<u>**Summary of the *E-rate Modernization Order***</u>

The Federal Communications Commission (FCC) adopted the *E-rate Modernization Order* on July 11, 2014 (http://www.fcc.gov/document/fcc-releases-e-rate-modernization-order). The Order takes major steps to modernize and streamline the schools and libraries universal service support program (more commonly known as the E-rate program) and focuses on expanding funding for Wi-Fi networks in elementary and secondary schools and libraries across America. Since its inception 17 years ago, the E-rate program has helped ensure that eligible schools and libraries have affordable access to the Internet. In modernizing the program, the Order seeks to ensure that the program is geared towards meeting the broadband needs of schools and libraries in today's world of interactive, individualized digital learning.

The Order adopts three goals for the E-rate program: (1) ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries, (2) maximizing the cost-effectiveness of spending for E-rate supported purchases, and (3) making the E-rate application process and other E-rate processes fast, simple and efficient. The Order then takes actions aimed at reaching those goals. With respect to high-speed broadband, the Order increases focus on the largest and most urgent need—closing the Wi-Fi gap—while transitioning support away from legacy technologies. Next, the Order adopts improvements that will ensure E-rate money is spent smartly. Finally, the Order enacts numerous changes that will improve program administration. Collectively, these actions will ensure greater access to E-rate support for the Wi-Fi networks needed to connect 10 million students a year to 21st Century educational tools and target an additional $5 billion for Wi-Fi services over the next five years.

I. **The E-rate Modernization Order First Adopts Three Goals For the E-rate Program (Order ¶¶ 22-62)**
    a. **Goal 1: Ensuring Affordable Access to High-Speed Broadband in Schools and Libraries (Order ¶¶ 26-49)**

The FCC adopts as its first goal ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries. The Order notes that the connectivity needs of schools can be divided into three network components—Internet access, Wide Area Networking (WAN)/Last-Mile, and internal connections. To measure progress towards achieving this first goal, the Order adopts connectivity targets for each of these network components. The Order also adopts mechanisms to gauge affordability for each of these network components.

i. **Internet Access (Order ¶¶ 34-38)**

The Order adopts, as bandwidth targets, the State Education Technology Directors Association's (SETDA) recommendation for Internet access for schools of at least 100 Mbps per 1,000 students and staff (users) in the short term and 1 Gbps Internet access per 1,000 users in the longer term. Internet connectivity will be measured at the district level for school districts and at the school level for schools that are not members of a district.

With respect to libraries, the Order adopts as a bandwidth target the American Library Association's recommendation that all libraries that serve fewer than 50,000 people have broadband speeds of at least 100 Mbps and all libraries that serve 50,000 people or more have broadband speeds of at least 1 Gbps.

To measure affordability, the FCC will track pricing as a function of bandwidth.

ii. **WAN/Last-Mile (Order ¶¶ 39-44)**

The Order adopts as a target for WAN connectivity the total number of schools that have a connection capable of providing a dedicated data service scalable to the SETDA long-term WAN target of 10 Gbps per 1,000 students.

For libraries, the Order concludes that the record is not sufficiently developed to establish a performance measure and a WAN connectivity target at this time. However, to the extent that libraries are connected by a WAN, the FCC will measure the total number of libraries that have a connection capable of providing a data service scalable to at least 10 Gbps.

Similar to Internet access, the FCC will measure the affordability of WAN connections by tracking pricing as a function of bandwidth.

iii. Internal Connections (Order ¶¶ 45-47)

Pending the development of a suitable available bandwidth measure for internal connectivity, the Order finds that a survey of school districts and libraries is the best method to gauge the sufficiency of internal connections at this time. The FCC's Wireline Competition Bureau (WCB) will continue to develop the record on this issue in hopes of developing a suitable method to measure available bandwidth for internal connectivity.

The Order directs WCB, as part of its survey on internal connections, to seek feedback from those schools and libraries that have insufficient wireless local access network capacity and coverage to support the educational or library activities conducted at their school or library site as to the reason for the lack of sufficient capacity and coverage.

b. Goal 2: Maximizing the Cost-Effectiveness of E-rate Spending (Order ¶¶ 50-54)

The FCC adopts as its second goal maximizing the cost-effectiveness of spending for E-rate supported purchases, thereby minimizing the contribution burden on consumers and businesses and maximizing the benefit of each dollar spent on services for schools and libraries. The FCC will focus its evaluation of progress towards this goal by measuring the prices paid for the E-rate services delivered to schools and libraries. For connectivity within schools and libraries, the FCC will measure and report pricing as a function of number of users or unique devices.

c. Goal 3: Making the E-rate Application Process and Other E-rate Processes Fast, Simple and Efficient (Order ¶¶ 55-62)

The FCC adopts as its third goal making the E-rate process and other E-rate processes fast, simple, and efficient. The FCC will evaluate progress towards this goal by measuring the timely processing of funding commitments to eligible schools and libraries by the Universal Service Administrative Company (USAC), the program administrator, by tracking the processing time against an established target. The Order sets this established target by instructing USAC to aim to issue funding commitments or denials for all "workable" funding requests by September 1st of each funding year.

II. Ensuring Affordable Access to High-Speed Broadband in Schools and Libraries (Order ¶¶ 63-154)

The Order moves to close the Wi-Fi gap in eligible schools and libraries by providing more predictable and more equitably distributed funding for Wi-Fi networks. The E-rate program historically has met the demand for those services that provide connectivity to schools and libraries (historically known as priority one services); however, the program has struggled to provide adequate support for internal connections such as Wi-Fi networks (historically known as priority two services). Recognizing the importance of Wi-Fi networks in connecting students and library patrons, the Order overhauls the support system for internal connections. In addition, to help free up funding for high-speed broadband in the future, the Order begins to transition support away from legacy services.

a. Funding for Broadband Within Schools and Libraries (Order ¶¶ 76-133)

To address the critical need for Wi-Fi networks in schools and libraries, the Order sets a target of providing $1 billion in annual support for internal connections, and designates such services as "category two services." It

designates services needed to support connectivity to schools and libraries as "category one" services. The Order also increases applicants' minimum contribution rate for category two services to encourage applicants to pursue the most cost-effective options, establishes category two budgets for applicants that seek support in the next two funding years, and updates the rules regarding eligible services to better align with the FCC's focus on providing support to services necessary for broadband connectivity.

i. $1 Billion Target for Category Two Services (Order ¶¶ 77-81)

In setting the $1 billion annual target for category two support, the Order makes clear that if demand for category one services exceeds the FCC's expectations, USAC is required to shift funds targeted for category two services to meet category one demand. This will ensure that funding continues to be available for category one support for broadband connectivity to schools and libraries. Alternatively, if requests for category one services fall below expectations in a particular funding year, the FCC may redirect excess category one funding to support category two requests in that funding year. Funds not committed for category one or category two services may be carried forward to be used in a subsequent funding year. The Order states that the additional funding announced by WCB earlier this year will allow the FCC to make $1 billion available annually in each of funding years 2015 and 2016. The Order expresses confidence that there will be sufficient funding available for funding years 2015 and 2016 to meet the $1 billion annual target for internal connections funding and phases down and eliminates support for non-broadband services to help meet this funding target in later years.

ii. Increasing the Minimum Contribution Rate for Category Two Services (Order ¶¶ 82-85)

E-rate applicants will continue to pay a percentage of the costs of the E-rate services they purchase, and an applicant's contribution rate will continue to be determined by two factors: (1) the poverty level of the population the applicant serves and (2) whether the applicant is located in a rural or urban area. However, the Order increases the minimum contribution applicants must make towards category two purchases from 10 to 15 percent. Therefore, the highest discount level for category two services is set at 85 percent rather than 90 percent and the Order adjusts the discount matrix for category two services to account for this change. The Order states that requiring applicants to pay a larger share of the cost of E-rate supported category two purchases will spread available funds more widely and increase the incentive for applicants to find the most cost-effective options for their internal connections needs.

iii. Budgets for Category Two Services (Order ¶¶ 86-117)

The Order also establishes budgets for those applicants that receive category two support in the next two funding years. Specifically, schools seeking category two funding during funding years 2015 or 2016 will be eligible to request discounts on purchases of up to $150 (pre-discount) per student for category two services over a five-year period. Similarly, libraries that seek category two funding in funding years 2015 or 2016 are limited to E-rate discounts on purchases of up to $2.30 (pre-discount) per square foot over a five-year period. To ensure the category two budgets are sufficient to meet the demands of schools with a small number of students and libraries in small buildings, the Order establishes a pre-discount funding floor of $9,200 in category two support available for each school or library over a five-year period. For applicants that receive category two support in years 2015 and/or 2016, this rolling funding cycle of five years replaces the existing two-in-five year rule.

Applicants that apply for category two funding will calculate their funding eligibility using the adjusted discount matrix. If an applicant receives support for category two services in either funding year 2015 or funding year 2016, the applicant can seek up to its budgeted amount for category two support over the course of the next four funding years, but it cannot receive any category two support over this budgeted amount. For example, over a five-year period, a school or school district at the 80 percent level will be able to request up to $120 in E-rate support per student (an 80 percent discount on $150 in services) and will be required to pay 20 percent of the cost of the eligible

category two services that it purchases. If 1,000 students attend that school or school district, the budget for the five-year period would equal $120,000 ($120 discount amount multiplied by 1,000 students). Further, if the school or school district were to receive no category two support in funding year 2015, and $20,000 in category two support in funding year 2016, that school or school district may, but is not required to, request up to a total of $100,000 over the next four funding years (2017 through 2020).

Applicants will be required to seek support for category two services on a school-by-school or library-by-library basis. Under this approach, school districts will have the flexibility to request support for any school or group of its schools each funding year. Likewise, library systems that include multiple libraries will have the flexibility to request support for all or a portion of the library branches each funding year. The costs for services shared by multiple entities will be divided between the entities for which support is sought. This approach will allow schools and libraries to plan for how best to upgrade their facilities and plan for future upgrades based on their own prior spending.

iv. Services Eligible for Category Two Support (Order ¶¶ 119-133)

The Order identifies three groups of services eligible for category two support: internal connections, basic maintenance, and managed internal broadband services (more commonly described as managed Wi-Fi). To provide schools a longer time period to purchase and install category two services, the Order permits applicants to seek support for category two eligible non-recurring services purchased on or after April 1, three months prior to the start of the funding year on July 1.

1. Internal Connections (Order ¶¶ 119-121, 130)

The Order focuses internal connections support on those broadband distribution services and equipment needed to deliver broadband to students and library patrons. Support is therefore limited to routers, switches, wireless access points, internal cabling, racks, wireless controller systems, firewall services, uninterruptable power supply, and the software supporting each of these components used to distribute high-speed broadband throughout schools and libraries. In addition, the Order designates caching functionality as an internal connection eligible for support in funding years 2015 and 2016. At the same time, support is eliminated for the following components that had been on the priority two Eligible Services List: circuit cards/components; interfaces, gateways, antennas; servers; software; storage devices; telephone components, video components, as well as voice over IP or video over IP components, and the components, such as virtual private networks, that are listed under Data Protection other than firewalls and uninterruptible power supply/battery backup.

2. Basic Maintenance and Managed Wi-Fi (Order ¶¶ 122-131)

For funding years 2015 and 2016, basic maintenance services and managed Wi-Fi are eligible for category two support. The FCC will evaluate the merits of these eligibility determinations, as well as the merits of its designation of caching as an internal connection, for future funding years. Absent FCC action, category two support for basic maintenance, managed Wi-Fi, and caching functionality will be available only to those applicants that received category two support in funding years 2015 and 2016 and are operating under a five-year applicant budget.

b. Phasing Down and Ending Support for Legacy Services (Order ¶¶ 134-154)

The Order phases down support for voice services and eliminates support for certain legacy services to better focus E-rate program funding on high-speed broadband needed by school and libraries.

i. Phasing Down Support for Voice Services (Order ¶¶ 135-143)

The Order starts a phase down of support for voice services. Specifically, the discount rate applicants receive for voice services will be reduced by 20 percentage points every funding year beginning in funding year 2015. This phase down will apply to all costs incurred for the provision of telephone services and circuit capacity dedicated to providing voice services, including: local phone service, long distance service, plain old telephone services, radio loop, 800 service, satellite telephone, shared telephone service, Centrex, wireless telephone service such as cellular, and interconnected VoIP. Over the first two years of this phase down, WCB will evaluate the impact of this phase down on schools and libraries. If the FCC takes no further action on this phase down by the opening of the funding year window for funding year 2018, this phase down will continue.

ii. Eliminating Support for Telephone Features, Outdated Services, and Non-Broadband Services (Order ¶¶ 144-154)

The Order eliminates support in funding year 2015 for paging; telephone service components, including directory assistance charges, text messaging, custom calling services, direct inward dialing, 900/976 call blocking, and inside wire maintenance plans; e-mail; web hosting; and voicemail. Data plans and air cards for mobile devices will remain eligible for support only if a school or library can demonstrate that individual data plans are the most cost-effective options for providing internal broadband access for portable mobile devices at its facility.

III. Maximizing E-Rate Spending (Order ¶¶ 155-186)

To maximize the cost-effectiveness of spending for E-rate supported services, the Order adopts rule changes to increase pricing transparency and encourage consortia and bulk purchasing.

a. Increasing Pricing Transparency (Order ¶¶ 158-167)

The Order adopts rules to increase pricing transparency to help schools and libraries find the best prices for E-rate services. Specifically, USAC must make publicly available on its website information regarding services and equipment purchased by school and libraries. Applicants may opt out of this public disclosure requirement only if a specific law, rule, or other restriction bars publication of the purchasing price data. Vendor contracts executed after the effective date of the Order may not contain any restriction barring publication of this pricing data.

b. Encouraging Consortia and Bulk Purchasing (Order ¶¶ 168-182)

The Order reduces or eliminates some of the existing barriers to participation in consortia. First, to address complaints regarding the timing of USAC review of consortium applications, the Order directs USAC to prioritize review of E-rate applications from state and regional consortia applicants.

The Order also provides WCB with the authority to designate preferred master contracts for category two equipment. Under the new rules, WCB may exempt preferred master contracts from the FCC Form 470 filing requirement, so applicants purchasing equipment from a preferred master contract may do so without filing an FCC Form 470. In addition, WCB may require applicants to include services available on a preferred master contract in their bid evaluations, even if the preferred master contract was not submitted in response to the applicant's FCC Form 470. WCB may enact either or both of these exceptions and may designate a preferred master contract only if the contract offers eligible entities nationwide the opportunity to obtain excellent pricing for equipment used in category two internal connections.

Finally, to encourage competitively priced bids, the Order amends the FCC's rules to clarify that a consortium lead may seek bids on behalf of all of its identified members, even if the consortium lead does not have authority to purchase services for the consortium members.

IV. Making the E-rate Administration and Application Processes Fast, Simple, and Efficient (Order ¶¶ 187-265)

The Order adopts a host of programmatic changes aimed at streamlining administration of the E-rate program.

a. Simplifying the Application Process (Order ¶¶ 190-208)

To simplify the application process, the Order (i) adopts a streamlined application process for multi-year contracts; (ii) eliminates the requirement for technology plans; (iii) exempts certain commercially available high-speed broadband services from competitive bidding; (iv) eases the signed contract requirement; (v) requires electronic filing of documents, and (vi) encourages applicants to explore direct high-speed broadband connections between schools and libraries.

i. Streamlining the Application Process for Multi-Year Contracts (Order ¶¶ 191-196)

Applicants that have qualifying multi-year contracts will only be required to submit a complete FCC Form 471 for the first funding year of the contract. In subsequent funding years, applicants will be permitted to use a streamlined application process. This simplified application process will be available to any applicant, beginning in funding year 2015, as long as (1) the multi-year contract is five years or less, and, (2) to the extent applicable, any changes in the requested services are within the scope of the original FCC Form 470 and multi-year contract.

ii. Eliminating the Technology Plan Requirements (Order ¶¶ 197-198)

Beginning in funding year 2015, the Order eliminates the technology plan requirements for category two services. The FCC eliminated the technology plan requirements for category one (then priority one) services in 2010.

iii. Exempting Certain Commercially Available High-Speed Broadband Services From Competitive Bidding (Order ¶¶ 199-202)

The Order creates an exemption, beginning in funding year 2015, in the competitive bidding rules for applicants seeking E-rate support for commercially available, business-class Internet access services. An Internet access service is eligible for this exemption only if (a) it offers bandwidth speeds of at least 100 Mbps downstream and 10 Mbps upstream for a pre-discount price of $3,600 or less annually, including any one-time installation and equipment charges, and (b) the service and price are commercially available. Each school or library must receive the eligible service at a cost of less than $3,600 annually and applicants may not average the cost of services across a number of buildings to qualify for this exemption. Applicants who qualify for this exemption may purchase services with a multi-year contract, but these applicants will still be required to file a FCC Form 471 for each year of service.

iv. Easing the Signed Contract Requirement (Order ¶¶ 203-204)

The Order eases the signed contract requirement to mandate that applicants have a signed contract or other legally binding agreement in place prior to submitting their FCC Forms 471 to USAC. Previously, the FCC had required applicants to submit their FCC Forms 471 "upon signing a contract for eligible services." This rule change ensures support for those applicants that have negotiated and agreed to contractual terms, but have difficulty obtaining signatures prior to the submission of their FCC Forms 471.

v. Requiring Electronic Filing of Documents (Order ¶¶ 205-206)

The Order requires E-rate applicants and service providers to file all documents with USAC electronically and requires USAC to provide all notifications electronically. USAC will phase in this requirement over the next three funding years.

vi.   Enabling Direct Connections Between Schools and Libraries (Order ¶¶ 207-208)

In the interest of promoting access to high-speed broadband connections in the simplest and most efficient manner possible, the Order encourages applicants to file waiver requests to the FCC for the purpose of seeking E-rate support for establishing direct connections between eligible schools and libraries.

b.   Simplifying Discount Rate Calculations (Order ¶¶ 209-231)

In the interest of simplifying the method of calculating discount rates, the Order (i) adopts district-wide discount rates, (ii) updates the definitions of rural and urban for purposes of calculating discount rates, (iii) provides direction on how schools and school districts that receive funding under the new Community Eligibility Provision (CEP) of the NSLP should calculating their E-rate discount rates, and (iv) modifies the requirements for using school-wide income surveys.

i.   Adopting District-wide Discount Rates (Order ¶¶ 210-221)

The Order requires each school district to calculate and use a single district-wide discount rate rather than calculating and using building-by-building discount rates. All public schools and libraries within that public school district will receive the same discount rate. Library systems that have branches or outlets in more than one public school district must use the address of the central outlet or main administrative office to determine within which public school district the library system lies. Independent charter schools, private schools, and other eligible educational facilities must calculate their discounts separately if not affiliated financially or operationally with a school district. Those independent charter schools, private schools, and other eligible educational facilities that are seeking support for more than one school building should factor all students in facilities under the control of their central administrative agency into the discount calculation. Consortia applications will continue to use a simple average of all members' discounts to calculate the overall consortium discount, but will now be required to use each member's district-wide discount.

ii.   Updating the Definition of "Rural" (Order ¶¶ 222-224)

To ensure that rural schools and libraries are able to afford E-rate services, the Order updates the E-rate program's definition of "rural." Noting that the previous definition of "rural" was outdated, the Order adopts the U.S. Census Bureau (Census) definitions of rural and urban for the purpose of determining whether an E-rate applicant qualifies for an additional rural discount. The Census definition classifies a particular location as "urban" based on population density and geography, and other criteria involving non-residential development, while "rural" encompasses all population, housing, and territory not included within an urban area. Beginning with funding year 2015, schools and libraries located in rural areas, as defined by the most recent decennial Census, will be considered rural for the purposes of the E-rate program. USAC will post a tool on its website that will allow schools and libraries to obtain information regarding whether they are classified as urban or rural under the new definition.

iii.   NSLP Community Eligibility Provision (Order ¶¶ 225-229)

The Order allows schools and school districts participating in the CEP of the NSLP to use the same approach for determining their E-rate discount as they use for determining their NSLP reimbursement rate. Specifically, schools utilizing the CEP shall calculate their student eligibility for free or reduced priced lunches by multiplying the percentage of directly certified students by the CEP national multiplier. For more information about the CEP see www.fns.usda.gov/school-meals/community-eligibility-provision.

iv.   Modifying the Requirement for Using School-Wide Income Surveys (Order ¶¶ 230-231)

To the extent a school or school district seeks to use a survey rather than NSLP data to determine its discount rate, the Order requires them to base their E-rate discount only on the surveys they actually collect beginning with funding year 2015. For example, a school with 100 students that collects 60 surveys showing that 52 students meet the eligibility criteria for the free and reduced lunch program would be considered to have a 52 percent eligibility percentage. Previously, schools using a school-wide income survey could calculate the percentage of NSLP-eligible students from the returned surveys and project that percentage of eligibility for the entire school population as long as surveys were collected from at least 50 percent of the school's students. The Order makes clear that E-rate participants may continue using NSLP data in lieu of school-wide income surveys.

c. Simplifying the Invoicing and Disbursement Processes (Order ¶¶ 232-242)

The Order amends the E-rate program's rules to allow for direct invoicing and adopts invoicing deadlines. First, the Order adopts rules to allow an applicant that pays the full cost of the E-rate supported services to a service provider to receive direct reimbursement from USAC beginning in funding year 2016. Second, the Order codifies USAC's existing invoice filing deadline: the latter of 120 days after the last day to receive service or the date of the FCC Form 486 notification letter. The filing deadline rule adopted by the FCC also allows applicants to request and automatically receive a single one-time 120-day extension of the invoicing deadline.

d. Extending E-rate Document Retention and Inspection Requirements (Order ¶¶ 262-264)

The Order extends the document retention period from five to 10 years after the latter of the last day of the applicable funding year, or the service delivery deadline for the funding request. In addition, the FCC revises its rules to clarify that E-rate applicants and service providers must permit auditors, investigators, attorneys and other appointed personnel to enter their premises to conduct E-rate compliance inspections.

e. Tribal Consultation, Training, and Outreach Program (Order ¶¶ 243-249)

The Order takes several actions to ensure that Tribal schools and libraries are able to participate effectively in the program. First, the Order delegates authority to the Office of Native Affairs and Policy (ONAP), in coordination with WCB and the Office of Managing Director (OMD), to conduct government-to-government consultation for the purpose of determining how best to gather data on current connectivity levels and help the FCC better determine the need for E-rate support among Tribal schools and libraries. The FCC also directs USAC to work with ONAP to develop and provide Tribal-specific E-rate training targeted to Tribal schools and libraries and to work with ONAP, WCB, and OMD to create a formal Tribal liaison at USAC to assist with Tribal-specific outreach, training, and assistance.

f. Requiring the Filing of Appeals with USAC (Order ¶¶ 250-252)

The Order also requires parties to first file appeals of USAC decisions with USAC itself before seeking FCC review. This requirement applies to all USAC decisions and not just E-rate decisions. Previously, parties could file initial appeals of USAC actions with either USAC or the FCC. Parties seeking only a waiver of the FCC's rules must seek relief directly from the FCC.

g. Additional Measures to Improve the Administration of the E-rate Program (Order ¶¶ 253-260)

The Order adopts a number of additional measures to ease the burden upon applicants, expedite commitments, and ensure that all applicants receive complete and timely information to help inform their decisions regarding E-rate purchases. These measures include a specific application review and funding commitment target for all category one funding requests; the modernization of USAC's E-rate Information Technology systems; a requirement for the publishing of all non-confidential E-rate data in open, electronic formats; and directions to USAC to make its

communications simpler and clearer so that applicants and service providers will better understand information provided by USAC.