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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:	)	
	)	
Addressing the Homework Gap through the E-	)	**WC Docket No. 21-31**
Rate Program	)	

Comments of the American Library Association[1]

Executive Summary

The American Library Association (ALA) welcomes the opportunity to comment on how libraries may leverage the strengths of the E-rate program to address still-persistent connectivity gaps through sustainable funding for Wi-Fi hotspots and other off-campus connectivity solutions. ALA is committed to promoting and improving the E-rate program, demonstrated by our ongoing advocacy with the FCC and other stakeholders and comments filed throughout the history of the program.

New technologies continue to emerge, shaping modern life. With these shifts, the needs of library patrons and students evolve, as well, to rely more heavily on access to virtual and/or hybrid learning. Increasingly, library services occur outside the walls of the library building with e-books and other e-material, online author talks, virtual discussion groups, and more; therefore, internet access is essential to accessing the services libraries provide. We commend the Commission for recognizing these technology changes and taking a fresh look at how the E-rate program might best support diverse communities with these educational goals and connectivity needs.

Lessons learned from the recent Emergency Connectivity Fund (ECF) program, as well as other library lending models, can be leveraged to support this needed expansion of the E-rate program. Over the last three years, more than a thousand libraries[2] provided Wi-Fi hotspots to connect patrons, including students, through more than $248 million of ECF funding. Wi-Fi hotspot lending has been an increasingly important tool for libraries to address both persistent and intermittent digital gaps in our communities.

ALA further commends the FCC approaching this rulemaking through the lens of digital equity and inclusion. Sustainable funding for Wi-Fi hotspot lending advances this framework by supporting un- and

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[1] The American Library Association (ALA) is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, ALA has been the trusted voice for academic, public, school, government and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all. ALA represents the nation's 123,000 libraries, which includes 17,000 public libraries.

[2] https://docs.fcc.gov/public/attachments/DOC-398178A1.pdf

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underserved communities through important community anchors, like libraries. Libraries are familiar, convenient, and trusted places to request support, work toward goals, and connect with services. To ensure the program best reaches those with the greatest need, the Commission must avoid drafting unnecessarily burdensome program rules.

In these comments, we affirm our support for including Wi-Fi hotspots and services in the E-rate program, respond to the Commission's questions, and share illustrative examples from the library field. To summarize our positions, we urge the Commission to:

- Balance the program goals, including protections against waste, fraud, and abuse, with the equitable distribution of funds and minimal administrative burden, especially regarding data collection and recordkeeping. Seek alternative data solutions for determining need. Program goals and any metrics developed to assess the impact of Wi-Fi hotspot lending through E-rate must allow for local variation and library patron privacy constraints.
- Establish rules that are not contrary to state or local patron privacy laws and library best practices in safeguarding patron privacy.
- Find that the Children's Internet Protection Act (CIPA) does not apply to the use of off-premises patron-owned devices. Find that CIPA does not apply to library-owned computers when a library receives E-rate *only* for Wi-Fi hotspots for off-site use and is not receiving any E-rate funds for its in-building internet access or internal connections.
- Give applicants maximum flexibility to determine the most cost-effective and efficient solutions to provide off-site internet connectivity.

ALA supports making off-premises use of Wi-Fi hotspots and services eligible for E-rate support.

Millions of households nationwide lack home internet access, disproportionately affecting low-income households, communities of color, and rural and remote residents. The E-rate program already plays an important role in tackling this digital divide and connecting marginalized communities through libraries and schools. Wi-Fi hotspot lending programs extend and advance this critical support. For example, students who need to complete homework after the library closes, individuals working on coursework after caretaking responsibilities, people without stable residences, and households who have multiple simultaneous internet users all benefit from library Wi-Fi lending programs, and communities benefit as well from more connected and informed stakeholders.

ALA also agrees with the Commission that precedent for hotspot eligibility within the E-rate program exists. Throughout the history of the program, the Commission has found extensions of E-rate services off-premises appropriate so long as determined to be for "educational purposes," – as mandated by the statute[3] that established the E-rate program – and met the Commission's definition of "educational services" – "activities that are integral, immediate, and proximate to the education of students" – as elucidated in one of the Commission's original E-Rate implementation orders[4]. In 2011 the Commission

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[3] 47 U.S.(1)(B)C. § 254(h)

[4] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*) (clarifying the meaning of educational purposes); 47 CFR § 54.500 (defining "educational purposes").

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initiated and operated a $10 million pilot program that allowed schools and libraries to use E-rate connectivity to support home connections[5]. And, just recently, as the first part of Learn Without Limits, the Commission approved an order that makes Wi-Fi on school buses eligible for E-rate support. In making that decision, the Commission relied on a 2003 order that had allowed E-rate to support cellular service for school bus drivers[6]. The Commission's earlier decisions that extended E-rate support beyond schools and libraries to ensure that students continue learning pave the way for Wi-Fi hotspots and off-premises internet connectivity.

The community need for more bridges to internet connectivity is clear, the FCC's authority is established, and libraries and schools are knowledgeable and trusted stewards of public funding to address the diverse digital needs of our campuses and communities.

Hotspot lending and other off-campus internet access provisions are established library practice with demonstrated demand and impact to advance digital equity.

In paragraph 18 of the NPRM, the Commission requests information on Wi-Fi hotspot lending from libraries and schools. Thankfully, the ALA and America's libraries are well-positioned to add significant detail to the public record. U.S. public libraries have developed and provided Wi-Fi hotspot lending solutions for more than a decade, seeking funding from a variety of sources to pilot and sustain the service as demand exceeds available supply and funding allows. Library staff use the programs to address community needs gaps and increase awareness of the benefits of home broadband adoption. Roughly one-third of all public libraries reported lending hotspots in the 2020 Public Library Technology Survey[7]. We offer illustrative examples about library lending programs in this section.

In 2015, the New York Public Library (NYPL), the Brooklyn Public Library (BPL), and the Queens Public Library (QPL) piloted a hotspot lending program for New York residents without broadband at home. Hotspot lending was one part of a larger strategy – including extending Wi-Fi signal from the library to the surrounding public space and using TV whitespace – to close the digital divide between those who can afford the internet and those who cannot. Initially, they ran a pilot lending 100 devices to patrons participating in NYPL after-school and English as a second language (ESL) programs for two-month periods, renewable for an additional two months. "We saw about three hours, on average [per day], of usage per device. The usage was mostly in the evenings, between six and midnight, the hours when our libraries are often closed. Folks self-reported using these devices to continue learning both from our classes and their schools, and looking for jobs," said Luke Swarthout, NYPL Director of Adult Education Services.[8] The program was then expanded to 10,000 devices[9].

With the expansion, each library employed different distribution methods. NYPL lent 4000 hotspots to

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[5] *Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18783-87, paras. 21-50 (2010)

[6] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9208-089, para. 19 (2003)

[7] https://www.ala.org/pla/sites/ala.org.pla/files/content/data/PLA-2020-Technology-Survey-Summary-Report.pdf or https://www.ala.org/pla/sites/ala.org.pla/files/content/data/Snapshot-TechLending21.pdf

[8] https://www.libraryjournal.com/story/nypl-cpl-wifi-lending-pilots-progressing-ala-annual-2015

[9] https://www.nypl.org/press/mayor-bill-de-blasio-city-library-chiefs-announce-expansion-library-hotspot-program-through

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NYPL's adult literacy and out-of-school time programs for 6 months with one renewal for a total of one year of service, citing the desire to "give [users] enough time to experience what it's like to have the internet at home."[10] They also offered lending events at branches in high-need neighborhoods. One user noted feeling like a more engaged parent, as she was able to help her children with homework at home, and as a non-native English speaker, could use the internet to help translate things she didn't understand.[11] BPL targeted its hotspot program in high-need branches. Devices were lent to those who attended an orientation session on a first-come, first-served basis. Recipients received the hotspot for one year. QPL lent their hotspots for one month, with the option for three renewals. They, too, targeted high-need branches, and devices were lent on a first-come, first-served basis.

Following these pilots, NYPL partnered with 24 rural libraries in Kansas and Maine[12] to see how the program might be different in more remote areas. In Kansas, the Kansas State Library first facilitated this initiative, supporting 18 Kansas public libraries. In the pilot year, 95 wireless internet hotspots were loaned to patrons 2,758 times. Thirteen of the libraries continued loaning hotspots after the initial project period, and more recently in 2021, the Kansas State Library again made hotspots available for public libraries to lend in their communities with American Rescue Plan Act (ARPA) funding provided through the Institute of Museum and Library Services (IMLS).

When Chicago Public Library (CPL) launched its Internet to Go Wi-Fi hotspot lending program[13] in 2015, the program's short-term goals included increasing users' comfort with digital technology and increasing users' perception that the internet is relevant to them, demonstrating how the internet supported education, career, social, and civic goal attainment. The hotspot lending program was piloted in three communities that were the least connected. The communities' broadband adoption ranged between 40%-64%. Each library was given 100 hotspots, and patrons could check them out for 3 weeks at a time. The city of Chicago had several low-cost home internet options, so the library provided patrons who checked out the hotspot a brochure that listed the low-cost options and had CyberNavigators that could aid patrons in signing up for internet access. The pilot was expanded multiple times over the years. CPL continues to loan hotspots in under-connected communities in Chicago based on continued interest and demand.

With the flexibility of Wi-Fi hotspot technologies, libraries target communities which would otherwise lack critical access to internet services. Cuyahoga County, Ohio, officials identified affordability as the main barrier to home access. With local partnerships, the public library spearheaded a Wi-Fi hotspot lending program, circulating over 700 hotspots. Still, the county is seeking long-term connectivity solutions.[14]

Lessons learned and successes from pandemic-era programs, including ECF, can inform and guide the development of the E-rate Wi-Fi hotspot lending program.

While hotspot lending was an emerging library service, the pandemic vastly accelerated this trend as libraries worked to connect community residents while their buildings were closed due to public health

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[10] https://americanlibrariesmagazine.org/2015/09/11/bridging-tech-gap-wi-fi-lending/

[11] https://www.bxtimes.com/nypl-expands-wi-fi-lending-program/

[12] https://journals.sagepub.com/eprint/KFMKUCDPVJ3PWMCYAVP7/full

[13] https://www.chipublib.org/news/borrow-a-wifi-hotspot-from-chicago-public-library/

[14] https://www.naco.org/articles/digital-inclusion-partnerships-connect-unconnected

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guidance.[15] Libraries frequently utilized federal pandemic relief funding such as the Coronavirus Aid, Relief, and Economic Security (CARES) Act and ARPA to support this expansion of hotspot and device lending. The Utah State Library developed the "Hot to Trot(spot)" lending program[16] with the intent of providing short-term, in-home internet access during pandemic quarantines. Seventy library locations across Utah introduced 688 hotspot devices to their communities. The Carnegie Library of Pittsburgh (PA) distributed 570 hotspots through partnerships with human service organizations and aid providers using CARES funding.[17] The suburban Evanston Public (IL) Library used its established experience with hotspot lending[18] to focus on increased unemployment with CARES Act funding. Its "Ready to Work: Bridging the Digital Divide for Tomorrow's Workforce" program[19] bundled access to technology and resources to help patrons build the necessary skills to be job ready. Library cardholders can borrow a Job Search Tech Kit containing a Chromebook, Wi-Fi hotspot and an Employment Kit Startup Guide to help with their job search. Kits check out for 28 days and can be renewed two times, availability permitting.

Similarly, libraries nationwide benefited from the ECF program and were able to quickly develop and scale hotspot lending programs for communities in need during the pandemic shutdowns. Small and rural libraries used ECF funding to lend small collections of Wi-Fi hotspots, with an average of 5-10 hotspots in Maine libraries, while larger library systems circulated thousands of hotspots funded through the ECF program. For example, the Houston-area Harris County Public Library distributed 40,000 hotspots with ECF, the largest of any public library in the country, after determining more than 640,000 households in their service area lacked home service.[20]

Many libraries partner with community organizations to reach vulnerable un- and underserved individuals and households. For example, the St. Joe County Public Library in Indiana has used ECF money to purchase 200 laptop and hotspot devices and cover a year of hotspot fees. The library has provided eleven local nonprofits with laptops and hotspots for use by the community since early 2022. Each nonprofit determines how the devices are used to serve the community within ECF program requirements. One nonprofit lends their allotment of laptops and hotspots to new residents and immigrants who need immediate access to sign up for utilities and other services. Another nonprofit, a local housing program, provides hotspots to individuals experiencing homelessness throughout their residential building and other temporary housing placements. The partnerships help the library with outreach to individuals most needing the service. Administrative work is distributed across the nonprofits and library.[21]

The Corpus Christi Public Libraries, in Texas, used ECF funding to lend 5,000 hotspots across their service area. The library partnered with Prospera Housing Community Services and the Corpus Christi Housing Authority & Affiliates to distribute the hotspots to those that qualify within their housing communities. A hotspot from the ECF-funded Lois Nelson Public Library in rural Princeton, Texas, helped a college student continue attending classes after an unexpected setback. Library Director Glenda Puckett

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[15] https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/broadband/Keeping_Communities_Connected_030722.pdf

[16] https://www.utah.gov/pmn/files/700041.pdf

[17] https://www.urbanlibraries.org/innovations/extended-hotspot-lending-and-consultation

[18] https://content.govdelivery.com/accounts/ILEVANSTON/bulletins/17f267a

[19] https://www.imls.gov/news/american-libraries-and-museums-awarded-138-million-imls-cares-act-grants

[20] https://issuu.com/txlibraryassociation/docs/tlj-fall-2021_final/s/13487466

[21] https://sjcpl.org/news/library-improves-digital-equity-through-laptop-program/

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reports, "I have a patron who attends college out of state on an athletic scholarship. She tore her ACL and meniscus. Due to her injury she had to come home. There was no internet at her home. She was able to do schoolwork because of the hotspot that the library provided." Wi-Fi hotspots fill a distinct and demonstrated need for many communities.

In another example, the Northwestern Regional Library in North Carolina serves a predominantly rural region with mountainous terrain and areas of concentrated poverty. They received ECF money for hotspots, predominantly to facilitate digital learning for K-12 students to connect to the internet at home, keep up with peers, utilize online tools, and complete assignments.[22] The Lubbock Public Libraries in Texas were able to make 100+ hotspots available for checkout through 2023 with ECF. The library planned to work with South Plains College so students could checkout a device for the entire semester, as well as with Literacy Lubbock, a non-profit offering classes, such as English as a Second Language, adult basic education, and GED preparation. Former Library Director Stacy McKenzie said, "A lot of the people in those programs are trying to learn all these things just on their phone, and that's very difficult to learn on a phone. So, we're working with them to have a limited number of these for checkout for their students, so that they can have a full educational experience."[23]

Libraries around the country successfully lend materials to their patrons meeting community need while also mitigating loss and damage and building in accountability and equity. Wi-Fi hotspot lending builds upon existing library circulation and lending practices to provide needed connectivity. This foundational work in libraries can inform promising practices for the E-rate hotspot lending program; at the same time, E-rate funding for hotspot lending can standardize and scale the work of libraries, bringing this innovative service to more communities. The inclusion of hotspot lending in E-rate will ensure libraries can more reliably address persistent connectivity gaps.

Over the course of the pandemic, the libraries that report not loaning hotspots or being able to boost Wi-Fi signals stated lack of funding as the primary reason.[24] As the Commission develops the rules for hotspot and services eligibility through the E-rate program, ALA encourages it to carefully consider the policies and procedures of long-term library programs[25] and model its hotspot program based on existing circulation and resource lending practices.

Excessive recordkeeping creates significant barriers for libraries and underserved communities.

The Commission is rightly concerned with how to ensure applicants will determine unmet need (par. 30-33 and 38), ensure E-rate supported services are used appropriately (par. 35-37), ensure usage of E-rate funded resources (par. 39-41), and track E-rate supported inventory (par. 43-44). ALA urges the Commission to address these concerns with common sense rules and leverage current E-rate

[22] https://www.kajeet.com/en/blog/resource/kajeet-success-story-northwestern-regional-library
[23] https://www.kcbd.com/2022/07/13/bridging-digital-gap-800-new-wi-fi-devices-ready-checkout-lubbock-libraries/
[24] https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/ALA_Homework_Gap_Comments_02162021.pdf
[25] Hotspot Playbook developed as part of the Public Library Association program DigitalLead: https://www.ala.org/pla/initiatives/digitallead/hotspot-playbook

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procedures and library practices to minimize applicant burden. Further, we take this opportunity to remind the Commission that rules and procedures that run afoul of patron privacy laws result in significant barriers to library participation. While many libraries participated in the ECF program, ALA knows that many, many others declined to apply because of these recordkeeping and privacy concerns.

Of the approximately 50 libraries/library systems that apply for E-rate in Arkansas, for instance, only 13 applied for ECF. Similarly, in Maine, only 5 out of 255 public libraries applied for ECF funding. In New York, in FY22, 434 libraries received E-rate funding (many as part of a consortia), but only 37 participated in ECF over the entire timeline of the program. And in Kentucky, of the 32 libraries that applied for ECF Window 3, all but 3 would not have been able to apply for ECF without extensive assistance from the Kentucky Department of Libraries and Archives.

We have noted in past E-rate proceedings that program administration and complexity are a barrier for libraries, and especially small and rural libraries. One in five town/rural public libraries that do not apply for E-rate report either they lack staff capacity to complete the application or the discount was not worth the time necessary to participate.[26]

Much of the recordkeeping proposed in the NPRM is unnecessarily burdensome to libraries. Libraries regularly circulate resources and equipment of similar value with success and without extensive tracking. Proposed rules could, if implemented, hinder the success of the lending program, especially for libraries with limited staff capacity. We consider the Commission's questions and make recommendations on these privacy and overall recordkeeping issues in this section.

Protecting patron privacy

As we have noted many times[27], libraries have longstanding privacy policies. Forty-eight states and the District of Columbia have laws protecting the confidentiality of library records, including patron accounts. The two other states, Kentucky and Hawaii, have attorney general's opinions protecting library users' privacy. While language varies, the majority of these laws declare that a library user's records and personal identifiable information are confidential and not subject to disclosure, unless certain legal conditions are met, such as the service of a court order. In paragraph 43, the Commission asks if it should consider library-specific rules. As we describe below, the answer to this question is yes.

To comply with state laws pertaining to the confidentiality of patron records in Arkansas, for instance, library patrons must *expressly permit* a future disclosure of the patron record for any purposes not specifically outlined in state law before checkout. Releasing the patron's name and dates of hotspot checkouts for an audit or review is not included in the law, and therefore patrons must waive their right to confidentiality for these items. Only after a patron gives this permission is a library able to save the patron names and dates of checkout once a hotspot is checked back in. This retention of data is a significant exception to standard library practice. To comply with state patron confidentiality laws, the library's integrated library system (ILS) does not retain patron circulation information. This means that recordkeeping of hotspot checkouts must occur outside of normal library systems, such as on paper, in a

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[26] Table 20: https://www.ala.org/pla/sites/ala.org.pla/files/content/data/PLA-2020-Technology-Survey-Summary-Report.pdf
[27]https://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/ALA_ECF_Comments_04052021.pdf

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spreadsheet, or via some other digital form. Circulating hotspots outside of traditional library procedures adds steps and administrative burden for library staff to comply with past ECF and proposed Wi-Fi hotspot document requirements. In Kentucky, state library staff similarly reported that many public libraries in their state did not apply for ECF support to address home internet gaps because of the requirement to capture and maintain records of personally identifiable information in the inventory of devices. Libraries that seek and use E-rate funding for internet access do not keep similar logs of patrons who use the public access computers.

While we appreciate the effort the Commission made to address privacy concerns in its ECF FAQ[28], the fact that libraries must adhere to respective state's laws while preparing for a potential FCC audit, resulted in fewer libraries participating in the ECF program. For those that did apply, Arkansas' patron privacy law and the Kentucky Attorney General's opinion illustrate the extent to which ECF requirements are contrary to library policy and the law.

Patron privacy is a concern to the library users, too. When completing acceptable use documents that included personally identifiable information (PII), Chicago Public Library staff frequently received questions about how the information would be used. Patrons had reservations that the information could be shared with vendors or the government (would the Commission contact patrons during audit to verify use?) or that they could be faulted for exceeding the data limit or incorrect use.

As it relates to tracking inventory, libraries can and do collect circulation data and could provide information on the number of times a hotspot has been checked out. Information such as the dates the device was loaned and returned and to whom is temporarily retained as part of the libraries integrated library system during the period the item is checked out as part of usual library circulation practices. Upon return, items are no longer associated with an individual's record. Circulation and data usage statistics should be sufficient to demonstrate the reach and demand for a library's hotspot lending program and should be sufficient for programmatic audits.

For all these reasons, the Commission should not require the collection and retention of PII by libraries beyond the loan period of the Wi-Fi hotspot.

Determining unmet need with community-based data

ALA appreciates the need for accountability measures and impact data to ensure appropriate usage of program funds and best meet the needs of un- and underconnected individuals. To address privacy and recordkeeping concerns, ALA proposes that a proxy be used to estimate the need for Wi-Fi hotspots. Just as the current E-rate program uses data from the National School Lunch Program (NSLP) or equivalent to determine level of discounts, readily available and reputable data sources would be appropriate for determining community need for hotspot lending. In addition to the NSLP, data from the National Telecommunications and Information Administration (NTIA) and the Census Bureau related to home computer and internet use, and federal and state broadband maps could be used to estimate need.

The San Diego County Library, for instance, used this computer and internet use data in determining need for its ECF application. The library estimated that there were 7,400 households in the service area

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[28] See items 8.1 and 8.2 at https://www.fcc.gov/sites/default/files/ecf_faqs_printable_pdf.pdf

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that did not have home internet access, nor a smartphone or computer to access the internet. Their ECF grant sought funding for 7,400 laptops and mobile hotspots with one year of data access. This method of estimating need was effective for ECF and could be implemented in the E-rate lending program without requiring individual certifications and record retention.

The Commission can avoid excess purchases that result in unused equipment and technology by requesting a rationale for the purchase amount (par. 39). For example, libraries and schools could submit data that demonstrate their request is in line with the need in their community. This could be NSLP data, broadband data maps from the federal, state or local government, or other data that demonstrates the number of un- and underconnected households in the community and library coverage area. If usage reports demonstrate that a percentage of the purchased hotspots are not being used, as in, not put into circulation or never activated, we suggest that those libraries and schools would only be able to purchase the amount their usage data indicates for future years.

Libraries can rely on existing circulation polices to protect equipment, ensure appropriate use and educational purpose.

Libraries have and will continue to update acceptable use policies for the use of materials and equipment both in and outside of the library. These policies are developed in collaboration with multiple stakeholders and approved by the library board. We believe that requiring patrons to adhere to a library's acceptable use policy is sufficient to mitigate risk and safeguard the program (par. 34).

Every day libraries use public funds to purchase and lend a wide range of resources to serve their communities in adherence with library policy. Libraries safeguard all of their equipment, technology, and materials and are equipped to develop and enforce acceptable use policies for E-rate funded hotspots. For example, libraries participating in the ECF program required, per ECF regulations, patrons to review and sign acceptable use policies upon checking out hotspots. Other libraries included print copies of their use policies with the device so that users had them at home. This oversight provides sufficient guardrails for use. Library professionals and stakeholders take care with navigating federal policies and being good stewards of resources.

For example, the Lois Nelson Public Library (TX)'s acceptable use policy for Wi-Fi hotspots requires a signature. Individuals review the policy and sign with a member of staff. They must also check the equipment back in with staff after the lending period is over and report any damage or loss. The library verifies that contact information associated with the individual's library record is current and that accounts are in good standing. These policies, determined by the library, safeguard the equipment and underscore their acceptable use.

Educational purpose is already defined within E-rate and is purposefully broad and inclusive. We urge the Commission to maintain this expansive view to enable library patrons to make the fullest possible uses of E-rate supported home connectivity for legal purposes.

Use Caution when Applying the Children's Internet Protection Act (CIPA)

The Commission raises the applicability of CIPA in the case of Wi-Fi hotspot lending. We ask the Commission to minimize the impact of CIPA, which will allow the greatest number of libraries to apply

for E-rate for Wi-Fi hotspot lending. The CIPA law states "A library having one or more computers with Internet access may not receive services at discount rates…" unless it filters[29]. The phrase "a library" clearly means both computers owned by the library and used inside a library building. Acknowledging this straight-forward interpretation of the statutory language, it is critically important to note that the Wi-Fi hotspots program is not funding the library's internet connectivity, it is funding connectivity to households and other locations outside of the library. Because of this critical difference in the locations where regular E-rate funds are used and where hotspots will be used, we contend that CIPA does not apply to the Wi-Fi hotspots because they are intended to be used at home, and not at the library. Our position on this has not changed during the three years of ECF.

We are pleased to see that in its ECF regulations the Commission recognized that personally owned devices are not subject to CIPA's filtering requirement. (This is a position ALA has ascribed to for about twenty years.) However, we are very concerned when the NPRM asks for comments on "The scope of the Commission's authority to impose requirements on third-party-owned devices pursuant to CIPA" (par.56). A straight-forward reading of CIPA's statutory language clearly refers to library-owned computers needing to be filtered, not devices (e.g., tablets, laptops) owned by individuals. We do not think this language in any way can be stretched to encompass personally-owned devices. Thus, whether patron's personal devices are used within the library or at home, CIPA does not apply.

We are also concerned when the Commission asks whether it "Can and should require or encourage filtering... to be implemented at the network-level to ensure that minors are not accessing harmful content through E-Rate-funded Internet access...." (par.55). We note that CIPA requires that a library's computers be filtered. But the law is silent on where such filtering takes place. (The word "network" does not appear in the law.) Considering this, it is best to allow libraries to determine where the filter will be installed. The Commission has never gotten into the minutiae of where filtering should occur, and we strongly encourage it not to do so now. Mandating this is a good example of needless program complexity.

Equally critical for library participation, we ask the Commission to state that CIPA does not apply to library-owned computers when a library receives E-rate *only* for Wi-Fi hotspots for off-site use and is not receiving any E-rate funds for its in-building internet access or internal connections. We think this position is supported by CIPA which states, "A library having one or more computers with Internet access may not receive services at [E-rate] discount rates…" unless it complies with CIPA.

Build flexibility into program rules to meet diverse needs of libraries and communities.

To meet program goals of bridging the digital divide, the Commission must design the program rules with maximum flexibility and recognition of the community-level knowledge that libraries and schools have. Below we make recommendations and respond to the Commission's questions related to equipment and service eligibility; funding and prioritization; and cost effectiveness.

In paragraphs 19 and 28, the Commission asks if Wi-Fi hotspots should be considered an internal connection. We believe that as necessary data transmission services and internet access, the service

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[29] 47 U.S.(6)(A). § 254(i)

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purchased for Wi-Fi hotspot lending is a category 1 service. We believe this view of the mobile data service is in line with the current E-rate definitions of category 1. With school bus Wi-Fi classified as a category 1 service, we see this as a similar solution and a parallel program. This classification would also avoid impacting applicants' finite category 2 budgets. And to avoid complexity, since providers will likely bundle the service and equipment, we recommend that the devices themselves also be classified as category 1.

We agree with the Commission that hotspots should be available per individual, and we believe that the ECF rule limiting support to the purchase of one Wi-Fi hotspot per student, school staff member, or library patron is appropriate (par. 20). This also would be consistent with library lending practices, with library cards issued at the individual user level and items circulated to the individual.

ALA opposes limiting eligibility only to recurring services; hotspot equipment should also be eligible (par. 21). For one, the internet access services (data plans) and Wi-Fi hotspots will typically be available to purchase as a bundle; it adds complexity to cost allocate this or to purchase devices and data separately. Both are necessary for off-premises connectivity. Additionally, libraries and schools will need to purchase new devices periodically, as the devices have a lifespan of approximately three years as noted in par. 26. Devices purchased with a different program, such as ECF, will need to be replaced, as will associated equipment like charging cables. We therefore think that any combination of data service plan and hotspot devices, as well as anything else typically bundled by the ISP should be covered (par. 26). As with other E-rate funded equipment, we ask that the Commission be consistent with current guidelines and procedures within the E-rate program for the frequency of ordering new equipment and disposing of no longer functional equipment.

Maintain a technology-neutral approach to support flexibility and sustainability.

ALA supports a technology-neutral approach, where functionally equivalent solutions should also be eligible for E-rate funding. This supports the Commission's own policy of supporting technology neutrality. For example, the current E-rate program is neutral regarding the technology used to provide library and school broadband and internet connectivity. In paragraph 19, the Commission asks for comment on the definition of Wi-Fi hotspots. We urge the Commission to consider the definition broadly and inclusively; in paragraphs 21 and 27, the Commission acknowledges circumstances where Wi-Fi hotspots are not the best option to meet connectivity needs. We know that in some communities, that Citizens Broadband Radio Service (CBRS) and TV White Space (TVWS) are better solutions, given the geography of the area.

In addition, some libraries will elect a relatively low-cost technology of placing more powerful Wi-Fi equipment on the roof of the library and then broadcasting the signal out into the surrounding neighborhood. To avoid duplication concerns, we suggest a threshold for a community to be approved to do this – perhaps 25% of the community lack home internet, and/or demonstration that Wi-Fi hotspots will not be an appropriate solution. It is important to note that with some of these technologies the remote connectivity will be backhauled to the library's own network. In such instances, it is essential that the bandwidth needed to support the connection from the library to its internet provider is not subject to any cost allocation based on the off-campus use of the library's bandwidth. We understand the Commission's concerns about funding costs for alternative solutions; we propose these alternatives in cases where it will be most cost-effective and Wi-Fi hotspots are not a viable solution. We also propose that regular E-rate competitive bidding rules apply to ensure that costs are controlled. In

some cases, the most cost-effective solution may be to build upon or extend existing networks that libraries have developed under ECF or other programs rather than pivot to lending Wi-Fi hotspots.

For example, the New York Public Library uses CBRS technology to provide at-home internet access to any patron in their coverage area. Individuals can check out a Wi-Fi device and Chromebook to connect to the CBRS network at home.[30] It would be most cost-effective and sustainable to fund and expand upon their existing work. Harris County Public Library, in partnership with Harris County IT Services offered a similar opportunity.[31] Allowing libraries to determine the most effective use of their resources will ultimately lead to cost-effective and sustainable investments that can integrate with existing infrastructure and resources. We ask that the most flexibility is provided so that applicants can use the funds in the way that is most appropriate. At minimum, in circumstances where Wi-Fi hotspots are not technically or cost effective, libraries and schools should be able to seek E-rate funding for alternative strategies that provide functionally-equivalent service.

Cost-effectiveness is an outcome of applicant flexibility and agency.

Regarding cost-effectiveness (par. 22) and funding caps (par. 23), we believe that standard E-rate processes apply. Keeping to the usual processes eases program complexity for applicants and the Commission. Competitive bidding rules are sufficient to prevent wasteful spending (par. 24), along with state and local procurement policies, for securing fair and appropriate contracts and services from service providers. The discount matrix should be applied to all reasonable purchases, regardless of equipment. If it seems unreasonable, the case would be taken up with Program Integrity Assurance (PIA) reviewers, and USAC could contact the applicant and inquire about the higher than usual funding, as is the case for any E-rate purchasing concern. With respect to alternatives to commercial services, flexibility is key, but program rules should be set so applicants cannot seek more than the going rate for commercially available services.

We know that it will be necessary for libraries and schools to be able to select multiple service providers to meet the needs of their communities. Some service areas, in both rural and urban communities, are vast and therefore have coverage in certain areas from different providers. The Arkansas River Valley Regional Library System, for example, covers a large geographic area with disparate communities. These communities, and the associated library branches, are served by three different service providers that the library works with through the E-rate program. For their existing Wi-Fi hotspot lending program, the library works with the only two providers in their service area that provide coverage to any part of their community.

Paragraph 26 asks if there are additional schools and libraries that did not apply for ECF support but would apply for E-rate support for the off-premises use of Wi-Fi hotspots and services. Many rural and small libraries in underrepresented communities did not participate in ECF, nor do all eligible libraries participate in E-rate. Further, libraries may have received funding for hotspots through ARPA or other pandemic funding sources that will not be available long-term. As the success of Wi-Fi hotspot lending programs grows, additional libraries will learn best practices that can be replicated to benefit their communities. There are over 9,000 public library systems in the United States. We anticipate that additional libraries that did not participate in ECF will apply for funding for Wi-Fi hotspot lending but

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[30] https://www.nypl.org/spotlight/nypl-wireless
[31] https://issuu.com/txlibraryassociation/docs/tlj-fall-2021_final/s/13487466

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remain concerned that small libraries will be dissuaded from applying should program rules be overly burdensome. Additionally, libraries that did participate in ECF will need to purchase new devices and equipment. With ECF ending in June 2024, in many cases the devices will have reached their end of life by the time E-rate funding is available. Looking at ECF program data alone will not suffice to estimate demand, as many small and rural libraries did not participate. We note, however, that running out of money in the fund has not been an issue since modernization.

In considering use, appropriate funding, and demand, Wi-Fi hotspot service in libraries should be eligible for E-rate funding for the entire year; libraries provide vital educational opportunities of all kinds year-round, and perhaps especially so during summer enrichment and supplemental programs (par. 39). As it relates to usage, however, it is important to note that libraries have used a range of circulation policies to address local needs—from lending a hotspot for a semester for students to lending for month or months for adult literacy program participants or job seekers or for weeks at a time to general users. Other than ensuring the data is used regularly by users, there is no single standard for circulation of devices to meet local needs.

If a service or device is not used in a given month, we are adamantly opposed to a service provider removing the cost for the service or device from the invoice provided to the library. This would place a considerable burden on the provider and the library, too. There are many circumstances outside of an individual's control for why a hotspot might not be used in a month: for example, a defective battery which needs to be ordered, approved, and then shipped; illness; or damage to an individual's personal device. Also, many of the services and equipment purchased with E-rate funding will be purchased under a contract that often covers many months or a year or more. (par 41).

Wi-Fi hotspots complement and layer with other broadband solutions by providing flexible, on-demand connectivity.

As the ECF program sunsets on June 30, 2024, Wi-Fi hotspot lending funded through E-rate is a necessary and urgent next step to keep households connected that otherwise are un- or underserved. Wi-Fi hotspots are one tool in closing the digital divide; they provide thousands of students and library patrons needed connectivity, but they are not a permanent nor one-size-fits-all approach. In many cases, they are a complement or bridge to other programs, such as the Affordable Connectivity Program (ACP). The FCC administers four Universal Service programs, as well as the ACP, that target different approaches to closing the digital divide. In many cases, these interventions must be layered for effectiveness. Even after all Infrastructure Investment and Jobs Act (IIJA) programs are fully implemented, Wi-Fi hotspot lending helps individuals move from one phase of life to another in a positive way. The examples below illustrate the many users who rely on Wi-Fi hotspots for needed connectivity in ways that other broadband programs would not accommodate.

Wi-Fi hotspots provide connectivity to individuals who do not otherwise have internet access, but they may also add capacity to a home with limited or low bandwidth that does not support multiple simultaneous users (such as a parent working remotely while a student learns remotely). Similarly, hotspots provide access to hard-to-reach populations such as homeless or transitional library patrons, including students, who may sleep on the streets, in shelters, or in different places from day to day or week to week. For example, some students may spend different weeknights with different family members and need to rely on a hotspot to complete schoolwork. Boston Public Library found that

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"mobile Wi-Fi hotspots reduced stress and anxiety for unhoused patrons because without the devices, patrons without fixed residences worried they could not be found; that hotspots kept unhoused patrons more connected, and therefore safer, in their tents despite the cold weather and a lack of electricity; and that unhoused patrons were concerned about their devices getting stolen because of their precarious situation. Although the unhoused patrons who participated in this study also shared their recommendations regarding how mobile hotspot lending programs in public libraries could be improved, they mentioned that the benefits of hotspot availability far outweighed their challenges."[32]

In response to the Commission's questions in paragraph 42, we view Wi-Fi hotspot lending to be an important complement to other broadband solutions. Library lending of hotspots implies that the users lack sufficient access to broadband otherwise. The Commission asks (par. 36) about Wi-Fi hotspots being used to provide internet to the whole family, rather than a more appropriate funding source, like ACP. This situation seems unlikely given the best use of Wi-Fi hotspots is at the individual level. Further, the FCC released an order about winding down the ACP program[33], which is expected to run out of funds in April 2024, leaving more than 22 million households without an affordable internet solution at home. Regardless, some families may have home internet, using a program such as ACP or otherwise, but it is not sufficient to meet the educational needs of the entire family. In these cases, a family member may also need to check out a Wi-Fi hotspot from the library. At the Indianapolis Public Library, a patron shared on a survey, "This Chromebook and Hotspot Program is awesome. It's helping me out so much. I'm at a domestic violence shelter and without this program I wouldn't be able to get my bachelor's degree to start a new life."[34] A patron at the Chicago Public Library reported that the internet in her public housing building was too slow during peak hours to load her school's learning management system. Prior to being able to check out a hotspot, she sat on the library steps at night to complete coursework.

During a disaster, wireless infrastructure tends to be easier to restore than wired Internet infrastructure, and therefore mobile hotspots can be a great benefit to those who may temporarily lack connectivity due to a storm or other natural disaster. Additionally, the mobility and portability of the mobile hotspot permits use outside of the home, which can help those who have been displaced by a disaster and need Internet access. A patron of the Houston Public Library noted in a survey: "I'm displaced due to Hurricane Harvey…There's no internet connection here. We've been able to use [the library's] device to help with FEMA and recovery efforts for our home." For other types of crises, a hotspot provides flexible, proximate access: a Chicago Public Library patron used a hotspot to study and do homework while visiting her ailing parent in the hospital. We share these examples to demonstrate the variety of ways that Wi-Fi hotspots offer flexible connectivity options to individuals who may not be eligible for ACP or other broadband initiatives; or, how hotspot lending complements and builds capacity for library patrons and students. As library staff keenly witnessed during the Great Recession, broadband access is rarely a binary. Changing life circumstances (including layoffs, evictions, medical crises and other emergencies) can mean that a library patron with home broadband one month may lack access the next month.

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[32] https://journals.sagepub.com/doi/abs/10.1177/20501579231212061
[33] https://docs.fcc.gov/public/attachments/DA-24-23A1.pdf
[34] https://indyplfoundation.org/news/2022/device-lending-expansion-bridges-digital-divide

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Conclusion

We commend the Commission for their careful stewardship of the Universal Service Fund and the Universal Service programs, including E-rate. We urge the Commission to take a balanced approach to navigating concerns of waste, fraud, and abuse with establishing program rules that do not disadvantage or have unnecessary roadblocks for libraries most in need of this funding to address persistent connectivity gaps. Ensuring these libraries, often rural, small, and tribal libraries, can access it is of utmost importance and should be considered alongside the priority of safeguarding the program.

E-rate funding for Wi-Fi hotspot lending programs provides sustainable, immediate, and actionable solutions to individuals in need. Libraries excel at deploying needed resources and information, being good stewards of funding, developing meaningful partnerships, and creating innovative and accessible opportunities for their communities. We look forward to working with the Commission to thoughtfully implement a successful program.

Respectfully submitted,

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