulemaking (NPRM) underlying the Report and Order. Two bands—135.7-137.8 kHz (2200 meter) and 472-479 kHz (630 meter)—were allocated for use in the amateur radio service after the Commission released the NPRM in 2016. There are also multiple very high frequency (VHF) bands and one ultra-high frequency (UHF) band that have baud rate limitations. In the Further Notice of Proposed Rulemaking

(FNPRM) the Commission proposes to remove the baud rate limitation in the two bands allocated for amateur radio use after the Commission released the NPRM in 2016 and in the VHF/UHF bands. Additionally, the Commission seeks comment on the appropriate bandwidth limitation for the 2200 meter and 630 meter bands, and proposes to maintain the existing bandwidth limitations in the Commission's rules for VHF/UHF bands.

2. In 2016, the Commission released the NPRM seeking comment on eliminating the baud rate limit in certain amateur bands and amending part 97 of the Commission's rules accordingly. The NPRM also tentatively concluded that a 2.8 kilohertz bandwidth limitation for RTTY and data emissions in the MF/HF bands was not necessary, but sought comment on this conclusion. The NPRM did not seek comment on eliminating the baud rate limit in the VHF or UHF bands allocated for amateur radio service. In 2017, the Commission adopted rules permitting fixed amateur radio operations in 135.7-137.8 kHz (2200 meter) and 472-479 kHz (630 meter) bands. These bands are allocated to the amateur radio service on a secondary basis. Consistent with the part 97 rules in effect for other amateur bands at that time, the Commission adopted a 300 baud rate limitation for both the 2200 meter band and the 630 meter band.

3. For the reasons outlined in the Report and Order, the Commission tentatively concludes that it should eliminate the baud rate limitation in the 2200 meter and 630 meter bands as well as the VHF and UHF amateur radio bands. These bands present the same technological opportunities for experimentation and innovation as the amateur radio service bands that are the subject of the Report and Order and likewise will be limited if a baud rate limitation is allowed to remain for these bands. Concomitantly, the Commission seeks comment on the appropriate bandwidth limitation for the 2200 meter band and the 630 meter band as well as on maintaining the bandwidth limitations already in the VHF and UHF bands. The Commission specifically seeks comment on these proposals. Alternatively, should it consider changing any of the existing bandwidth limitations in the VHF and UHF bands allocated to the amateur radio service? Commenters seeking to modify existing bandwidth limitations must provide support for the modification, including any associated costs and benefits. Commenters should focus their comments on the VHF and UHF bands and the 2200 meter band and the 630