

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

In the Matter of)
)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION
OF NTCA-THE RURAL BROADBAND ASSOCIATION
AND THE UTAH RURAL TELECOM ASSOCIATION**

Pursuant to section 1.429 of the rules of the Federal Communications Commission (the “Commission”),¹ NTCA–The Rural Broadband Association and the Utah Rural Telecom Association² (the “Associations”) seek clarification, or to the extent necessary, reconsideration, of the Commission’s July 23, 2014 *Order* in the above-captioned proceeding. This request is presented specifically with respect to the Commission’s revision of the definition of “rural” for purposes of determining whether any given district or system of anchor institutions qualifies for an additional rural discount under the E-rate program.³

In the first instance, the Associations seek clarification that the explicit text of the rule adopted by the Commission to revise the definition of “rural” schools and libraries prevails over

¹ 47 C.F.R. § 1.429.

² NTCA represents nearly 900 rural rate-of-return regulated local exchange carriers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many of its members provide wireless, video, satellite, and long distance and other competitive services to their communities. Utah Rural Telecom Association (“URTA”) is an association representing 12 independent companies whose facilities serve to provide technologically advanced telecommunications services in the rural areas of Utah. The facilities of the URTA members provide schools, libraries, health care facilities, businesses and residential customers with landline telecommunications services, high speed broadband services, and wireless backhaul services, permitting rural Utah to connect to other businesses, residents and the internet.

³ *Modernizing the E-rate Program for Schools and Libraries*, Report and Order, and Further Notice of Proposed Rulemaking, FCC 14-99 (rel. July 23, 2014) (*Order*), at ¶¶ 222-224.

ambiguous and potentially conflicting language in the text of the *Order* and on Census Bureau materials linked via the *Order*. In particular, the Associations seek to confirm: (1) that the Commission purposefully intended by its explicit reference only to “an urbanized area” in revised Section 54.505(b)(3)(i) of the Commission’s rules to incorporate *only* that specific term, as is defined by the Census Bureau, in identifying whether a given school or library is rural or urban; and further (2) that the Commission conversely did not intend to include “urban clusters” (which are not mentioned in the revised rule) as a component of the definition by which a given school or library would be characterized as urban. In the alternative, if the Commission indeed intended to sweep “urban clusters” within its definition of “urban” despite including only the specific defined term “urbanized area” in the rule itself, the Associations request reconsideration of this determination and urge the Commission to consider alternatives that provide for reasonable transitions from current support levels and more appropriately recognize the rural nature of many small towns that dot the landscape of rural America.

I. BACKGROUND

In the *Order*, the Commission indicated a desire to “modernize” the definition of rural schools and libraries for purposes of the E-rate program by reference to “relatively new” Census data and annual adjustments in urban boundaries.⁴ The Commission also concluded that “any school district or library system that has a majority of schools or libraries in a rural area . . . will qualify for the additional rural discount.”⁵ The changes to reflect these decisions were captured in

⁴ *Id.* at ¶ 223.

⁵ *Id.* at ¶ 224.

revised Section 54.505 of the Commission’s rules. With respect in particular to the first modification, the Commission promulgated the following rule:

- (i) The Administrator shall designate a school or library as “urban” if the school or library is located *in an urbanized area* as determined by the most recent rural-urban classification by the Bureau of the Census.⁶

The phrase “urbanized area” is a specially defined term in Census Bureau parlance. Specifically, an “urbanized area” is a place “of 50,000 or more people.”⁷ An “urbanized area” is but one type of “urban area,” which is a term separately defined by the Census Bureau.⁸ The express reference in the rule as promulgated is to an “urbanized area” – the rule does *not* refer to “urban areas,” which would consist of both “urbanized areas” *and* “urban clusters.”

Despite the clear reference to an “urbanized area” in the rule adopted by the Commission, the language used in the underlying *Order*, however, is unclear and could be read to contradict the explicit text of the rule. Rather than referencing “urbanized areas,” the *Order* text appears to refer more broadly to “urban areas” – and at one point in particular states that rural areas for purposes of the E-rate program going forward will encompass “all population, housing, and territory not included within an urban area.”⁹ The inconsistency between this text from the *Order* and the explicit and specific use of a different, clearly defined term in the language of the rule itself – and also the potential for possibly unintended and still-unidentified precipitous shifts in E-rate support

⁶ 47 C.F.R. § 54.505(b)(3)(i) (emphasis added).

⁷ See <https://www.census.gov/geo/reference/urban-rural.html>.

⁸ See *id.* (“The Census Bureau identifies two types of urban areas:
• Urbanized Areas (UAs) of 50,000 or more people;
• Urban Clusters (UCs) of at least 2,500 and less than 50,000 people.”)

⁹ *Order* at ¶ 223.

for individual schools and libraries arising out of changes to the definitions of “rural” and “urban” – give rise to the instant Petition.

DISCUSSION

The Commission should clarify in the first instance that the use of “urbanized area” in the text of Section 54.505(b)(3)(i) was specifically intended to exclude “urban clusters” (*e.g.*, small rural towns of perhaps several thousand residents) from the definition of “urban” for purposes of the E-rate program. There are many schools and libraries located in relatively small towns that dot the landscape of rural America and serve populations in the outlying areas. Reducing support to such schools and libraries in fulfilling their missions for rural residents simply because their physical facilities happen to sit within a somewhat more populous cluster would appear to undermine, if not defeat, the purpose of providing an additional rural discount in the first instance.

Moreover, it is not at all clear whether and to what degree the Commission has analyzed the transitional impacts of moving from the current definition of “rural” to one based upon either “urbanized areas” or “urban areas” as defined by the Census Bureau. Indeed, there is no discussion or analysis whatsoever in the *Order* of the possible effects of the proposed change (regardless of how one ultimately interprets it), and no consideration appears to have been given to whether any transition might be necessary to avoid disrupting reasonable existing expectations regarding levels of E-rate support. Unfortunately, the multi-prong test employed by the Commission – referring both to an individual institution’s rural status and the status of the majority of other institutions within the applicable district or system – makes it difficult to assess precisely the effects of either type of change, as the Associations have access to neither individual school or library addresses nor a listing of which schools or libraries sit within which districts or systems. But it is at least

clear as a directional matter that treating schools and libraries in relatively small rural towns as urban could result in significant shifts in E-rate support for those institutions.

For example, through consultation with member companies (who have in turn been consulting with the Utah Education Network), the Associations understand that school districts in only 5 counties in that state would appear to meet the new definition of “rural,” as compared to school districts in 25 Utah counties that previously qualified for the additional rural discount. One such county, Kane, is nearly 4,000 square miles in scope, with an average density of 1.8 persons per square mile – and yet, it appears that based upon the characterization of a majority of the schools under the new rule, Kane County schools might not qualify for the additional rural discount. As another example, initial estimates obtained by members in Oklahoma from library contacts in that state indicate that up to 116 seemingly rural libraries could become “urban” under the revised definition depending upon how it is read, leading many of those to lose access to the additional rural discount depending upon the characterization of other libraries in the same systems.

These reflect just a few examples of potential effects of the changed definitions, and to be sure, more analysis is needed to understand and validate the precise impacts on school districts and library systems across the country. But even these preliminary reviews make clear that counting schools and libraries in small rural towns as “urban” for purposes of the E-rate program is likely to result in significant shifts in support flows in still-unidentified and presumably unintended ways. Any such flash-cut results would appear contrary to the announced intent of the Commission in first proposing to revise the “rural” definition, when it stated: “As we seek

comment on this proposed change in definition, it is not with the intent to reduce discounts to certain rural schools but rather to ensure that the funds are targeted appropriately.”¹⁰

The Commission should therefore clarify and confirm that the text of Section 54.505(b)(1)(iii) – which references “urbanized areas,” but not “urban areas” – was indeed intended to exclude “urban clusters” from the definition of “urban” notwithstanding any ambiguity to the contrary arising out of the text in the underlying *Order*. In the alternative, if the Commission indeed intended to sweep “urban clusters” within the scope of this rule despite referencing only “urbanized areas” in the rule itself, the Associations request reconsideration of this determination and urge the Commission to provide greater visibility (with data) to stakeholders regarding the consequences and impacts of different options for defining “urban” and “rural” areas, and to consider alternative approaches that more appropriately recognize the rural nature of many small towns that dot the landscape of rural America and that provide for more reasonable transitions in connection with any changes in support that may result.

¹⁰ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for our Future*, GN Docket No. 09-51, Notice of Proposed Rulemaking, FCC 10-83 (rel. May 20, 2010), at ¶ 37; *see also Rural Health Care Support Mechanism*, WC 02-60, Order, DA 14-1042 (rel. July 23, 2014), at ¶¶ 6-9 (discussing changes to the definition of “rural” within the Rural Health Care program and adopting a multi-year transition plan to provide recipient health care providers “with notice and sufficient time to determine whether their status as a ‘rural’ site will change, and to address any implications of this in their business operations”).

II. CONCLUSION

For the foregoing reasons, the Associations respectfully request that the Commission grant this Petition.

Respectfully submitted,

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