

ALA American Library Association

Public Policy and Advocacy Office 1615 New Hampshire Ave. NW Washington, DC 20009

January 8, 2021

To: Biden-Harris Transition Agency Review Team for the FCC

From: American Library Association

Subject: E-rate Funding to Address the Connectivity Gap, E-rate Eligibility of Network Security, and Tribal Library E-rate Eligibility

The American Library Association (ALA) thanks you for your public service to the Biden-Harris Transition and the nation. **Unfortunately, the outlook for libraries to help the nation's communities has grown dimmer since we talked with you.** While the Bipartisan Emergency Covid Relief Act of 2020 (enacted as part of the Consolidated Appropriations Act) included some desperately needed relief for Americans, the provisions for library broadband were removed in the 24 hours before the bill was finalized. Meanwhile, the pandemic grows more severe with a new daily record high of 4,112 deaths just yesterday, the health projections for the next months dire, and the economy lost 140,000 jobs in December.

Therefore, we are asking for imminent actions that the FCC may take without new legislation. There is over a billion dollars of unused annual spending authority in the E-rate program. ALA is hopeful that the incoming FCC administration will be less bureaucratic and more responsive to the national emergency than the current one.

Addressing the Connectivity Gap

The E-rate program (codified in section 254 of the Communications Act) has played a central role in enhancing broadband connectivity for libraries and schools. Yet the E-rate program could do that much more if it permitted libraries and schools to extend their broadband connections off campus to the surrounding community—at least for the national emergency period.

When the President declared the COVID-19 National Emergency on March 13, 2020, most of our nation's 16,500 public library locations closed their doors to the public, immediately eliminating critical computer and internet access for their communities. Libraries quickly pivoted to meet this challenge by a variety of means including: (1) extending their wi-fi signal out beyond the library building to adjacent parking lots and other areas on library property;¹ (2) parking wi-fi enabled vans or bookmobiles throughout the community; (3) partnering with local businesses to locate library hotspots in high traffic areas; and (4) increasing lending of hotspots to patrons. For some libraries funding to implement these initiatives came from \$50 million in

¹ In a Notice released March 23, 2020, (DA20-234) the FCC confirmed that libraries can allow public use of E-Rate supported Wi-Fi networks *while on library property*.

funding included in the March CARES Act. But this funding was exhausted months ago and libraries and state library agencies report the available funding was woefully inadequate to meet ongoing local demand for such services. Meanwhile, many libraries report they need more hotspots to meet community demand but lack the funds to purchase them.

The pandemic has continued far longer than many assumed. As a result—and as stated above—there continues to be a critical need for funds to address the connectivity gap. The E-rate program remains the most viable and expedient option now available to address the gap. Moreover, the ALA believes there is no need for statutory changes to the E-rate program because the Commission already has the authority to allow the E-rate program to support off-campus internet connectivity, providing access to library patrons wherever they are, which nowadays is typically not inside a library building. Thus, there are no barriers to using the E-rate program as the mechanism to address the connectivity gap—especially for the duration of the national emergency. **We urge the Commission to make this a top priority by allowing libraries to 1) use their broadband capacity off the library campus to provision community wi-fi access points at parks and other public spaces and 2) allow hotspots and other internet capable devices to be E-rate eligible, including the monthly recurring costs. A sketch of a hotspots lending program is provided in the Appendix.**

Addressing Network Security Issues

Network security is a critical issue for any private or public sector organization connected to the internet. This issue has become even more obvious in light of the recent news highlighting widespread network breaches attributed to Russian intelligence. Our libraries are vulnerable just like any other public sector organization. Unfortunately, a comprehensive security tool suite is not eligible for E-rate discounts. ALA and many other organizations have repeatedly asked the FCC to make security tools eligible for E-rate discounts. For example, in comments² ALA filed September 3, 2019, the association noted that, “Library networks are especially vulnerable because core services, like internet access, are open to the public with few restrictions. As Waller McGuire, Executive Director of the St. Louis Public Library aptly stated after the library was a victim of a ransomware attack:

Library networks are very different from private or most government networks: our mission is to provide open and free access to information for all. Thousands of St. Louisans depend on our computers and networks every day to access a world of vital information and services. Balancing that demand for open access against the need for protection takes a great deal of staff work and expense.”³

In September 2020 ALA filed comments with the Commission related to the 2021 E-rate Eligible Services List. In our comments we again advocated for the eligibility of security tools.⁴ But the

² See the E-rate Category Two comments of the American Library Association. Filed September 3, 2019. (<https://ecfsapi.fcc.gov/file/1090340163387/ALA%20Category%202%20Reply%20Comments%2009032019.pdf>).

³ *An update on the ransomware attack*. Statement from Waller McGuire, Executive Director of the St. Louis Public Library, June 30, 2017. (<https://www.slpl.org/news/an-update-on-the-ransomware-attack-against-slpl/>).

⁴ See Reply Comments of the American Library Association In Response to the Proposed E-rate Eligible Services List for FY 2021. Filed September 4, 2020. (<https://ecfsapi.fcc.gov/file/10904134405716/ALA%20E-rate%20ESL%20Reply%20Comments%2009042020.pdf>).

Commission declined the request in its 2021 Eligible Services List.⁵ Of interest the Commission noted that the eligible services list process “is limited to determining what services are eligible under the Commission’s current rules.... Accordingly, we decline to address comments requesting that we add new services to the eligible services list.” The second sentence in this quote appears to assume, a priori, that all requests for new services are *not* under the Commission’s current rules. This is clearly not a correct assumption, and ALA (and other E-rate advocates) asserts that eligibility of security tools fits comfortably under the Commission’s current rules.⁶ Some security tools already are E-rate eligible and have been for many years. For example, the 2021 Eligible Services List includes “firewall services and firewall components separate from basic firewall protection provided as a standard component of a vendor’s Internet access service.”⁷ Firewall components are an obvious part of any security tool suite.⁸ Because firewall components are eligible under its current rules, it is logical that other security tools are also within the scope of the Commission’s current rules.

The full suite of network security tools should be eligible for e-rate discounts.

Tribal Library E-rate Eligibility

Many tribal libraries are not currently eligible to participate in the E-rate program because of the definition of library in the FCC’s rules. In 47 C.F.R Section 54.500, the definition of library only includes a “public” library, a school, academic or research library, and only those private libraries designated as eligible for E-rate funding by the State. (This FCC definition is based on the definition in the prior Museum and Library Services Act (MLSA), but the FCC’s rules do not refer to the MLSA). Congress added “Tribal” libraries as a separate and distinct type of library in the definition of a library in the MLSA re-authorization Act of 2018, but the FCC has not updated its rules to reflect the new MLSA definition. **We urge the Commission to update its definition of a library with the 2018 MLSA reauthorization language so that it is clear tribal libraries are eligible for E-rate funding.**⁹

⁵ The 2021 Eligible Services List released November 30, 2020. (<https://docs.fcc.gov/public/attachments/DA-20-1418A1.pdf>).

⁶ One concern sometimes mentioned is that making security tools eligible will increase demands on the Universal Service Fund. But the great majority of costs for security tools will be part of a library or school’s Category Two funding and this funding is fixed for the next five years and thus cannot increase.

⁷ See the 2021 Eligible Services List, page 9. (<https://docs.fcc.gov/public/attachments/DA-20-1418A1.pdf>).

⁸ Early in the E-rate program firewalls were often a separate, stand-alone program. But firewalls are now incorporated into a much more comprehensive security suite that can include hardware, software, and services that detect, prevent, or mitigate denial of service (DoS) attacks, unauthorized access to networks and systems, malicious software, and malicious content, and management of network traffic encryption, log collection and analysis, etc.

⁹ The Commission may wish to adopt the following language to further clarify tribal library eligibility. “An Indian tribe that is eligible for support under section 261 of the Library Services and Technology Act ([20 U.S.C. 9161](#)) may designate a tribal library or tribal library consortium as a library or consortium that is eligible for grant funds under this section, without regard to whether the library or library consortium is eligible for assistance from a State Library Administrative Agency under the Library Services and Technology Act ([20 U.S.C. 9121](#) et seq.), if the library or library consortium is eligible for support from an Indian tribe under such section 261.”

In closing, we ask that you strongly encourage the next Commission to take action in its first 100 days to:

- Leverage the E-rate program to allow libraries to loan hotspots and internet capable devices and extend wi-fi networks beyond the library campus to help close the connectivity gap;
- Declare that a comprehensive set of network security tools are an eligible service under the E-rate program; and
- Reconcile the definition of library with the 2018 MLSA reauthorization language to clarify that tribal libraries are eligible for E-rate funding.

Thank you for your attention to these issues and for your service.

Sincerely,

Larra Clark, Deputy Director
Alan S. Inouye, Senior Director
Marijke Visser, Senior Policy Advocate

APPENDIX

American Library Association Framework for an E-rate Supported Library Wi-Fi Hotspot Lending Program

Within weeks of the President declaring the COVID-19 National Emergency on March 13, 2020, a majority of our nation's 16,500 public libraries closed their doors to protect the health and safety of staff as well as library patrons. Unfortunately, with these closures the public lost the no-fee internet access provided by their community libraries. To address this loss, libraries took various actions including extending their wi-fi signal out beyond the library building and lending wi-fi hotspots to patrons. The following framework seeks to use the well-established E-rate program as the mechanism to provide essential emergency funding for libraries to meet the ongoing needs of their patrons who lack other options to access the internet.¹⁰

A COVID-19 Wi-Fi Hotspot Lending Program through the E-rate Program

This hotspot lending program framework focuses on libraries, but it could be adapted to accommodate schools as well. With this program being part of the E-rate it will be administered by the Universal Service Administrative Company (USAC).

It is important to recognize that thousands of the nation's public libraries have been loaning out tens-of-thousands of wi-fi hotspots long before the current pandemic struck. Thus these libraries are already active in helping address the internet homework and connectivity gaps. However, many libraries report they cannot meet demand for hotspots because they lack the funds to purchase them. Funding has become an especially critical issue during the pandemic because many libraries are confronting budget cuts.

Here is our general outline of an E-rate supported library wi-fi hotspot lending program.

Eligible applicants: State libraries or state library administrative agencies are eligible to apply. A state library means a "state library" or "state library administrative agency" having the meanings given those terms in section 213 of the Museum and Library Services Act (20 U.S.C. 9122). To simplify and expedite the application process we do not propose that individual libraries (or schools) be eligible to apply.¹¹

¹⁰ There is precedence for the Federal Communications Commission to create a special, emergency funding program. For example, in 2005 the FCC created a special application process allowing libraries and schools in the Gulf States impacted by Hurricane Katrina to request special E-rate funding. (See http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-178A1.doc.)

¹¹ Limiting the number of applicants to state libraries (and state education agencies if included) will greatly simplify the application process and program administration. With this limitation a maximum of 110 applications will be submitted by state and territorial library and education agencies. By comparison, for the 2020 E-rate funding year 38,207 applications were submitted by libraries and schools.

Eligible libraries: Applications from a state library can only include public libraries that are eligible to receive funding from the E-rate program.¹² The eligibility of a tribal library shall be based on the definition of tribal libraries in the Museum and Library Services Act (MLSA). In its application the state library will certify that all libraries receiving funding from this program to purchase wi-fi hotspots are eligible to do so.

Public input: In the Commission's 2005 Hurricane Katrina Order, it stated "Because of the exigent circumstances, we find good cause to adopt temporary rules *without notice-and-comment* in order to assist the Nation's disaster relief effort."¹³ (Emphasis added.) Considering the current a nationwide disaster, we strongly encourage the Commission to move with all possible speed to create this wi-fi lending program and thus bypass a public comment period.

Timeframe: Within 30 days of adopting a wi-fi lending program the Commission shall open a 60 day application period. The proposed wi-fi lending program shall be active until June 30, 2022, or the duration of the pandemic, whichever is later.

Funding allocation and reimbursement: Funding will be through the existing Universal Service Fund (USF). Even with this additional funding the E-rate program is still significantly below its allowed funding maximum.¹⁴ A funding alternative is to have Congressional legislation passed that appropriates sufficient funding outside of the USF. Various E-rate bills proposed in the last Congress included funding outside of the USF.¹⁵

The Commission shall reserve sufficient funds from the USF to cover the funding requests from the state library agencies. The funding shall be reserved with a minimum of \$1,000,000 allocated to each State (approximately \$55 million). The remaining funds will be distributed to the state libraries based on their population as determined by the most recent Bureau of the Census data. Of the total amount allocated to each state 2% of such total can be reserved for the state library to pay for program administration. From these remaining funds the state library's application shall list the libraries eligible to receive funds to purchase wi-fi hotspots following the priority stated below. A maximum of \$60/month can be supported by E-rate funds for each wi-fi hotspot and associated data plan. The state library has the authority to establish the maximum number of wi-fi hot spots each library can purchase as part of the program. Once an application is submitted and approved, USAC will transfer the approved funding to the state library. The state library will then allocate funding to each library based on the library's funding request as stated in the state library's application. The state library may also opt to purchase hotspots on behalf of individual libraries and develop a state-wide program.

Priority: State libraries shall give priority to libraries that document they serve high levels of poverty. This priority shall be based on the percentage discount a library receives from the E-rate program and

¹² See more details on library eligibility at <https://www.usac.org/e-rate/applicant-process/before-you-begin/school-and-library-eligibility/>.

¹³ 2005 Hurricane Katrina Order, page 2.

¹⁴ The maximum annual E-rate program funding (the "cap") is set by the FCC and for funding year 2020 it is \$4.22 billion (see <https://docs.fcc.gov/public/attachments/DA-20-263A1.pdf>). The total average annual E-rate funding demand by applicants for the past four years (2017-2020) has been \$2.94 billion.

¹⁵ For example, Representative Meng's *Emergency Educational Connections Act of 2020*, and Senator Markey's *Emergency Educational Connections Act of 2020* allocated \$2 billion and \$4 billion in funding respectively. There was also bi-partisan support for providing funding for libraries to expand hotspots lending programs and their wi-fi networks.

any other federal poverty programs as determined by the state library. Priority will also be given to libraries serving rural communities and communities heavily impacted by the pandemic.

Eligible equipment: Libraries can purchase wi-fi hotspots and costs associated with a subscription service which may include but is not restricted to a data plan and ongoing support and maintenance.¹⁶ As stated above, funding shall not exceed a maximum of \$60/month for each wi-fi hotspot and associated data plan. Reasonable costs incurred by a library with establishing or administering a wi-fi hotspot lending program (e.g., staffing, decontamination) may also be reimbursed up to a maximum of 2% of the cost of the hotspots acquired by the library as part of this program. Procurements are exempt from the regular E-rate competitive bidding requirements.

Application process: The Commission (or USAC) will provide an application form and an online portal for application submission. State libraries must complete several steps to apply for funding as specified by the application form. These steps include:

- Basic information includes: Complete address, FCC Registration Number (FRN), EIN, DUNS, full contact information, etc.
- Detailed budget listing the number and cost of wi-fi hotspots for each library in the program. The budget will include other associated costs (e.g., data plans, staff). (USAC will provide a budget template to each applicant.)
- An approximate timeline from each library on deployment of the purchased hotspots and the length of reimbursement (maximum reimbursement to June 30, 2022, or the duration of the pandemic).
- Logistics of the wi-fi hotspot loan process including loan period, penalties for late returns, any required deposits and any other restrictions or conditions on hotspot use.
- For each participating library list the percentage discount a library receives from the E-rate program and any other federal poverty programs as determined by the state library.
- Identify and explain any cooperation with other community anchors like local schools, social service agencies, neighborhood associations, etc.
- Any additional information to support the state library's application.

Application review: The FCC shall establish an expedited application review process and a determination to fund or not fund any state library's application shall be made within 30 days of its submittal unless there are extraordinary circumstances that prevent meeting this date.

* * *

¹⁶ Many providers charge a single monthly (or annual) cost which includes the wi-fi hotspot device, data plan, ongoing support, etc.