

Via Federal eRulemaking Portal

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Federal Communications Commission
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Washington, DC 20554

RE: Comment on FCC NPRM to Review E-Rate Program to Ensure Congress’s Vision (WC Docket Nos. 26-133, 13-184; FCC 26-41)

To Chairman Carr and Commissioners:

The Attorneys General for Washington, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Virginia (collectively States) submit these comments to urge the Federal Communications Commission (the Commission) to preserve the federal E-Rate program. The E-Rate Program provides over \$3 billion annually in broadband connectivity for elementary and secondary schools and libraries nationwide. Our schools and libraries depend on E-Rate funding for academics and operations—from accessing curriculum and learning materials to building security and attendance tracking. Maintaining robust broadband connectivity is critical to the continued success of our nation’s schools and libraries.

The Commission solicits comment on a wide range of proposed modifications to the E-Rate program.¹ The actions under consideration in the proposal would terminate, significantly narrow, or restrict E-Rate. In addition to terminating E-Rate, the Commission considers eliminating certain types of E-Rate eligible services, excluding Head Start and prekindergarten classrooms from E-Rate eligibility, and reducing E-Rate support in urban districts. The Commission also considers using E-Rate support as a vehicle to override local government and school districts’ decisions on certain education policies. These policies include requiring school districts to limit the time students use devices, meet specific academic outcomes, allow parents to opt out of technology-based curriculum, and implement network-level filtering to monitor personal devices accessing an E-Rate-supported network. Further, the Commission considers abandoning the National School Lunch Program (NSLP) as the current metric for determining poverty in a school district.

The Commission justifies its “review” of the E-Rate program by assuming that the number of schools connected to broadband has crossed an arbitrary threshold and that the “mission” of the program is fulfilled. The Commission’s purported justification rings hollow. The NPRM falsely equates expanding our country’s broadband infrastructure with sustained affordable broadband connectivity. The benchmark is not whether schools are physically connected to a broadband line, but whether schools will have the ability to meet the educational demands they face now and in the years ahead. Ongoing broadband connectivity requires affordable service and maintenance of equipment and networks. High connectivity rates for schools demonstrate that E-Rate is working

¹ Notice of Proposed Rulemaking (NPRM) and Further Notice of Proposed Rulemaking (FNPRM) (WC Docket Nos. 26-133, 13-184; FCC 26-41), 91 Fed. Reg. 52626 (Aug. 14, 2026) (to be codified at 47 C.F.R. pt. 54) (hereinafter E-Rate NPRM).

as intended—they do not eliminate the ongoing need for and recurring costs to continue to expand and maintain affordable connectivity.

The proposed modifications to the E-Rate program would violate the law.

First, any rulemaking to terminate E-Rate would be contrary to law and exceed statutory authority in violation of the Administrative Procedure Act (APA). Terminating the E-Rate program would violate § 254(h)(1)(B) of the 1996 Telecommunications Act (the Act), which provides that the Commission “shall” maintain a meaningful and ongoing discounted-service program for schools and libraries. Any action to end the program contradicts the continuing obligation Congress imposed on the Commission and would exceed its delegated authority under the Act.

Second, any rulemaking to significantly narrow the scope of eligible E-Rate services would be contrary to law and arbitrary and capricious. Sections 254(h)(1)(B) and 254(b)(5) of the Act, respectively, direct the Commission to “enhance” access to affordable broadband connectivity and demand that E-Rate support be “predictable” and “sufficient” to provide affordable broadband connectivity for schools and libraries. Narrowing E-Rate to exclude categories of services for internal network connections would be contrary to its mission to preserve the E-Rate program. Further, failing to consider school districts’ reliance on, or the three decades of settled interpretation of, the scope of E-Rate would be arbitrary and capricious.

Third, any rulemaking to condition E-Rate eligibility on education policies set by the Commission would be contrary to law, exceed statutory authority, and be arbitrary and capricious. The Commission does not have a source of regulatory power to prescribe the number of minutes students may use a device, set student academic outcomes, require an option for parents to opt out of curriculum using educational technology, or to require network-level filters to monitor and limit screen time. States and local school districts retain authority over these education policies. And any rulemaking conditioning E-Rate support on these policies without consideration of the significant harm to school districts would be arbitrary and capricious.

Fourth, any rulemaking to eliminate prekindergarten and Head Start classrooms from E-Rate eligibility would be arbitrary and capricious. There is no rational basis for requiring schools to cost-allocate prekindergarten and Head Start classrooms out of E-Rate funding requests, especially since these classrooms are recognized as part of the public education system, nor is there any rational basis for claims these classrooms are sources of fraud, waste, or abuse.

Fifth, any rulemaking to reduce E-Rate support in urban districts would be contrary to law and arbitrary and capricious. The need for affordable connectivity is based on poverty indicators. Poverty is both an urban and rural challenge. The Act does not support using geography as a substitute for assessing discount rates. Ignoring the affordability challenges in urban districts would be arbitrary and capricious and again contrary to the direction by Congress in § 254(h)(2)(A) to “enhance access” to affordable broadband connectivity.

Last, any rulemaking to discontinue the use of the NSLP as the core metric for discount rates would be arbitrary and capricious. The NSLP is an administrable, student-level proxy that operationalizes congressional intent. Any change without a reasoned connection between the

Commission’s statutory directive and an effective alternative mechanism would be arbitrary and capricious.

I. BACKGROUND

A. The E-Rate Program Provides Critical Benefits to Schools and Libraries

The Communications Act of 1934 established the Commission and instructed it to make available to “all the people of the United States,” reliable communications services “at reasonable charges[.]”² That objective is known as “universal service.”³ The Act expanded the definition of universal service to include, among other things, telecommunications, internet access, and internal connections for schools and libraries and provided a funding mechanism for this service popularly known as the E-Rate program.⁴ The Universal Service Administrative Company (USAC) collects funds from telecommunications companies and holds them in the Universal Service Fund to meet the objective of universal service.⁵ USAC then distributes the E-Rate funds to schools and libraries.

E-Rate ensures that schools have affordable access to advanced telecommunications and information services.⁶ Under the E-Rate program, schools receive significant discounts on the cost of telecommunication and information services.⁷ The discounts cover 20% to 90% of the cost of eligible services and are based on the percentage of students in a school district eligible for free or reduced-cost lunch as part of the NSLP.⁸ USAC compensates a school’s vendors (e.g., internet providers) from the Universal Service Fund for the amount of the discount.⁹ Through E-Rate, the federal government offers over \$3 billion annually to school districts to help elementary and secondary schools cover the cost of high-speed internet access, wireless networking equipment, and related network technology.¹⁰ In 1996, when Congress approved E-Rate, just 14% of schools in the U.S. had internet access.¹¹ Today, over 90% of public schools rely on E-Rate for affordable internet connectivity.¹² Broadband access has been transformative for communities nationwide.

² 47 U.S.C. § 151.

³ *Universal Service*, Universal Serv. Admin. Co., <https://www.usac.org/about/universal-service/> (last visited Oct. 6, 2026).

⁴ 47 U.S.C. § 254(b)(6); *Universal Serv. Fund*, FCC, <https://www.fcc.gov/general/universal-service-fund> (last visited Oct. 6, 2026).

⁵ *Id.*

⁶ 47 U.S.C. § 254(b)(6).

⁷ *Universal Service*, Universal Serv. Admin. Co., <https://www.usac.org/about/universal-service/> (last visited Oct. 6, 2026).

⁸ 47 C.F.R. § 54.505(b).

⁹ *Universal Service Fund*, FCC, <https://www.fcc.gov/general/universal-service-fund> (last visited Oct. 6, 2026).

¹⁰ CDW•G, *A Guide to E-Rate* (Jan. 2017), https://edtechmagazine.com/k12/sites/edtechmagazine.com.k12/files/document_files/white-paper-a-guide-to-e-rate.pdf.

¹¹ Erica Meltzer, *Feds target school internet subsidiaries in ed-tech backlash even as Trump touts AI*, Chalkbeat (Sept. 23, 2026, 4:48 am PDT), <https://www.chalkbeat.org/2026/09/23/e-rate-school-internet-subsidies-threatened-in-screen-time-backlash/>.

¹² Maria McCauley, *Save Our E-Rate*, American Libraries (July 14, 2026), <https://americanlibrariesmagazine.org/2026/07/14/save-our-e-rate/>.

E-Rate features two funding categories, Category One and Two.¹³ Category One funds a school building's connection to high-speed broadband lines.¹⁴ Category Two, which is funded as a 5-year discount budget cap per school, pays for internal connections within the building and maintenance of those connections.¹⁵

B. Loss of E-Rate Support Would Have an Immediate and Negative Impact

For most school districts and libraries, E-Rate funds are intrinsically woven into budgets, and a loss of such funding would have drastic negative impacts.¹⁶ Broadband connectivity has been deeply embedded in the academics and operations of almost every school district in the nation.¹⁷ Educational technology is used by students to complete assignments, engage with instructional resources, collaborate with classmates, conduct research, and access assistive technology. Teachers use connectivity to plan lessons, access instructional resources, and communicate with families. Broadband connectivity also ensures a school's day-to-day operations such as building security, buses, payroll, attendance, food services, ability to serve student health needs, delivery of federally mandated assessments¹⁸ and special education services, communication with families, and emergency notifications can function. As districts that have experienced an active shooter situation can attest, it is a sad but important reality that reliable connectivity is not only about technology or convenience—internet access is essential to a school's ability to communicate and coordinate a response with law enforcement, staff, and families. Further, in many states, including Washington State, students take state and federal tests regularly to assess their learning growth as well as the progress of the educational system as a whole.¹⁹ The vast majority of these require students to be online throughout the assessment. Schools rely on E-Rate to provide the internet access needed for these necessary functions. A reliable high-speed internet connection requires ongoing costs to maintain, secure, upgrade, and scale the broadband network.²⁰ Without E-Rate, these ongoing costs, such as monthly internet bills, do not disappear. School districts operate with finite budgets.

Without E-Rate support, school districts would be forced to make difficult decisions about whether to reduce bandwidth, delay updates to aging infrastructure, postpone network projects, or redirect scarce general fund dollars to cover the cost of connectivity. For example, in Shelton

¹³ *Eligible Services Overview*, Universal Serv. Admin. Co., <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-overview/> (last visited Oct. 6, 2026).

¹⁴ *Id.*

¹⁵ *Category Two Budgets*, Universal Serv. Admin. Co., <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/category-two-budget/> (last visited Oct. 6, 2026).

¹⁶ Over the past three years, Delaware's E-Rate reimbursement has averaged about \$1.9 million per year. Over the past five years Illinois has received over \$94 million in E-Rate support each year. For Vermont school districts, E-Rate has provided \$3.7 million in support for the 2024–2025 school term. Over the last four years, Connecticut libraries have received \$2 million and school districts have received \$73 million through the E-Rate program.

¹⁷ *E-Rate: Universal Service Program for Schools and Libraries*, FCC, <https://www.fcc.gov/consumers/guides/universal-service-program-schools-and-libraries-e-rate> (last visited Oct. 6, 2026).

¹⁸ *State Testing*, Wash. Office of Superintendent of Public Instruction, <https://ospi.k12.wa.us/student-success/testing/state-testing> (last visited Oct. 6, 2026).

¹⁹ *Id.*

²⁰ In Washington State, 218 of the state's 295 public schools rely on E-Rate funding for district-specific needs. The State of Vermont's entire public education system (prekindergarten through secondary school), all 52 supervisory unions and supervisory districts, have active E-Rate accounts. In the State of Maine, 950 schools and libraries rely on E-Rate support. At least 172 of the State of Oregon's 197 school districts (87%) received E-Rate funding directly between FY 2021 and 2025. More than 5.8 million students in California rely on the E-Rate program.

School District in Washington State, where over 90% of students are eligible for NSLP, loss of funding would be catastrophic, as the district has zero funds to pay for even the slightest change. Loss of E-Rate funding would require the district to reduce staffing or other services to cover internal connection costs. For districts like Essex Westford in Vermont, E-Rate funds are critical to their budget. That district uses the funds for maintenance work and purchasing replacement parts critical to supplying the internet to its schools. If E-Rate funding were cut, the district would have to absorb the costs within its budget, and it would impinge on the services it provides to schools for other critical systems. There are similar and numerous examples in every state across the nation.²¹

The effects of losing E-Rate funding would also extend beyond a single institution losing connectivity or other crucial services. Without E-Rate, the cost of expanding and maintaining a broadband infrastructure would land on state and local school district budgets; budgets that are already stretched thin. In Washington State, most school districts rely on a high-speed, high-capacity network that connects colleges, universities, K-12 school districts and libraries across the state to high-speed, reliable broadband. This network relies heavily on annual E-Rate funding.²² If any schools or districts in the network lose eligibility for E-Rate, such as for failing to meet proposed screen time limits imposed by the Commission, Washington State could lose funding to cover the cost of connecting those schools or districts to the network. Many other states likewise apply for E-Rate to provide statewide broadband connection to their school districts.²³ Without E-Rate, these states would have to divert resources from other essential projects.

The loss of E-Rate internet access at schools and libraries would also negatively impact students without internet access at home. For many communities, especially rural and underserved areas, local libraries and schools remain the only reliable source of free internet access.²⁴ There are 16,751 public library locations nationwide.²⁵ Of these, about 73% receive E-Rate discounts.²⁶

²¹ East St. Louis School District in Illinois estimates about \$857,000 in E-Rate Category Two costs for network infrastructure over the next five years. Without E-Rate support of Category Two funding, the district would be forced to find other sources of funds or forgo network infrastructure maintenance and upgrades. Oregon school districts would collectively need to absorb more than \$40 million in costs per biennium that are currently supported through E-Rate, with likely impacts to instructional and student service budgets. Yreka Union High School District in California consistently qualifies for an 80% discount, and from FY 2020 through 2026 has identified approximately \$198,000 in eligible E-Rate services and approximately \$159,000 in E-Rate support. For a small rural district, these are significant dollars. Without E-Rate, the costs do not disappear for Yreka. They must be absorbed by the district's General Fund and compete directly with other essential educational needs.

²² The E-Rate application for the network includes 268 of the state's 295 school districts, and the E-Rate funding request for the current year totaled \$6.87 million. The discount rate for the network is based on the average poverty level of the member districts (currently 77%).

²³ In Maine, the Maine School and Library Network provides internet connectivity to approximately 950 schools and libraries statewide. E-Rate supports approximately 60% of the cost of that network, with the remaining approximately 40% supported through the Maine Telecommunications Education Access Fund. In Delaware, the Department of Technology and Information (DTI), the state's central IT agency, files a single consortium application each year on behalf of every public school district and charter school in Delaware. Through E-Rate, DTI works to modernize Delaware's K-12 network. Michigan Statewide Educational Network (MiSEN) relies on E-Rate support to ensure statewide high-speed connectivity for over 1.4 million students.

²⁴ John Harrington, *E-rate Keeps Schools and Libraries Connected*, Funds for Learning (Sept. 10, 2025), <https://www.fundsforlearning.com/news/e-rate-keeps-schools-and-libraries-connected/>.

²⁵ *Id.*

²⁶ *Id.*

For example, according to Chicago Public Schools (CPS), approximately 100,000 students lack high speed internet access at home with many of those students' families making \$35,000 or less in annual income. For the families of these and other students across the country who live in homes without internet access, local public libraries are vital anchors for the community for crucial needs, such as applying for jobs, ordering prescriptions online, and accessing government resources.

Reduction or elimination of E-Rate support will result in drastically reduced access to online learning resources and curriculum, increase the difficulty for communities to maintain existing technology infrastructure, and widen disparities between affluent and less affluent school districts.

II. DISCUSSION

A. Any Rulemaking to Terminate the E-Rate Program Would Be Contrary to Law and Exceed Statutory Authority

As a threshold matter, the Commission asks whether it has the authority to sunset the E-Rate program.²⁷ It does not. E-Rate is a Congressionally mandated program established to keep broadband services affordable for public and nonprofit elementary and secondary classrooms and libraries.²⁸ When Congress has spoken through a clear statutory mandate, an administrative agency may not decline to administer that mandate based on generalized policy objections.²⁹ Congress directed the Commission to implement rules to ensure schools and libraries have access to affordable connectivity.³⁰ Specifically, Congress directed the Commission to determine the appropriate discount amount “to ensure affordable access to and use of such [universal] services”³¹ and “establish competitively neutral rules . . . to enhance . . . access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms[.]”³² Nothing in these directives gives the Commission the authority to end or even substantially narrow E-Rate.³³ And where, as here, an agency asserts power affecting “vast economic and political significance,” it must point to “clear congressional authorization.”³⁴ Further, the Commission’s prime directive is to “enhance” access to affordable connectivity.³⁵ As “enhance” means to “heighten, increase,”³⁶ the Commission lacks authority to reduce the efficacy of the program or decrease the services covered.³⁷ Taking action to end E-Rate or ignoring statutory

²⁷ E-Rate NPRM, 91 Fed. Reg. 52626-52627 (Aug. 14, 2026) (to be codified at 47 C.F.R. pt. 54).

²⁸ See *United States ex rel. Heath v. Wisconsin Bell, Inc.*, 92 F.4th 654, 665 (7th Cir. 2024).

²⁹ See *Massachusetts v. EPA*, 549 U.S. 497, 532-34 (2007) (holding that an agency cannot refuse to implement a mandatory statutory directive on policy grounds without a reasoned, record-based explanation).

³⁰ See 47 U.S.C. §§ 254(h)(1)(B), 254(h)(2).

³¹ 47 U.S.C. § 254(h)(1)(B).

³² 47 U.S.C. § 254(h)(2)(A).

³³ *Nat’l Fed’n of Indep. Bus. v. Dep’t of Lab., Occupational Safety & Health Admin.*, 595 U.S. 109, 117 (2022) (“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress has provided.”).

³⁴ *West Virginia v. EPA*, 597 U.S. 697, 716 (2022) (citation omitted); *Biden v. Nebraska*, 600 U.S. 477, 506 (2023) (citation omitted).

³⁵ 47 U.S.C. § 254(h)(2)(A).

³⁶ Merriam-Webster, *Enhance*, <https://www.merriam-webster.com/dictionary/enhance> (last visited Oct. 6, 2026).

³⁷ Cf. *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 225-230 (1994) (holding 47 U.S.C. § 203(b)(2) granted the Commission authority to “modify” requirements but did not permit the Commission to make basic and fundamental changes in regulatory scheme).

direction to ensure affordable connectivity would be contrary to law and exceed the authority Congress delegated to the Commission in the Act.³⁸

B. Any Rulemaking to Significantly Narrow Eligible E-Rate Services Would Be Contrary to Law and Arbitrary and Capricious

The Commission asks whether the provision of existing eligible services for “internet access and the installation of maintenance of internal connections” (i.e., Category Two services) exceeds the Commission’s authority under § 254(h) and further solicits input on whether it may narrow eligible services.³⁹ The Commission should reject proposals to narrow or eliminate eligible services relied on by school districts.

First, § 254(h), properly understood, supports the program as currently implemented. When Congress implemented § 254(h)(2)(A) to “enhance . . . access to advanced telecommunications and information services” in classrooms, Congress clearly intended to include both internet access and internal connections.⁴⁰ Access to broadband internet services is information services.⁴¹ Connecting a broadband line to a school alone is not “access.”⁴² Access to broadband internet requires affordability and an internal connection network. An internal connection network requires equipment, such as wireless access points, routers, and switches. Internal connections are necessary to access the internet from devices for instruction and operations (e.g., security cameras, building sensors and alert systems, laptops, tablets, printers, scanners, interactive whiteboards, STEM kits, etc.). For example, most modern devices rely on Wi-Fi, which requires network equipment (i.e., wireless access points, routers, and switches) that needs to be set up, serviced, and periodically updated or replaced. Schools rely on E-Rate funds to set up and maintain their internal connection network. Section 254(h)(2) would be meaningless if read to exclude funding to make necessary technology for internet access affordable. E-Rate fills the gaps necessary for a school to afford the necessary equipment and services to access the internet. An interpretation of E-Rate that only funds connections to the building, but not the internal connections within a building, would not allow for “access,” let alone “enhance access” in any meaningful sense, and would be arbitrary and capricious. The Commission cannot ignore decades of settled interpretation or make meaningful decisions on technical questions of law without a reasoned explanation or adequate legal basis.⁴³

³⁸ See 5 U.S.C. §§ 706(2)(A), (C); *Kaweah Delta Health Care Dist. v. Becerra*, 123 F.4th 939, 944 (9th Cir. 2024) (“[U]nder our system of separation of powers, neither good intentions nor pressing policy problems can substitute for an agency’s lack of statutory authority to act.”); *Nw. Env’t Advocs. v. EPA*, 537 F.3d 1006, 1025-27 (9th Cir. 2008).

³⁹ E-Rate NPRM, 91 Fed. Reg. at 52628.

⁴⁰ See H.R. Conf. Rep. 104-458, at 132 (1996), *reprinted in* 1996 U.S.C.C.A.N. at 144.

⁴¹ *In re MCP No. 185*, 124 F.4th 993, 997-998 (6th Cir. 2025) (“Using ‘the traditional tools of statutory construction,’ . . . we hold that Broadband Internet Service Providers offer only an ‘information service’ under 47 U.S.C. § 153(24)[.]” (citations omitted)).

⁴² Comparatively, Congress clearly intended advanced telecommunication services in the Act to cover wiring inside the building. See Report and Order at 240-241 ¶ 450, *In re Federal-State Joint Board on Universal Service*, FCC No. 97-157 (FCC, May 7, 1997), <https://www.usac.org/wp-content/uploads/about/documents/fcc-orders/1997-fcc-orders/FCC-97-157.pdf>.

⁴³ See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024) (“But even when an ambiguity happens to implicate a technical matter, it does not follow that Congress has taken the power to authoritatively interpret the statute from the courts and given it to the agency.”).

Second, while the Commission may refine the program, it does not have the authority, and it would be contrary to law, to eliminate three decades of settled program structure.⁴⁴ The Commission must follow the reasoned decision-making requirements of the APA.⁴⁵ Section 254(b)(5) demands that universal-service supports must be “specific, predictable, and sufficient . . . to preserve and advance universal service.”⁴⁶ Re-interpreting universal-service after years of consistent practice to support the Commission’s new, current policy preferences is not “predictable.” Students use digital platforms to access curriculum, complete assignments, conduct research, collaborate with classmates, and demonstrate what they have learned. Teachers use connectivity to plan instruction, access instructional resources, communicate with families, and provide differentiated learning opportunities. Families rely on a school’s connectivity to be able to get in contact with teachers and schools, and to stay informed on everything from homework assignments to school event announcements to changes to school bus routes. Schools also rely and operate on fixed five-year cycle budgets for network equipment (i.e., Category Two) with the understanding that those costs will be subsidized by E-Rate. Terminating support for necessary internal connections would be contrary to §§ 254(b) and (h)⁴⁷ and detrimental to the schools that rely on this funding.⁴⁸

Further, while Congress delegated certain rulemaking authority to the Commission, the Act constrains such rulemaking by requiring consideration of the public interest. Section 254(c)(1) provides that the Commission, in defining services supported by universal service funds, “shall consider the extent to which such telecommunications services . . . are consistent with the *public interest*, convenience, and necessity.”⁴⁹ The Supreme Court noted that the term “public interest” gives the Commission authority that is “supple” and “comprehensive” but not “unlimited.”⁵⁰ Certainly, “the language in § 254(h)(2)(A) demonstrates Congress’s intent to authorize expanding support”⁵¹ Schools need the internet to operate. Teachers need the internet for necessary instruction and assessment tools. Students need the internet to complete assignments. Families need the internet to communicate with schools, especially in an emergency. E-Rate eligible services have and must continue to include internal connections in order for schools to have connectivity. Any proposal to narrow E-Rate eligible services without careful consideration of the school districts’ reliance on currently defined eligible E-Rate services to provide the best possible education to their students would be arbitrary and capricious, as well as contrary to the direction in § 254(h)(2)(A) to consider the “public interest.”

⁴⁴ See *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

⁴⁵ *Id.*

⁴⁶ 47 U.S.C. § 254(b)(5).

⁴⁷ See *Becerra*, 123 F.4th at 944.

⁴⁸ *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (“When an agency changes course, . . . it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.”) (citation modified).

⁴⁹ (Emphasis added).

⁵⁰ *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 138 (1940).

⁵¹ *Tex. Off. of Pub. Util. Couns. v. FCC*, 183 F.3d 393, 446 (5th Cir. 1999).

C. Any Rulemaking to Condition E-Rate Eligibility on Education Policies Would Be Contrary to Law, Exceed Statutory Authority, and Be Arbitrary and Capricious

1. The Commission cannot condition E-Rate support on compliance with education policies regarding student device use and technology in the classroom

The Commission asks whether it has authority to make decisions about curriculum, instruction, accessibility, and classroom practices concerning technology in classrooms that rely on E-Rate funded networks and services.⁵² It does not. The States share the FCC’s concern about student well-being and technology, but decisions about curriculum and instruction are well beyond the FCC’s mandate.⁵³ The Commission’s role is to oversee broadband connectivity in libraries and schools, not to take on these questions itself.

First, the Commission does not have the authority to make curriculum decisions about what technology can be used in the classroom or how technology should be used to support learning. Curriculum decisions rest squarely in the domain of state and local control.⁵⁴ In fact, the U.S. Department of Education itself is statutorily prohibited from controlling or conditioning funding on curriculum and program instruction.⁵⁵ The Commission, too, has no authority to use E-Rate funding as a means to seize control of educational decisions from local government and school districts. Traditionally, state government, school districts, and educators make decisions about how technology should be used to support learning and how to better protect children while at school. For example, different school communities may make their own choices about technology use in the classroom in response to their local values and the needs of their particular student bodies. But no matter how a school decides to use technology in its curriculum, that school still requires basic connectivity for core school administration. The Commission does not have the authority to override this state and local control, and any such action would be contrary to law and exceed statutory authority.

Second, ensuring affordable connectivity is not synonymous with unrestricted screen time and unfiltered access to the internet. E-Rate pays for broadband connection for schools and libraries, not for the devices or content that connect to the network.⁵⁶ Internet access is vital for school operations, from security to payroll, and is not limited to student use of technology. Connectivity does not correlate with the amount of time a student spends on a screen. Further,

⁵² E-Rate NPRM, 91 Fed. Reg. at 52634-52635.

⁵³ See *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (“[A] federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority.”).

⁵⁴ See *Milliken v. Bradley*, 418 U.S. 717, 741-42 (1974) (“No single tradition in public education is more deeply rooted than local control over the operation of schools[.]”); *Tennessee v. Cardona*, 737 F. Supp. 3d 510, 553 (E.D. Ky. 2024) (“[P]ublic education in our nation is committed to the control of state and local authorities.”) (quoting *Goss v. Lopez*, 419 U.S. 565, 578 (1975)); *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66, 111 (D. Md. 2025) (holding Department of Education exceeded agency’s statutory authority by exercising control over the content of curriculum).

⁵⁵ 20 U.S.C. § 3403 (prohibiting the Department of Education from directing, supervising, or controlling State curriculum and program instruction); 20 U.S.C. § 7907 (prohibiting the Department of Education from conditioning funding on approval of State curriculum).

⁵⁶ Order at 13, *In re Modernizing the E-Rate Program for Schools and Libraries*, WC No. 13-184 (FCC, Dec. 17, 2025), <https://www.usac.org/wp-content/uploads/e-rate/documents/resources/DA-25-1069A1.pdf> (noting “end-user devices and equipment such as computers, laptops, and tablets” are ineligible for certain E-Rate funding).

there is an important distinction between reasonable use of educational technology and recreational use of devices. The U.S. Department of Education recently reinforced this distinction when it published new guidance on August 20, 2026, about the reasonable use of education technology, calling education technology “integral” for students to participate in modern education.⁵⁷ Modifying E-Rate based on an unjustified link between screen time and E-Rate funded broadband connectivity would be arbitrary and capricious rulemaking.

Additionally, the White House has touted the importance of AI in education and preparing students for a job market that depends on AI.⁵⁸ Whether local governments and school districts chose to emphasize AI in education is up to them. Some states may follow the White House and adopt programs to “ensure that every American has the opportunity to learn about AI from the earliest stages of their educational journey.”⁵⁹ With this in mind, now is not the time to undermine E-Rate, one of the very programs that makes those opportunities possible. Instead, the Commission should consider South Korea as an example. South Korea was the first country to connect every primary and secondary school to high-speed broadband internet.⁶⁰ Today, the country is a global leader in educational technology and one of the world’s most technologically advanced nations because it has heavily invested in its digital infrastructure, having transformed its classrooms into highly connected digital learning environments.⁶¹ The Commission should focus on continuing to provide America’s schools with affordable connectivity instead of interfering in state and local policies, which would ultimately defund and hinder opportunities for our students to be prepared to compete in a global market.

2. The Commission cannot condition E-Rate support on education policies regarding academic outcomes or parental opt-out policies

The Commission contemplates whether E-Rate funding eligibility should be determined based on educational outcomes or conditioned on whether parents are given an opportunity to opt out of screen-based learning.⁶² The Commission lacks authority to condition E-Rate eligibility on student academic outcomes or parental rights policies. Again, statutes prohibit even the U.S. Department of Education from conditioning funding on educational standards, so it is not surprising the Act conveys no such authority to the Commission.⁶³ E-Rate is intended to fund

⁵⁷ Letter from Kirsten Baesler, Assistant Sec’y, Office of Elementary and Secondary Educ., to Colleague at 1 (Aug. 20, 2026), <https://www.ed.gov/media/document/guidance-education-technology-and-screentime-schools-114386.pdf> (noting, “[r]ecreational technology and education technology should not be viewed as synonymous.”).

⁵⁸ Exec. Order No. 14,277, 90 FR 17519 *Advancing Artificial Intelligence Education for American Youth*, The White House (Apr. 23, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/advancing-artificial-intelligence-education-for-american-youth/>.

⁵⁹ *Id.*

⁶⁰ Hyun Oh Seok, *South Korea’s path to internet mastery*, The National (Feb. 12, 2013), <https://www.thenationalnews.com/business/south-korea-s-path-to-internet-mastery-1.291780>.

⁶¹ Salman Asim, et al., *Teachers are leading an AI revolution in Korean classrooms*, World Bank Blogs (Oct. 30, 2024), <https://blogs.worldbank.org/en/education/teachers-are-leading-an-ai-revolution-in-korean-classrooms>.

⁶² E-Rate NPRM, 91 Fed. Reg. at 52635 (“empower greater parental control over their child”).

⁶³ See, e.g., 20 U.S.C. § 7907 (prohibiting the Department of Education from conditioning funding on academic standards); 20 U.S.C. § 3403 (“[T]he Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems . . .”).

connectivity infrastructure, not the instructional application of technology.⁶⁴ Any action to impose such a requirement would be contrary to law and exceed statutory authority.

Further, there is no rational justification to condition these policies on funding for school connectivity—connectivity that schools rely on to operate. There is no reasoned correlation between a school’s broadband network infrastructure and academic results. Moreover, forcing a school to take on the administrative requirements or costs of providing separate curriculum for students whose parents choose to opt out of technology-based curriculum would negatively impact the school’s budget and learning environment.⁶⁵ Indeed, stripping an already struggling school of affordable connectivity would make it even harder to improve academic performance. Threatening to take away affordable connectivity for failing to follow federally mandated parental rights policies is the same as threatening to cut off a school’s access to water or electricity for the same offense. Any proposed rulemaking based on these conditions with only cursory justification and without consideration of the significant harms to school districts would be arbitrary and capricious.

3. The Commission cannot condition E-Rate support on education policies regarding compliance with network-level monitoring of screen time

The Commission is considering whether to more broadly interpret the Children’s Internet Protection Act (CIPA).⁶⁶ Among the many inquiries is whether the Commission should require institutions receiving E-Rate funding to use network-level filtering to monitor personal devices using the E-Rate-supported network and to impose screen time limits.⁶⁷ The regulation of children’s safe use of the internet is a serious issue, but one that is entirely distinct from E-Rate funding. The States support meaningful implementation of appropriate measures to protect students from harmful content. However, the concerns regarding online safety should not be regulated through the same framework designed to provide affordable connectivity. CIPA should remain focused on online safety. The Act authorizes the Commission to require schools and libraries to submit certifications of compliance with CIPA, but it does not authorize the Commission to expand CIPA to require technology protection measures.⁶⁸ Furthermore, requiring schools to install technology protections on computers owned and controlled by others would create a substantial implementation and cost burden. Cutting off a school’s affordable internet access is a drastic step with no rational relation to CIPA’s purpose to encourage internet safety policies and, as such, would be arbitrary and capricious. The Commission should assume that schools want to protect their students online and should not punish schools and students by cutting off E-Rate support.

⁶⁴ See *infra*, n.54.

⁶⁵ *Mahmoud v. Taylor*, 606 U.S. 522, 527 (2025) (acknowledging schools have a “compelling interest in having an uninterrupted school session conducive to the students’ learning.” (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 119 (1972))).

⁶⁶ E-Rate NPRM, 91 Fed. Reg. at 52631-52634.

⁶⁷ *Id.* at 52631-52632.

⁶⁸ *Id.* at 52631.

D. Any Rulemaking to Eliminate Public Head Start and Prekindergarten Classrooms From E-Rate Eligibility Would Be Arbitrary and Capricious

The Commission asks whether Head Start and prekindergarten students should remain eligible for E-Rate support and whether schools should be required to cost-allocate those students and classrooms out of funding requests.⁶⁹ Head Start and prekindergarten classrooms should remain eligible for E-Rate support.

First, cutting funding for connectivity to these classrooms does not eliminate the need for internet access. As discussed elsewhere, connectivity is not synonymous or even correlated with screen time for students. Internet access provides instructional resources for teachers, family connections, and assessment systems. Internet access also provides accessible materials for preschool students with disabilities—materials that school districts are required to provide under the Individuals with Disabilities Education Act as part of mandated special education services for students ages three to five.⁷⁰

Second, many of these early learning programs are integrated into the public education system and are often located inside an elementary school building sharing an internal network with the entire school. Eliminating one of the classrooms in the building from E-Rate eligibility creates an administrative burden and shifts the cost for part of the internal network to be covered by the school. For a school district with a 90% discount, that could have a significant impact on the school district's budget.

Last, the Commission inquires whether limiting the eligibility of Head Start and prekindergarten would “address waste, fraud, and abuse” in the E-Rate program.⁷¹ The Commission provides no rational basis for assuming that costs to support connectivity for classrooms dedicated to the education of Head Start and prekindergarten students have been the source of fraud, waste, or abuse.⁷² To the extent the Commission is worried about fraud, waste, or abuse, it should look to the aspects of its universal service programs that have actually been shown to be prone to fraud,⁷³ not attack crucial support for classrooms that provide early childhood education and family support services. Affordable connectivity for Head Start and prekindergarten classrooms should remain E-Rate eligible if states determine they are part of the public education system. Any rulemaking to the contrary would be arbitrary and capricious.

⁶⁹ *Id.* at 52630-52631.

⁷⁰ 20 U.S.C. §§ 1412(a)(1)(A), (a)(1)(B)(i).

⁷¹ E-Rate NPRM, 91 Fed. Reg. at 52631.

⁷² *See id.*

⁷³ *See, e.g., United States ex rel. Heath v. Wisconsin Bell, Inc.*, 808 F. Supp. 3d 917, 920-921 (E.D. Wis. 2025) (Telecommunications company “fraudulently obtained subsidies by falsely certifying that it was providing telecommunications services to schools and libraries at the lowest rate charged to similarly situated customers for similar services.”).

E. Any Rulemaking to Reduce E-Rate Support in Urban Districts Would Be Contrary to Law and Arbitrary and Capricious

The Commission seeks comment on whether the discount rate for rural areas should be higher than the discount rate for urban school districts.⁷⁴ The States oppose any proposals to lower discount rates for urban school districts. Geography is not a proxy for determining financial need.

The need for affordable connectivity is based on poverty indicators, and poverty is both an urban and rural challenge. Although rural districts often face geographical challenges and higher costs to build infrastructure, there are still significant affordability challenges for urban districts. School districts in urban districts with high poverty face significant challenges to affordable connectivity even with available broadband infrastructure. For example, urban school districts often have more students and staff—meaning more connectivity devices, and more school buildings require more connectivity and network maintenance. Further, urban districts face unique affordability challenges, such as complex or aging infrastructure, requiring high connectivity and maintenance costs. For example, Delaware features some of the oldest educational institutions in the country. These older school buildings are more expensive to wire and equip. Also, an urban family in poverty is just as likely to have limited internet access at home as a rural family in poverty, meaning schools and libraries are their primary access to the internet. As discussed above, CPS estimates that 100,000 students live in homes without internet access. That is just under a third of all CPS (during the 2025–2026 school year, approximately 322,000 students were enrolled in CPS). If those students lose internet access at school, and at local libraries, these students and families will be cut off from the internet.

Broadband connection to a school is meaningless if the school cannot afford to pay the monthly internet bill or replace outdated modems or routers. Reducing E-Rate support for urban schools simply because a building can easily connect to broadband ignores the actual financial needs of a district and would be arbitrary and capricious rulemaking. And ignoring the affordability challenges in urban districts would be contrary to enhancing access to affordable broadband connectivity.⁷⁵

F. Any Rulemaking to Abandon NSLP as the Core Metric for Discount Rates Would Be Arbitrary and Capricious

The Commission inquires whether it should use a discount criterion not expressly identified in § 254 of the Act.⁷⁶ In particular, the Commission asks whether it should phase out the use of NSLP as a discount methodology.⁷⁷ Section 254(h) does not provide a specific criterion for determining discount level.⁷⁸ Instead, the Act explicitly authorized the Commission to determine the discount methodology most likely to “ensure affordable access.”⁷⁹ The NSLP is frequently used as a proxy for school poverty since it is generally available at the school level, while actual poverty rates require data collected from other sources about each individual student. NSLP

⁷⁴ E-Rate NPRM, 91 Fed. Reg. at 52629.

⁷⁵ See 47 U.S.C. § 254(h)(2)(A).

⁷⁶ E-Rate NPRM, 91 Fed. Reg. at 52629-52630.

⁷⁷ *Id.*

⁷⁸ See *Wisconsin Bell, Inc.*, 92 F.4th at 658.

⁷⁹ 47 U.S.C. § 254(h)(1)(B).

provides useful and available data for the Commission to determine the level of need to ensure affordable access connectivity. Even so, the Commission already allows other mechanisms to determine a school's level of need, as long as the mechanism is based on the same measures of poverty used by NSLP, such as participation in Medicaid, Supplemental Nutrition Assistance Program (SNAP), Supplementary Security Income (SSI), federal public housing assistance, Section 8, or Low Income Home Energy Assistance Program.⁸⁰ The NSLP reflects the level of need in a district sufficient to ensure affordable access. Any rulemaking without a reasoned explanation for abandoning a discount methodology that has effectively reflected poverty in a district for the last thirty years would be arbitrary and capricious.

III. CONCLUSION

For the foregoing reasons, the Commission should reject any proposals that would terminate E-Rate; significantly narrow E-Rate eligibility or services eligible for E-Rate support; condition E-Rate support on education policies directed by the Commission; or fundamentally alter E-Rate's discount structure.

Sincerely,



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⁸⁰ *Alternative Discount Mechanisms*, Universal Serv. Admin. Co., <https://www.usac.org/e-rate/applicant-process/applying-for-discounts/alternative-discount-mechanisms/> (last visited Oct. 6, 2026).



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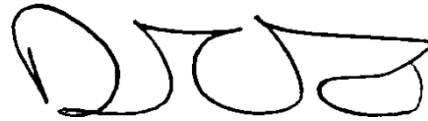
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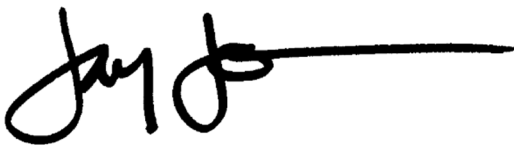
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