April 8, 2020

Chairman Ajit Pai
Commissioner Mike O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks

Re: Covid-19 Relief; WC Dockets 02-6, 13-184, 11-42, 17-287, 09-197, 96-45

Dear Chairman Pai and Commissioners O'Rielly, Carr, Rosenworcel and Starks:

The current Covid-19 crisis has closed K-12 schools in every state, impacting 55 million students.[1] At least 15 states and two territories will be closed for the remainder of the school year. Educators, students and parents are struggling to continue teaching and learning online, including instruction and interaction with teachers and classmates that is only practical in homes with adequate broadband connections. Homes have become the temporary classrooms for most of America's students.

Unfortunately, roughly 12 million children and at least 7 million school-age children lack the broadband internet access at home that is necessary to participate in online education.[2] As the *New York Times* reported yesterday, a substantial share of students in less affluent districts are missing class: "The absence rate appears particularly high in schools with many low-income students, whose access to home computers and internet connections can be spotty."[3]

[1] "Map: Coronavirus and School Closures," *Education Week* (April 2020), available at https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html (last visited on April 6, 2020).
[2] *See* Rafi Goldberg, "Digital Divide Among School-Age Children Narrows, but Millions Still Lack Internet Connections," NTIA Blog (Dec. 11, 2018) (estimating 7 million K-12 students are in homes without internet access), https://tinyurl.com/ut3jevw; "America's Digital Divide," U.S. Congress Joint Economic Committee (Sept. 2017) (estimating 12 million children live in homes without internet access), https://tinyurl.com/teybqpk.
[3] Dana Goldstein, Adam Popescu and Nikole Hannah-Jones, "As Classes Go Online, Many Students Just Aren't Showing Up," *The New York Times*, at A1 (April 7, 2020). "Some teachers report that less than half of their students are regularly participating. . . . Students are struggling to connect in districts large and small."

The disparity between schools that can move from traditional in-person classes to instruction online and those that cannot highlights as well how the 'homework gap' hurts all students in underserved communities. Many schools are deciding they cannot rely on online instruction because too many students lack adequate connectivity.[4] This divide between school districts also reinforces a broader inequity: Some districts and affluent schools are better equipped to conduct remote learning and take advantage of online resources than others.[5]

This is an intolerable situation that, thankfully, the Commission has the authority to mitigate immediately. The Commission can designate a substantial portion of the $2.2 billion in currently available E-Rate funding for this purpose and waive restrictions on the use of E-Rate funded facilities to extend school or library connectivity to students off campus for educational purposes. One fast and relatively low-cost way to do so would be funding for "hotspots" (Wi-Fi routers) served by established internet service providers – predominantly cellular, but also fixed wireless and satellite providers. Hotspots could be distributed efficiently through schools and libraries already receiving support through the Fund's E-Rate program. School districts also need the flexibility to leverage innovative and proven solutions, including the use of school buses as Wi-Fi hotspots,[6] locating Wi-Fi access points in public housing and other locations,[7] and extending the reach of the school's own network using a rooftop transmitter and unlicensed spectrum.[8] The FCC can readily waive restrictions and grant that flexibility.

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[4] "[S]ome districts that lack infrastructure and serve heavily poor populations have given up altogether on remote learning. Still others are hesitant to pursue online instruction out of fear they might be hauled into court for offering course materials to which broadband-deprived families cannot gain access." "Locked Out of the Virtual Classroom," Editorial, *The New York Times*, at A22 (March 28, 2020).

[5] Center for Reinventing Public Education, "District Responses to COVID-19 School Closures," Survey Database, (last visited March 31, 2020), https://www.crpe.org/content/covid-19-school-closures. In response to its school closures, the Brownsville Independent School District in Texas tried to move its curriculum online, but ran into the problem that "unlike wealthier areas . . . [n]early half of households there lacked broadband in 2018." Noam Scheiber, Nelson D. Schwartz and Tiffany Hsu, "Pandemic, an Equalizer, Magnifies a Class Divide," *The New York Times*, at B1 (March 28, 2020).

[6] Some districts are parking school buses equipped with Wi-Fi hotspots in parks and parking lots where students can safety (if not always conveniently) get internet access. *See, e.g.*, Lee V. Gaines, "While Schools Are Closed, Illinois District Uses Buses As Wi-Fi Hotspots," Illinois Public Media (March 19, 2020), https://tinyurl.com/tqgrcpn; Allie Kirkman, "Where South Bend students can find buses with free access to Wi-Fi," South Bend Tribune (March 18, 2020), https://tinyurl.com/vhkglsp; Carter Evans, "Calif. school district puts Wi-Fi on wheels to close digital divide," CBS News (April 6, 2016), https://tinyurl.com/w25lc2k.

[7] Michelle R. Davis, "District Extends Wi-Fi to Students in Public Housing," *Education Week* (April 13, 2015) (Kent, Washington, school district deployed nine Wi-Fi kiosks in three community centers at public housing projects and donated hotspots outside six district schools in poor neighborhoods), https://www.edweek.org/ew/articles/2015/04/15/district-extends-wi-fi-to-students-in-public.html.

[8] In response to the ongoing homework gap, two districts in southern Virginia used unlicensed TV White Space frequencies to extend internet access from schools to students within range who lacked broadband access at home. *See* Ex Parte of Microsoft, ET Docket No. 20-36, CC Docket No. 02-6, WC Docket No. 10-90, WC Docket No. 13-184, WT Docket No. 18- 353 (March 17, 2020) at 1-2.

Alternatively, or in addition, the Commission has the authority to authorize emergency funding under the general Universal Service Fund to extend broadband internet access to low-income homes with students that lack adequate broadband connectivity. This could be part of a broader effort to support widespread stay-at-home orders by subsidizing the cost of basic internet access. The Commission can and should take action through the Lifeline program to enact a broadband benefit to help low-income households get online.[9] Leveraging the Lifeline program could not only connect more low-income homes with students, but it could also provide internet access to others under orders to stay at home who desperately need it for work, health care, government services, communication, information services and news. The Commission can and should also take action to ease the Lifeline application process to ensure that all Americans who need help gaining access to broadband are able to receive it amid record-breaking initial jobless claims.[10]

Whether increased funding comes through E-Rate or the general USF budget, the Commission should waive current, cumbersome E-Rate application procedures and instead define eligibility and authorize reimbursements to schools and libraries that purchase and loan the necessary equipment (e.g., hotspots), as well as for the cost of ISP services.[11] A maximum reimbursement per eligible household should be established. To multiply the impact of available fund, the Commission should, in addition, solicit commitments from participating ISPs to provide service at no cost or at a deep wholesale discount. E-Rate competitive bidding restrictions should also be waived, temporarily during the crisis, so that orders for hotspots and wholesale agreements for ISP connectivity can be completed as expeditiously as possible.

There is considerable and diverse support for Commission action to tap universal service funds to support local school district initiatives to connect students in their home-schooling classrooms. The Schools Health & Libraries Broadband Coalition (SHLB) suggested, in a March 17 letter, that the "FCC could make emergency funding available from the Universal Service Fund for hot spot lending programs operated by schools, libraries and other community organizations in areas where schools and libraries close."[12] The US Telecom Association (USTA) similarly recommended that the Commission use its available authority to "allow schools to apply for funding to purchase wired or wireless broadband connectivity on behalf of students and/or teachers that do not currently have broadband access from home during the

[9] Emergency Request for Increased Lifeline Support During the COVID-19 Crisis, Docket Nos. 11-42, 09-197, 96-45, 17-287 (March 23, 2020), https://tinyurl.com/qtju3sn.

[10] Rebecca Rainey and Nolan D. McCaskill, "'No words for this': 10 million workers file jobless claims in just two weeks," Politico (April 2, 2020), https://www.politico.com/news/2020/04/02/unemployment-claims-coronavirus-pandemic-161081.

[11] To obtain E-Rate support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and then file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services. *See* 47 CFR § 54.503.

[12] Letter from John Windhausen, Executive Director, Schools Health & Libraries Broadband (SHLB) Coalition, at 5 (March 17, 2020).

COVID-19 pandemic."[13] Sixteen U.S. senators also recently called on the FCC to use available E-Rate funding to help schools buy Wi-Fi hotspots to distribute to students lacking adequate connectivity to participate in learning from home, an idea endorsed by most of the most prominent associations of principals, teachers, and school technologists.[14]

The Commission Has the Legal Authority to Designate an Emergency Set Aside of new USF or Unallocated E-Rate Funding for Use by Schools to Connect Students Lacking Broadband Internet Service

OTI commends the Commission for moving quickly to release a Public Notice clarifying that all public and nonprofit K-12 schools and libraries "are permitted to allow the general public to use E-Rate-supported Wi-Fi networks while on the school's campus or library property," including after school hours and during the current closures.[15] However, while some students on the disadvantaged side of the digital divide might be able to get connected from the safety of a parent's car in a school or library parking lot, both schools and the FCC can do far more to connect their temporary home-school classrooms to their school's online educational resources and the internet more broadly. This is even more salient now that the vast majority of states have enacted stay-at-home orders. The Commission can draw almost immediately on one or both of two sources of funding through the Universal Service Fund.

First, the Commission has the authority to respond immediately to widespread school closures by designating a new emergency category of E-Rate funding that prioritizes broadband internet access for students home-schooling where it is not available. Section 254 of the

[13] Letter from Jonathan Spalter, President & CEO, US Telecom—The Broadband Association, at 5 (March 27, 2020), https://tinyurl.com/vnz9xmn. USTA further recommended that the FCC "support the purchase of, and distribution to students and/or teachers that do not currently have access at home, devices such as laptop computers, tablet computers, hotspots, smartphones or similar devices capable of connecting to mobile broadband internet access service, either by receiving such service directly or through the use of Wi-Fi, as well as applications that protect students from accessing inappropriate content to support e-learning outside of the school premise during the COVID-19 pandemic."

[14] Letter from Senators Edward J. Markey, Brian Schatz, Michael Bennet, et al., to Chairman Ajit Pai (March 16, 2020), available at https://tinyurl.com/qr9bjoa. Commissioner Jessica Rosenworcel, in her March meeting statement, noted support for E-Rate funding of hotspots by AASA—the Superintendents Association, the American Federation of Teachers, the American Library Association, the Association of Educational Service Agencies, the Association of School Business Officials International, CoSN—the Consortium for School Networking, the Council of Chief State School Officers, the International Society for Technology in Education, the National Association of Elementary School Principals, the National Association of Independents Schools, the National Association of Secondary School Principals, the National Association of State Boards of Education, the National Catholic Education Association, the National Education Association, the National PTA, the National Rural Education Advocacy Consortium, the National Rural Education Association, the National School Boards Association, State Educational Technology Directors Association, the United States Conference of Catholic Bishops, and many other organizations." Statement of Commissioner Jessica Rosenworcel on Agenda Meeting (March 31, 2020).

[15] Public Notice, "Wireline Competition Bureau Confirms that Community Use of E-Rate Supported Wi-Fi Networks is Permitted During School and Library Closures Due to Covid-19 Pandemic," WC Dockets 02-6, 13-184 (March 23, 2020) ("E-Rate Wi-Fi PN").

Communications Act requires the Commission to oversee the USF based on a set of "universal service principles" that include "[a]ccess to advanced telecommunications services for schools, health care, and libraries." As the Commission recognized in its 2014 E-Rate Order, Sections 254(c)(1), (c)(3), (h)(1)(B), and (h)(2) of the Act "collectively grant the Commission broad and flexible authority to set the list of services that will be supported for eligible schools and libraries, as well as to design the specific mechanisms of support."[16] Section 254(c)(1)(A) requires the Commission, in designating supported services, to consider the extent to which services "are essential to education, public health, or public safety."[17]

Separately, the Act explicitly gives the Commission discretion to add "special services" for schools from time to time as needed. Section 254(c)(3) states:

> In addition to the services included in the definition of universal service under paragraph (1), the Commission may designate additional services for such support mechanisms for schools, libraries, and health care providers for the purposes of subsection (h).

This authority reflects a recognition by Congress that the technology needs of schools for educational purposes are constantly "evolving" in light of "advances in telecommunications and information technologies and services."[18] Moreover, Congress gave the Commission "specific authority to alter the definition [of services] from time to time, and to provide a different definition for schools, libraries, and health care facilities."[19]

Certainly, during a period of school closures, in 2020 there are few things more "essential to education" than broadband internet access for students and teachers. Moreover, the need to fund equipment or services, such as Wi-Fi hotspot connectivity, that extend broadband to students where they are learning is further supported by Section 254(h)(2)(A), which directs the Commission to "enhance, to the extent technically feasible and economically reasonable, access to *advanced* telecommunications and information services" for schools and libraries.[20] Although the Commission has long maintained that Section 254's focus on access to services precludes funding for end-user devices, such as laptops,[21] Wi-Fi-enabled hotspots represent network

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[16] Report and Order, *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket 13-184, at ¶ 67 (rel. July 23, 2014) ("2014 E-Rate Order"), citing 47 U.S.C. §§ 254(c)(1), 254(c)(3), 254(h)(1)(B), 254(h)(2), Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
[17] *Id*. at ¶ 73, citing 47 U.S.C. § 254(c)(1)(A).
[18] 47 U.S.C. § 254(c)(1).
[19] Joint Explanatory Statement of the Committee of Conference, Telecommunications Act of 1996, Report 104-458, 110 Stat. 56, 104th Cong., 2d Sess. at 131 (Jan. 31, 1996), available at https://www.congress.gov/104/crpt/hrpt458/CRPT-104hrpt458.pdf.
[20] *See* 47 U.S.C. §§ 254(h)(1)(b) and 254(h)(2)(A) (emphasis added); *2014 E-Rate Modernization Order* at ¶ 69. *See also Texas Office of Public Utility Counsel v. FCC*, 183 F.3d at 444 (the Commission's "primary directive is to 'enhance access to advanced telecommunications and information services' for schools and libraries").
[21] *See, e.g.*, Modernizing the E-rate Program for Schools and Libraries, Order, 33 FCC Rcd 11219, 11231, Appendix B, Eligible Service List for Funding Year (WCB 2018) ("Examples of items that are ineligible

equipment and perform the same function as Wi-Fi routers and other internal connections that distribute wireless connectivity to students and teachers in a school.

Last week the Commission further clarified its legal authority under Section 254(h)(2)(A) to "enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services" in its Report and Order creating a new $100 million Connected Care Pilot Program as part of its response to the Covid-19 crisis.[22] The Commission relied on Section 254(h)(2)(A) to justify funding a pilot to extend internet access *to patients outside of health care facilities*, particularly low-income patients and veterans, so that they can access the services of the "health care providers" that are the traditional and established recipients of Rural Health Care Program support. The Order is clear in concluding the Commission has the statutory authority under Section 254(h)(2)(A) – which applies to schools, libraries and health care providers – to create a discrete new category of USF support dedicated to "funding health care provider purchase of *broadband Internet access service for participating patients* . . .."[23] The Order describes the goal of extending connectivity to reach patients where they are with these services, which apply equally to schools attempting to extend essential education services to students the home:

> For the Pilot Program, funding patient broadband Internet access services would **expand health care providers' digital footprints for purposes of providing connected care services** and allow health care providers to serve more eligible low-income patients and veterans through the Pilot Program and, thus, enhance health care providers' access to "advanced telecommunications and information services." Accordingly, **funding** health care provider purchase of **broadband Internet access service *for participating patients*** through this discrete, limited duration Pilot Program falls within the scope of section 254(h)(2)(A) of the Act.[24]

In reaching this conclusion, the Commission states that it has previously determined it has "broad discretion regarding how to fulfill this statutory mandate" under section 254(h)(2)(A).[25] The Commission notes that the record indicates "[a]dvances in information technologies and services are allowing health care providers . . . to provide connected care services to patients in their homes or mobile locations, and there is growing evidence of the benefits of connected care services both for health care providers and their patients."[26] The record also indicates that "the costs of broadband Internet access service for patient use in their homes or mobile locations, . . . are an obstacle for certain health care providers and their patients

components of Internet access services include applications . . . and end-user devices and equipment such as computers, laptops, and tablets.").

[22] Report and Order, *In the Matter of Promoting Telehealth for Low-Income Consumers*, WC Docket No. 18-213, WC Docket No. 20-89 (rel. April 2, 2020).

[23] *Id* at ¶ 88 (emphasis added).

[24] *Ibid* (emphasis added).

[25] *Id*. at ¶ 90.

[26] *Ibid*.

to adopt connected care services."[27] The Order concludes that enhancing program services to extend its reach to patients lacking connectivity represents an "advancement of universal service [based] on the principles outlined in section 254(b) of the Act."[28]

All of these circumstances seem as true for students and teachers needing internet access at home for essential education services as it does for telehealth patients in the Connected Care Pilot Program. The Commission's innovative Pilot Program is not limited to the current crisis, but designed to continue for three years. Of course, like home-schooling classrooms, while the need is greatest now, the Commission is certainly correct that the ability of advanced telecommunications to extend the benefits of USF-supported services to locations where it is most needed advances the Congressional goals of universal service set out in Section 254.

The Order notes further that relying on Section 254(h)(2)(A) "also ensures that the Pilot Program is health care provider-driven and enables participating health care providers to select from the broadest range of broadband Internet access service providers to meet the health care needs of participating patients."[29] Similarly, in the case of E-Rate, funding to extend services to students and teachers off campus should be school-driven and give schools the flexibility to select the internet service provider that is most cost-effective and appropriate to their needs.

The E-Rate Program has Current Budget Authority the Commission can Immediately Authorize on a Temporary Basis to Address the Covid-19 Connectivity Gap for K-12 Students and Teachers

A second source of funding for home classroom hotspots and other off-campus connectivity solutions is the $2.2 billion currently available in the E-Rate program itself. In a Public Notice last July, the Wireline Bureau announced that the estimated total demand for funding year 2019 would be $2.9 billion, some $1.2 billion below the program's current funding cap of $4.15 billion.[30] In addition, the program has available carry-forward funding of $1 billion.[31] The 2019 E-Rate funding year runs through June 30, 2020, suggesting that as much as $2.2 billion in E-Rate funds could be dedicated on an emergency basis to meet the coronavirus connectivity crisis for K-12 schools without even exceeding the program's annual cap.

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[27] *Ibid*.
[28] *Id*. at ¶ 91. For support, the Order cites to a Lifeline pilot and states: "In 2012, the Commission previously relied in part on the universal service principles in section 254(b) to establish a limited duration pilot program to explore how USF funding could increase broadband adoption among Lifeline consumers. *See Lifeline Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6797, paras. 328-330 (2012)." *Id.* at ¶ 91, n. 352.
[29] *Ibid*.
[30] Public Notice, "Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests," CC Docket No. 02-6, at 1 (July 17, 2019), available at https://www.fcc.gov/document/wcb-directs-usac-fully-fund-eligible-c1-and-c2-e-rate-request-0.
[31] *Ibid*.

A group of 16 U.S. senators, led by the legislative author of E-Rate, Sen. Edward J. Markey, told Chairman Pai in a recent letter that the Commission should consider directing at least a portion of the $2 billion in available E-Rate funding to "one-time discounts for schools seeking to loan Wi-Fi hotspots to students who do not have internet at home."[32] They stated: "We believe that the FCC can use its emergency powers to temporarily waive relevant E-rate program rules and allow its beneficiaries to utilize universal service funding to provide home wireless service to existing school devices and hotspots for students who lack internet access at home."[33] For the reasons outlined above, OTI concurs that the Commission has both the statutory authority and the available E-Rate budget to waive normal program rules and immediately authorize an emergency allocation to reimburse schools and libraries for hotspots and other off-campus connectivity solutions that meet the need occasioned by this crisis.

The Commission's touchstone has long been whether E-Rate funds are used for bona fide "educational purposes."[34] The FCC's rules define educational purposes as "activities that are integral, immediate, and proximate to the education of students," with a presumption that activities on-campus meet that definition.[35] Technology has steadily expanded the ability to engage in educational activities off school premises, as the Commission acknowledged nearly a decade ago in the *Sixth E-Rate Report & Order*.[36] In the context of massive school closures it should be inarguable that teaching and learning has moved to home-schooling classrooms. Although OTI believes the Commission should trust schools and students to use subsidized devices and connectivity accordingly, any conclusion that internet access must be limited to teachers and students for educational purposes, and must comply with the Children's Internet Protection Act, could be managed using mechanisms such as passwords and by filtering internet access through school district VPNs. Neither constraint should be used as an excuse not to close the educational connectivity gap.

We recognize that one potential objection is that the advanced telecommunications services described in Section 254(h)(2)(A) refers to "public and nonprofit elementary and secondary school *classrooms*.[37] As discussed in more detail below, concerning E-Rate rules, the Commission has never interpreted this as limiting funding strictly to "classrooms." Indeed, the universal service principle in Section 254(b)(6) refers more broadly to "elementary and secondary schools and classrooms," while Section 254(c)(3) gives the Commission authority to "designate additional services . . . to schools," with no mention of or limitation to "classrooms." And, as noted above, in the current context homes are the only classrooms available.

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[32] *Letter from 16 Senators, supra* note 13.
[33] *Ibid*.
[34] *See, e.g.*, Sixth Report and Order, *Schools and Libraries Universal Service Support Mechanism,* WC Docket 02-6, 25 FCCRcd 18762, at ¶ 22 (2010) ("Sixth E-Rate Report and Order").
[35] 47 C.F.R. §54.500(b).

[36] *Sixth E-Rate Report & Order* at ¶¶ 42-43 and ¶ 46. The Sixth R&O approved a pilot program for off-campus connectivity and device use based on this observation, as discussed further in the next section.
[37] 47 U.S.C. § 254(h)(2)(A) (emphasis added).

The Commission Should Waive Any Restrictions on the Use of Current E-Rate Funding, or E-Rate Funded Facilities, to Extend Connectivity Off Campus for Educational Purposes

Even in the absence of an emergency increase in USF or E-Rate program funding, OTI urges the Commission to go further to encourage schools and libraries to expand internet access for unconnected students at home or in public places.

As noted above, last week's Public Notice clarified that schools and libraries "are permitted to allow the public to access E-Rate funded services even when they are closed to the public due to the coronavirus pandemic."[38] The Commission adopted this off-hours, community-use exception in its *Sixth E-Rate Report & Order* in 2010.[39] Unfortunately, under current E-Rate rules, while the general public can use Wi-Fi networks funded by E-Rate on school property, schools do not have the flexibility to use E-Rate funds to extend those networks to students and teachers lacking adequate internet access at home. Existing rules require schools to allocate the cost of connections or devices used off school property so that E-Rate funds do not cover that cost, a cumbersome and costly deterrent for schools and districts with the greatest need that would also entirely prohibit funding for home-school hotspots.[40]

OTI believes that widespread school closures provide a compelling justification for the Commission to revisit this policy and to give eligible schools the flexibility to use their current-year E-Rate funding – and E-Rate funded facilities – for this purpose. As Chairman Pai stated in his dissent to the *2014 E-Rate Order*, the Commission should "let local communities set their own education-technology priorities. . . . The FCC has no business micromanaging the technology priorities of our local schools and libraries."[41]

Students should not have to rely on school or fast food parking lots to do their homework in cases where the school (or library) could extend network services to reach them at home, at a community center, or other safer and/or more convenient location. As noted above, these remedial connectivity strategies should allow schools to purchase and loan Wi-Fi hotspot connectivity to students at home, or in public locations (e.g., school-bus hotspots in parks, access points in public housing), or to use TV White Space and other advanced wireless technologies to extend the reach of the school's network to connect students off campus.[42]

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[38] *E-Rate Wi-Fi PN* at 1, *supra* note 15.
[39] *See Sixth E-Rate Report and Order*, at ¶¶ 25-26.
[40] Government Accountability Office, "FCC Should Assess Making Off-School Premises Access Eligible for Additional Federal Support" (July 2019) at 23 ("School districts we met with said that existing E-Rate program rules that require cost-allocation . . . limit their ability to address the homework gap and providing off-premises access remains a challenge for schools and school districts.") ("GAO Report"). *Id.* at 27-28.
[41] Dissenting Statement of Commissioner Ajit Pai, *2014 E-Rate Order*, at 170, 172.
[42] A Petition for Rulemaking, filed by several school districts and Microsoft in 2016, requested a waiver or clarification allowing schools to extend internet access from the school's E-Rate supported network to students without connectivity using TV White Space and other wireless technologies. The Petition

The Commission effectively acknowledged that it has the authority to give school districts this flexibility when it adopted the *E-Rate Deployed Ubiquitously (EDU) 2011 Pilot Program* in the *Sixth E-Rate Report & Order*. The Order "authorize[d] up to $10 million for funding year 2011 to support innovative and interactive off-premise wireless device connectivity for schools and libraries."[43] The Order discussed how even by 2010, teaching and learning had evolved in ways that made access to online learning resources outside the school more and more important: "Advances in technology have enabled students to continue to learn well after the school bell rings, including from their homes or other locations, for example, youth centers."[44] The Commission further stated:

> In the *E-rate Broadband NPRM*, we sought comment on the [National Broadband Plan] recommendation to provide full E-rate support for wireless Internet access service for portable learning devices that are used beyond school or library premises. In response, commenters generally agreed that students need to learn "anytime/anywhere," which would require Internet access outside schools and libraries.[45]

In adopting the *EDU Pilot Program*, the Commission never questioned its authority to allow E-Rate funding for wireless internet access for students and teachers provided they served primarily "educational purposes" that met the E-Rate standard of "activities that are integral, immediate, and proximate to the education of students."[46] The Commission adopted a pilot program, it stated, because of practical concerns that suggested the need for more experimentation and data:

> At the same time, however, we acknowledge the concerns of commenters who urged us to proceed cautiously in this area and emphasized the challenges that may accompany support for connectivity for portable learning devices used outside the physical grounds of schools and libraries.[47]

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received widespread support. It remains pending. *See* Joint Petition for Clarification or, in the Alternative, Waiver by Microsoft Corporation, Charlotte and Halifax County Public Schools, et al., WC Docket 13-184 (March 22, 2016) ("TV White Space E-Rate Petition").

[43] Sixth E-Rate Report & Order ¶ 46.

[44] *Id*. at ¶ 42. The Order further stated: "We recognize the benefits of enabling innovation in learning outside the boundaries of the school building and the traditional school day, as well as of enabling libraries to innovate with new models of delivering service to library patrons. We note the potential for meaningful gains in student achievement that new devices and applications may deliver. We also see significant utility in devices that allow remote access to the Internet for library patrons." *Id*. at ¶ 43.

[45] *Id.* at ¶ 42.

[46] *Id*. at ¶ 20. *See* 47 C.F.R. §54.500(b).

[47] *Id*. at ¶ 43. A subsequent GAO report found that the FCC had never established an adequate methodology for assessing the pilot program results and that FCC staff reported that "given the changes in technology, costs, and student learning in recent years, the data collected from the pilot may have some limitations." GAO Report at 22-23. The GAO report recommended that the FCC "should determine and execute a methodology for collecting and analyzing data—such as conducting a new pilot program

Years earlier, in the 2003 *E-Rate Second Report and Order*, the Commission established that there are circumstances where E-Rate can support offsite connectivity: "[W]e conclude that in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus would be considered to be an educational purpose."[48] While the Commission at that time construed these circumstances narrowly, there is no statutory barrier to defining eligible expenditures more broadly in light of both the evolution of educational practices and, particularly, the current crisis.

Allowing schools to extend the reach and functionality of their broadband networks will also enhance the value derived from E-Rate funding in the same way that investments in Wi-Fi access points throughout a school building has magnified the value of E-Rate.[49] In 2014 the Commission updated its funding rules to provide for more category two funding for the explicit purpose of using Wi-Fi routers to extend the reach and utility of the school's internet connection within schools.[50] In that context, extending the reach of school network connectivity to students or teachers off campus is conceptually no different than adding Wi-Fi access points to extend access within a school, or between buildings on a school campus, to reach more classrooms, students, and teachers at the location where the network can best serve the school's educational purpose. Functionally, the use of TV White Space or other wireless technology to transmit internet access to students at home, or at a community center, is equivalent to a wireless extension cord.

Finally, even if more data and a broader pilot program is needed to inform a permanent change in the E-Rate rules, a temporary authorization of the use of E-Rate funds (or E-Rate funded facilities) for off-campus educational connectivity would both provide suffering communities across the country with immediate relief and offer an opportunity to analyze the long-term possibilities of a similar pilot program to that of 2011. A temporary waiver of E-Rate cost allocation requirements for off-campus educational purposes during the crisis can serve the current acute need while providing insights into more permanent program modernization.

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regarding off-premises wireless access or analyzing other data—to assess the potential benefits, costs, and challenges of making off-premises wireless access eligible for E-rate program support, ..." *Id*. at 24.

[48] Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6, at ¶ 19 (rel. April 30, 2003).

[49] *See* Comments of New America's Open Technology Institute, Center for Rural Strategies, National Hispanic Media Coalition, Public Knowledge, X-Lab, and United Church of Christ OC, Inc., WC Docket No. 13-184, WC Docket No. 10-90, CC Docket No. 02-6 (Nov. 3, 2016) at 2.

[50] *Modernizing the E-Rate Program for Schools and Libraries, Second Report and Order and Order on Reconsideration*, 29 FCCRcd 15538 (2014).

For all of these reasons OTI urges the Commission to prioritize consideration of both an emergency set-aside of additional USF and/or E-Rate funding to extend broadband connectivity to students lacking it *and* a waiver of related E-Rate program restrictions. The Commission demonstrated its leadership in advancing innovative wireless internet services by temporarily granting authority to a few dozen wireless internet service providers to use 5.9 GHz spectrum to bring broadband access for the purposes of distance learning, among other uses.[51] The Commission should similarly explore ways to use E-Rate and the Universal Service Fund to empower similar school-and-library-driven efforts to extend their networks to students and teachers for educational purposes during this public health crisis.

Respectfully submitted,

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[51] Marguerite Reardon, "FCC gives access to 5.9GHz spectrum for rural wireless broadband amid coronavirus pandemic," CNET (March 27, 2020), https://tinyurl.com/sb73ujs.