

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

In the Matter of

Addressing the Homework Gap through the E-
Rate Program

WC Docket No. 21-31

**REPLY COMMENTS OF NORTH AMERICAN CATHOLIC EDUCATIONAL
PROGRAMMING FOUNDATION, INC. AND MOBILE BEACON**

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Commenters agree that the Commission should not impose unnecessarily restrictive requirements, at least in the first year of this new expansion of the E-Rate Program. North American Catholic Educational Programming Foundation, Inc. (“NACEPF”) and Mobile Beacon urge the Commission to heed commenters’ caution that adding burdensome new requirements, in the absence of any compelling need, will unnecessarily burden schools, libraries, and other program participants, and make it harder for students to connect. As the American Library Association (“ALA”) cautions, the record does not support “imposing more rules and regulations to address issues that do not yet exist [and] will discourage participation in the program.”¹

The Commission should increase, not restrict, applicant flexibility. The E-Rate Program and the Commission’s *Report and Order* already impose substantial restrictions and requirements on program participants, and the Commission should gather and review data from the first year of this new initiative to make informed decisions tethered to applicant and service providers’ experience rather than making those decisions in a vacuum now. To that end, the evidence presented to the Commission weighs heavily in favor of permitting applicants to set tailored lending periods and ensuring that any non-usage thresholds account for practical considerations and extenuating circumstances.

It is plain from the record in this proceeding that the granular requirements discussed in the *FNPRM* are ill-suited to take account of the complexities inherent in bridging the Homework Gap. The Commission should instead rely on educators and library administrators to develop policies that are tailored to their communities’ unique needs.

¹ Comments of the American Library Association at 1, WC Docket No. 21-31 (filed Oct. 3, 2024) (“ALA FNPRM Comments”).

Commenters Agree that the Commission Should Increase, Not Restrict, Applicant Flexibility. The record reflects agreement that the Commission should increase, not restrict, applicants’ flexibility to design and implement policies that reflect the needs of students and library patrons in their communities. NACEPF and Mobile Beacon agree with the Dallas Independent School District’s observations that “[t]he Commission should avoid complexity, reduce administrative burden, and increase flexibility, relying upon existing E-Rate mechanisms such as applicant cost-sharing, competitive bidding, certifications, and the audit process to ensure alignment with program rules and goals.”² Increased applicant flexibility in this first year of a new initiative will “allow the design and implementation of solutions that most efficiently and effectively meet unique end-user needs.”³ On the other hand, “[e]quity concerns are exacerbated by narrow design, and universally applied assumptions,” and there is real risk that unnecessary program complexity and burden could discourage applicants from participating in the program at all, “leaving need in communities unmet.”⁴

² Comments of the Dallas Independent School District at 2, WC Docket No. 21-31 (filed Oct. 1, 2024) (“Dallas ISD FNPRM Comments”).

³ *Id.* at 2, 7.

⁴ *Id.*; *see also id.* at 3–7 (“The program should not be requiring additional steps or imposing additional limits on applicants, which will only further discourage participation in the program leaving need in communities unmet Service level requirements differ more based on geographic and network topologies, especially in rural areas, than based on the enrollment size of a school or school district. Some applicants may not be served by tier-1 densely deployed networks and may require technology solutions from service providers using multi-network services, more robust devices with greater range, or other alternative technologies. Several proposals discussed in the FNPRM which more narrowly define acceptable or allowable conditions will reduce the ability to meet the needs of all program participants The above questions all increase program complexity and administrative burden on applicants, service providers and the program administrator. Micro-management of the applicant implementation, the introduction of conditional procedures and modifications, new steps that impede invoice processing, and uncertainty of future program budget or limits will further discourage program participation. The Commission appears to be assuming an adversarial relationship before the program has even begun to deliver support to end-users. In contrast, the program would develop

Rather than impose potentially counterproductive regulatory requirements without the benefit of program data, the record supports monitoring this initiative to collect data on usage and non-usage, costs, applicants', service providers', and end users' experience, and other relevant metrics, and using that data to make informed decisions about the program's scope and guardrails going forward.⁵

The Record Shows That the Commission Should Not Impose One-Size-Fits-All Lending Periods. In keeping with commenters' support for applicant flexibility, the record does not support imposition of a one-size-fits-all lending period. Rather, the evidence presented to the Commission weighs heavily in favor of permitting applicants to set lending periods suited to their communities' needs—as Kajeet observes, “[a]pplicant end-users have varied use cases and applicants are meeting differing community expectations . . . [w]hile one applicant may have good reason to limit lending periods, another applicant may not.”⁶ NACEPF and Mobile Beacon support commenters' opposition to top-down time limits on hotspot loans.

faster, allow for greater response to applicant end-user needs, and innovate toward market-driven efficient solutions if the Commission focused on supporting applicant flexibility and directed the Program Administrator to surface and share successful practices across the applicant and service provider community. Applicants are already incentivized to right-size their program via the applicant share of non-discounted cost.”).

⁵ See ALA FNPRM Comments at 2–3 (“[W]e question whether releasing the *Further Notice* at the same time as the hotspot Order is premature. With the hotspot lending program just starting, the Commission acknowledges that there is no way to determine whether the program's rules are sufficient to prevent applicants from requesting hotspots that will not be used We suggest a better plan to address hotspot use and non-use will be to monitor the program in its first year to collect usage and cost data. This information can then be used to better craft changes to the program in future years.”).

⁶ Comments of Kajeet at 2, WC Docket No. 21-31 (filed Sept. 30, 2024) (“Kajeet FNPRM Comments”) (“Creating additional requirements should be avoided as they will increase risk and uncertainty in the program, driving down the willingness of service providers to participate in the program or, driving service providers to increase pricing to compensate for additional risk.”); see also ALA FNPRM Comments at 2 (“Libraries and schools are in the best position

Commenters Agree That Non-Usage Thresholds Should Account for Common Extenuating Circumstances. As to the *FNPRM*'s questions regarding non-usage, Kajeet raises an important threshold observation: “non-usage is not in the interest of applicants and . . . the applicants bear a cost for lines with no usage via the applicant non-discount share of eligible service costs. Likewise, non-usage is not in the interest of service providers as products and services that are not meeting a real need will ultimately lead to a poor customer experience and instability in the service provider business. Therefore, it is in the interest of the applicant and their service provider(s) to work together to minimize any instances of non-usage.”⁷ The *FNPRM*'s non-usage questions put the cart before the horse—as ALA cautions, “[t]he program has not yet lent any hotspots and thus there is no evidence that a non-usage problem exists.”⁸ There is no reason for the Commission to ignore the incentives already in place for applicants and service providers to engage in careful use of limited resources.

Commenters also raise practical concerns with any requirement for service providers to terminate service on unused devices after 30, not 90, days. As NACEPF and Mobile Beacon explained in their opening comments, a 30-day period is simply unworkable. Such a short period of time does not allow enough time for applicants to identify unused lines, notify users, and cure the non-use.⁹ In addition, ALA points out that “a 30-day limit is . . . concerning because the Order states that libraries or schools can only ask a provider once annually to restart service after it is terminated. Hotspot devices that have their service terminated twice will then sit on the shelf,

to determine loan periods based on local considerations and needs. Setting a single, ‘top down’ nationwide time limit for hotspot loans unnecessarily removes this local control.”).

⁷ Kajeet *FNPRM* Comments at 1.

⁸ ALA *FNPRM* Comments at 3.

⁹ Comments of North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon at 10–12, WC Docket No. 21-31 (filed Oct. 4, 2024).

unused.”¹⁰ Kajeet raises another practical consideration: “termination of a line . . . creates significant burdensome follow-on effects and complicates re-activation of service. Termination followed by reactivation will frequently create discontinuities in reporting as the ‘new’ line of service may be provisioned with different IP address, routing, or service records.”¹¹ The evidence presented to the Commission offers many reasons for the Commission to maintain its current 90-day non-usage window, and offers no reason to impose a shorter period of non-usage on applicants. NACEPF agrees with ALA’s assessment that “a 30-day period of non-use is simply too short.”¹²

The record similarly fails to support imposing a high data threshold for non-usage. Not all educational uses require a significant amount of data, so there is no necessary correlation between data use and educational impact. The Commission should instead recognize, as Kajeet urges, that “[h]otspots can support both high-bandwidth and low-bandwidth use cases” and that and that, if the Commission does choose to adopt a non-zero usage threshold, that threshold should be low.¹³

The FCC Has Authority to Extend E-Rate Funding to Wi-Fi Hotspots. Finally, the record in this proceeding leading up to the Commission’s *Report and Order* established strong support for the Commission’s authority to extend E-Rate Program funding to Wi-Fi hotspots for off-premises use. The Heritage Foundation’s¹⁴ filing to the contrary is substantively mistaken.¹⁵ It is

¹⁰ ALA FNPRM Comments at 2 (citation omitted); *see also* Dallas ISD FNPRM Comments at 5 (“[T]he Commission should not shorten the non-usage period, and the applicant should be able to provide service when and where there is need.”).

¹¹ Kajeet FNPRM Comments at 4.

¹² ALA FNPRM Comments at 2.

¹³ Kajeet FNPRM Comments at 5.

¹⁴ *See generally* Comments of the Heritage Foundation, WC Docket No. 21-31 (filed Oct. 4, 2024).

¹⁵ *See, e.g.,* Reply Comments of North American Catholic Educational Programming Foundation, Inc. and Mobile Beacon at 18–22, WC Docket No. 21-31 (filed Jan. 29, 2024); *Addressing the*

also procedurally inappropriate, as the Commission as already decided these issues and has not sought further comments on these matters in the *FNPRM*. The Heritage Foundation’s attempt to second guess the decisions in *Report and Order* would be more appropriately raised as a Petition for Reconsideration—yet even if restyled as a Petition for Reconsideration, it would fail to satisfy the basic requirements for reconsideration.¹⁶

Homework Gap through the E-Rate Program, Report and Order and Further Notice of Proposed Rulemaking, FCC 24-76, WC Docket No. 21-31, ¶¶ 88–96 (rel. July 29, 2024).

¹⁶ See e.g., 47 C.F.R. § 1.429(l) (Petitions that “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding” are inappropriate and “plainly do not warrant consideration by the Commission.”).

In any event, it is well established that the Commission has the authority to enact the rules at issue here and there is a vast unmet need for educational connectivity to close the Homework Gap and to allow students to participate fully in modern educational opportunities. The Commission should use this authority to expand educational connectivity for students wherever they learn, without imposing unnecessary restrictions such as mandatory lending periods and arbitrary data-use requirements.

Respectfully submitted,

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