

Nos. 24-354 and 24-422

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**In the Supreme Court of the United States**

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FEDERAL COMMUNICATIONS  
COMMISSION, *ET AL.*, *Petitioners*,

v.

CONSUMERS' RESEARCH, *ET AL.*, *Respondents*.

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SCHOOLS, HEALTH & LIBRARIES BROADBAND  
COALITION, *ET AL.*, *Petitioners*,

v.

CONSUMERS' RESEARCH, *ET AL.*, *Respondents*.

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**On Writs of Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

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**BRIEF FOR THE AMERICAN LIBRARY  
ASSOCIATION AS AMICUS CURIAE IN  
SUPPORT OF PETITIONERS**

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## INTEREST OF AMICUS CURIAE<sup>1</sup>

For more than 140 years, the American Library Association (“ALA”) has been the trusted voice for academic, public, school, government, and special libraries, advocating for the profession and the library’s role in advancing learning and ensuring access to information for all. Representing the nation’s 125,000 libraries, including more than 17,000 public library locations, the ALA is the foremost national organization providing resources for library and information professionals. The ALA has advocated for the Schools and Libraries universal service support program—commonly known as E-Rate—since its inception. The ALA has worked with the Federal Communications Commission (“FCC”) over 25 years to improve the E-Rate program and to help libraries access affordable, high-capacity broadband, boost library participation in the program, and streamline the application and review process. As a result, libraries are no longer just locations where Americans can borrow books. They are also places to access the unlimited information resources available in the online world to expand educational and economic opportunity.

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<sup>1</sup> In accordance with this Court’s Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

## SUMMARY OF ARGUMENT

The Court should reverse the Fifth Circuit decision and find the Universal Service Fund (“USF”) programs, including the E-Rate program, are constitutional. Americans, especially the most vulnerable, rely on libraries’ internet access made affordable by the E-Rate program. The Fifth Circuit’s holding jeopardizes thousands of libraries that rely on the E-Rate program.

Any targeted remedy should be limited to the Respondents and should also accommodate libraries’ substantial reliance interests in the E-Rate program. There are millions of library patrons who depend on E-Rate supported internet access services to advance education, employment, entrepreneurship, and emergency communications.

Today, libraries provide technology access, training, and technology infrastructure, all of which need staff and budgets to work. However, library budgets are strained with staff needing to do more with less and E-Rate funds are critical to fill this need and ensure sustainability for libraries’ broadband connections.

The ALA agrees with Petitioners that the FCC already actively oversees all Universal Service Administrative Company (“USAC”) decisions and continues to expand its oversight. As a last resort, to save the USF programs for millions who rely upon its benefits, the agency could do even more, if the Court deems it necessary.

## ARGUMENT

### I. THE UNIVERSAL SERVICE FUND IS CONSTITUTIONAL.

USF programs, including the E-Rate program, are constitutional. The Sixth and Eleventh Circuits got this one right. See *Consumers’ Rsch v. FCC*, 67 F.4th 773 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 2628 (2024); *Consumers’ Rsch. v. FCC*, 88 F.4th 917 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 2629 (2024). The Fifth Circuit got it wrong. The E-Rate program, and the funding mechanism the Fifth Circuit disapproved of, have been in place for nearly thirty years. Americans, especially those living in high-poverty and the most rural communities, rely on libraries’ internet access made affordable by the E-Rate program. The Fifth Circuit’s holding jeopardizes thousands of libraries that rely on the E-Rate program to meet the needs of their communities and advance educational and economic opportunity for all Americans. Reversing the Fifth Circuit will respect Congressional intent and preserve this critical program to ensure Americans continue to receive the critical services libraries provide.

Respondents challenge the E-Rate funding amount for a single quarter. In keeping with the historically limited role of courts and their equitable powers, in no event should the Court endorse any remedy beyond exempting Respondents—and *only* Respondents—from paying the particular fees they challenge. See *Dep’t of Homeland Sec. v. New York*, 140 S. Ct. 599, 600 (2020) (Gorsuch, J., concurring) (decrying “the increasingly common practice of trial courts ordering relief that transcends the cases before them”);

see also *United States v. Texas*, 599 U.S. 670, 703 (2023) (Gorsuch, J., concurring) (arguing against vacatur as it “can also sweep up nonparties who may not wish to receive the benefit of the court’s decision”). A targeted remedy would also accommodate libraries’ substantial reliance interests in the E-Rate program. Cf. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30–33 (2020) (recognizing that reliance interests must be considered before rejecting an existing program).

Below, we illustrate those reliance interests and emphasize the importance of the E-Rate program to libraries and their patrons.

## **II. LIBRARIES RELY ON E-RATE FUNDS TO PROVIDE CRITICAL COMMUNICATIONS AND INTERNET ACCESS TO THEIR COMMUNITIES.**

The E-Rate program is a vital program for funding public libraries’ provision of advanced communications and information services. See Telecommunications Act of 1996, Pub. L. No. 104-104, § 101(a), 110 Stat. 56, 71-75 (codified as amended at 47 U.S.C. § 254) (the “1996 Act”). Upon passage of the 1996 Act, former Senator John Rockefeller, an early champion of the E-Rate program, remarked, “It was a day of bipartisanship, and E-Rate was the most bipartisan program ever developed. The glory of libraries \* \* \* I could go on forever.” E. Wagner, AMERICAN LIBRARIES MAGAZINE, *Celebrating 20 Years of E-Rate* (Jan. 20, 2018), <https://americanlibrariesmagazine.org/blogs/the-scoop/celebrating-20-years-e-rate/>. In the intervening years, the E-Rate program continues to receive wide bipartisan support from the FCC, Congress, the

White House, U.S. Department of Commerce and states. Senators Susan Collins and Angus King noted that “[i]n today’s high-speed world, there is no commodity more valuable than information, which is why broadband connectivity is more important than ever before—particularly in a rural state like Maine. In order for our communities and students to keep pace, schools and libraries need fast and reliable access to the internet.” *Collins, King Announce More than \$5 Million in E-Rate Funding to Provide Maine Schools and Libraries with Broadband Connectivity*, Press Release (June 10, 2014), <https://www.king.senate.gov/newsroom/press-releases/collins-king-announce-more-than-5-million-in-e-rate-funding-to-provide-maine-schools-and-libraries-with-broadband-connectivity>.

The 1996 Act pronounces universal service as a national priority. Libraries are central to achieving that goal because almost all Americans can access a local library at no direct cost to them. See S. CONF. REP. NO. 104-230 at 132 (1996). With more than 17,000 locations in city neighborhoods and remote villages of only a few hundred residents, America’s public libraries represent a critical national infrastructure that engages communities and delivers services to people of all ages and backgrounds, including access to information that is the lifeblood of our country’s knowledge economy. To complement this physical access to libraries, the statute creates a framework for libraries and schools to purchase broadband and internet services at discounted rates ranging from 20% to 90% while enabling carriers to “receive reimbursement utilizing the support mechanisms to preserve and advance universal service.” 47 U.S.C. § 254(h)(1)(B)(2); see 47 C.F.R. § 54.505, 54.505(c)

(providing higher discounts to libraries and schools in areas with lower income and rural areas).

The E-Rate program has been wildly successful. When Congress passed the 1996 Act, only 44.6% of public libraries had internet access at all. See Bertot, J., *1996 National Survey of Public Libraries and the Internet: Progress and Issues*, 2 (July 1996), <https://files.eric.ed.gov/fulltext/ED398932.pdf>. Less than ten years later, nearly all public libraries were connected to the internet *and* provided public internet access. By 2000—with critical assistance from the E-Rate program—95.7% of libraries were able to provide internet services to their patrons. See *Public Libraries and the Internet 2000: Summary of Findings*, National Commission on Libraries and Information Science, at 3 (Sept. 2000), <https://ii.fsu.edu/sites/g/files/imported/storage/original/application/53b68baffb7364bacc9bb87a2e74ff26.pdf>; see, e.g., John C. Bertot, *et al.*, *Public Libraries and the Internet 2006: Study Results and Findings* (Sept. 2006), <https://ii.fsu.edu/sites/g/files/imported/storage/original/application/2b01b0319c19fb1669b63aaa2189f6ec.pdf>.

The E-Rate program has evolved and adapted as Americans' communications preferences and technology have changed. For example, the fund initially supported discounts for voice services, but this was phased out over a decade ago and the program now emphasizes facilitating access to high-speed broadband services. This includes improving Wi-Fi connectivity that is now nearly ubiquitous in public libraries, allowing libraries to build their own broadband networks when doing so is the least expensive option available and launching a study of E-rate funding for

cybersecurity services in libraries and schools. Cf *Schools and Libraries Cybersecurity Pilot Program*, Report and Order, 89 Fed. Reg. 61282 (2024). This evolution has been integral in ensuring libraries are able to keep pace with the demand by users for essential online services. In the current E-Rate funding year, libraries initially requested over \$91.4 million in funding by libraries in all fifty states and U.S. territories, to help support internet access. See *E-Rate Data Tools*, USAC Open Data <https://opendata.usac.org/stories/s/E-rate-Tools/bneq-mh8b/> (funding amount does not include larger consortium and shared network funding requests).

### **III. THE E-RATE PROGRAM SUPPORTS EDUCATION, E-HEALTH, EMPLOYMENT, ENTREPRENEURSHIP, AND EMERGENCY COMMUNICATIONS THROUGH LIBRARIES.**

Because of the E-Rate program, libraries in cities, small towns, and on tribal lands have used internet access services to advance education, employment, E-health, entrepreneurship, and emergency communications. Libraries are indispensable for Americans with no or unreliable internet access at home. And that's not a small number. In 2023, 12% of all households had no access; 27% of low-income households (more than 30 million Americans) had no access; and many more had unreliable access depending on economic circumstances. See NTIA, *New NTIA Data Show 13 Million More Internet Users in the U.S. in 2023 than 2021* (June 6, 2024), <https://www.ntia.gov/blog/2024/new-ntia-data-show-13-million-more-internet-users-us-2023-2021>.

In addition to providing fixed and wireless broadband access to the public, library staff provide technology training and assistance using online resources to support broadband adoption and meaningful use. Through the “library effect,” in areas with a library, there was a 6% higher enrollment in the federal Affordable Connectivity Program, providing discounted home broadband service, compared to those without. See Benton Institute for Broadband and Society, *Affordable Connectivity Plan Enrollment and Digital Equity Planning* (June 16, 2022), <https://www.benton.org/blog/affordable-connectivity-plan-enrollment-and-digital-equity-planning>. The E-rate program enables a “virtuous” circle in which libraries use USF to power broadband-enabled programs and services to their communities, who are then better positioned to adopt home broadband access and use technology to expand educational and economic opportunity.

*a. E-Rate expands libraries’ capacity to provide education services for children and adults alike.*

From elementary through graduate school, assignments and teaching now take place online or require online resources. Staff at Gregory (S.D.) Public Library have noted that “[m]ost students are required to do their homework and submit it online. However, many of our students have no Internet access at home, so, although the school may have provided a tablet or laptop, they have no way of completing the task.”

Students come to the library to use the free broadband and take advantage of study space and other library resources. In Spencer County, Kentucky, where over 25% of the homes do not have internet access, the Spencer County Public Library uses its E-Rate



funding to leave its Wi-Fi network on and operational 24/7 so students can complete their homework day and night, often in the library parking lot. During the COVID-19 lockdown almost all libraries were closed to the public, but many, like the Buena Vista Public Library in Colorado, extended their E-Rate funded Wi-Fi signal to cover outside locations so learners of all ages could use the service. In other rural locales, libraries like the Quapaw Tribal Library in Oklahoma use their E-Rate funds to provide high-quality internet so students can participate in online classes.

The range of library-supported educational services is vast, including support for K-12 students who are homeschooled as well as homework and research resources for out-of-school learning; virtual field trips; summer reading and learning programs; completing general education diploma or other degree programs online; continuing education and professional certifications for all ages; adult basic literacy programs; and lifelong learning of all kinds. The Topsham Public Library in Maine notes that students of all ages come to study and use the Wi-Fi, including a patron in law school who lacks home internet access and comes to study and write papers twice each week.

*b. Libraries use E-Rate funds to provide essential electronic telehealth services.*

Libraries use their E-Rate broadband services to provide training and dedicated spaces for residents, especially older adults, to access electronic telehealth (“E-Health”) services and have private conversations with healthcare providers. In Texas, the Pottsboro Public Library built an E-Health space for private telehealth appointments. See *From Telehealth to*

*Tools, Pottsville Library Connecting Community*, PUBLIC HEALTH WATCH (Feb. 2, 2024), <https://publichealthwatch.org/2024/02/02/from-telehealth-to-tools-pottsville-library-connecting-community/>; see also *Public Libraries Become Unexpected Health Hubs*, NEWSWEEK (Nov. 29, 2024), <https://www.newsweek.com/public-libraries-health-services-us-1993562> (“From checkouts to checkups, public libraries are stepping into the roles of community health providers in the United States.”). Because older adults are often the least prepared to access E-Health services, the Nashville Public Library uses its live digital literacy curriculum for older adults to provide a virtual curriculum with patient portals and telehealth access.

The Veteran’s Administration (“VA”) also has recognized this broadband access gap and opportunity to collaborate with libraries like the Jackson County Public Library in Kentucky. The closest VA medical center for the estimated 650 veterans in Jackson County is about 70 miles away, and there is no hospitals or long-term care facility in the county of about 13,000. Dr. Tuyen T. Tran of the Lexington VA Medical Center said these types of collaborations are helpful because, “patients and veterans don’t have any anxiety about walking into a library.” See *Lawmakers explore telehealth care for veterans*, The Lane Report (Sept. 15, 2017), <https://www.lanereport.com/81364/2017/09/lawmakers-explore-telehealth-care-for-veterans/>. The VA currently plans to expand this type of service by establishing a new telehealth grant program to support telehealth access stations in rural, highly rural, or medically underserved areas, to the extent practicable. See *VA proposes funding telehealth access points in non-VA facilities*, Route 50 (Nov. 13,

2024), [https://www.route-fifty.com/digital-government/2024/11/va-proposes-funding-telehealth-access-points-non-v-a-facilities/400984/?oref=rf-today-nl&utm\\_source=Sailthru&utm\\_medium=email&utm\\_campaign=Route%20Fifty%20Today:%20November%2014%2C%202024&utm\\_term=newsletter\\_rf\\_today](https://www.route-fifty.com/digital-government/2024/11/va-proposes-funding-telehealth-access-points-non-v-a-facilities/400984/?oref=rf-today-nl&utm_source=Sailthru&utm_medium=email&utm_campaign=Route%20Fifty%20Today:%20November%2014%2C%202024&utm_term=newsletter_rf_today).

*c. E-Rate funds enable career and employment services.*

Internet access is a gateway to new jobs and upskilling resources, yet unemployed and underemployed individuals are often the least able to afford home internet access. Libraries have addressed this issue by providing their constituents with critical internet access supported with E-Rate funding. The 2022 Public Library Services for Strong Communities Report found that 78% of libraries offer job and career services and 24% have workforce development programs. See Public Library Assoc., *PLA Releases First Public Library Services for Strong Communities Report* (June 22, 2023), <https://www.ala.org/news/press-releases/2023/06/pla-releases-first-public-library-services-strong-communities-report>. Community partnerships extend the program's impact, offering training at low-income housing complexes, community centers and assisted living facilities for older adults. Ninety-five percent of public libraries provide formal or informal digital literacy training, which helps to address the documented skills gap for roughly one-third of the American workforce. See National Skills Coalition, *New Report: 92% of Jobs Require Digital Skills, One-Third of Workers Have Low or No Digital Skills Due to Historical Underinvestment, Structural Inequities* (Feb. 6, 2023), <https://nationalskillscoalition.org/>

news/press-releases/new-report-92-of-jobs-require-digital-skills-one-third-of-workers-have-low-or-no-digital-skills-due-to-historic-underinvestment-structural-in-equities/. In rural communities, jobs are frequently located miles away from where people live and libraries also provide the ability to telework, conduct video conferences, or to apply and interview for jobs.

Libraries are increasingly facilitating active career exploration and planning for in-demand occupations using technology-rich tools and electronic resources. The Nevada State Library has enabled the College of Southern Nevada to offer the first-ever dialysis technician training using 3D and virtual reality. The training is embedded within the Nevada Career Explorer program, which is available through all libraries in the state and supports library staff as career navigators to assist patrons making career transitions.

*d. Entrepreneurs use E-Rate supported library broadband services for business development.*

Libraries provide space and resources to support the creation of new businesses and entrepreneurship. The Yakama Nation Library in Washington offers patrons a market space and center for tribal entrepreneurs and broadband access for online business support. Only about half of Native Americans on tribal lands have access to high-speed internet, and these areas have some of the highest levels of unemployment and poverty in the U.S. For libraries in rural and tribal lands, using E-Rate funds for internet access is vital and opens the ability to establish careers and earn a livelihood.

Baltimore County Public Library has been supporting aspiring and existing small business owners and entrepreneurs through a training program offered at library locations and virtually for over five years. The library provides needed technology, such as laptops and wi-fi hotspots, to participants who need it. This successful program has provided entrepreneurs across the county access to the needed resources and develop business plans, develop websites and marketing materials, and connect with customers and funders.

*e. Libraries provide emergency communications to help communities harmed in natural disasters.*

Libraries use E-Rate funds during and after disasters to help patrons. When a natural disaster knocks out internet service across wide swaths of homes and business, restoring access to libraries can enable them to serve as a centralized hub for community access until service is restored. In August 2016, multiple tornadoes struck Kokomo, Indiana, forcing hundreds of residents to take refuge in emergency shelter. The Kokomo Public Library relocated its E-Rate-funded mobile lab, with laptops and Wi-Fi hotspots, to the shelter so that people could notify their families, use social media to connect with missing friends, and apply for federal assistance. In Maine, when winter storms shut down residential internet services, the state E-Rate-funded broadband network is often still available thus allowing residents to connect at local libraries to work and obtain repair services. When the Tubbs Fire tore through northern California in October 2017, Napa County Library branches were among the few locations that never lost

Internet access. Commercial Internet connections were severed in many cities, and many cell towers were damaged in the fire, leaving citizens unable to access information about where the fires were heading. The library responded to patrons' needs and transformed itself into a communications hub. See CENIC, *Libraries Are Key to Providing Broadband Access to California Communities* (Sept. 11, 2020), <https://cenic.org/blog/libraries-are-key-to-providing-broadband-access-to-ca-communities>. Similarly, in response to Hurricane Milton in 2024, the Deltona Regional Library in Florida was designated a relief center to assist those affected by the storm, which included a place to access free internet.

#### **IV. AFFIRMING THE FIFTH CIRCUIT'S DECISION WOULD DEPRIVE LIBRARIES OF CRITICAL E-RATE FUNDING THAT SUPPORTS HIGH-SPEED INTERNET ACCESS TO COMMUNITIES NATIONWIDE.**

Today, libraries provide more than just books on shelves. They provide technology access, training, and technology infrastructure, all of which need staff and budgets to work. Like many community anchors, library budgets are strained with staff needing to do more with less. E-Rate funds are critical to help address chronic budget issues. See *2023 Public Library Technology Survey: Summary Report*, Chicago: Public Library Association, at 15-17 (2024), [https://www.ala.org/sites/default/files/2024-07/PLA\\_Tech\\_Survey\\_Report\\_2024.pdf](https://www.ala.org/sites/default/files/2024-07/PLA_Tech_Survey_Report_2024.pdf). Technology funding is especially important for rural libraries, as only 56.5% of them have designated funding for public access technology purchases (as compared to 84.7% of city libraries). See *id.*

at 16. Overall, 30% of libraries cannot afford the cost of increasing bandwidth to support faster internet speeds, and 28% of libraries provide online access at speeds slower than the FCC definition minimum threshold for what constitutes broadband. See *id.* at 12, 26. Without E-Rate funding, some libraries will resort to jerry-rigged methods like the tribal library in Cochiti Pueblo, in New Mexico, which purchased two cellular cards and a wireless router to provide download speeds of only 24 Mbps to its community before E-Rate funding was made available.

Without E-Rate funding, some states' entire broadband network could face elimination, severe reductions, or relegated to slower inadequate speeds. For example, the Maine School and Library Network is a statewide consortium that connects approximately 243 library locations, 450 school buildings, and 40 non-instructional facilities with gigabit internet speeds. It uses its size to negotiate lower costs and comparable services unavailable to individual libraries. And in rural Maine, libraries are often the only source of internet access in their communities.

Although other federal and state funding programs contribute to broadband deployment, those programs cannot fill the void if E-Rate is eliminated. The Broadband Equity Access and Deployment ("BEAD") Program funds broadband deployment but does not require services to libraries and only provides one-time funds for initial broadband infrastructure funding. It does not support the ongoing and recurring costs of receiving broadband service, which is addressed through E-Rate support.

For over a quarter of a century, the E-Rate program has provided the only consistent and stable source of funding for the recurring costs of broadband connectivity and internet access. Rates for services could significantly increase, up to 90% in some areas, devastating already constrained budgets and forcing libraries to eliminate vital communications and internet access services. In some locations, libraries would be faced with making difficult trade-offs including reduced hours or staffing in order to pay for the vital broadband services.

Affirming the Fifth Circuit's decision also will eliminate other Section 254 universal service programs that support deployment to high-cost and rural areas, which help communication companies build-out broadband infrastructure to reach many critical anchor institutions, like libraries and schools.

#### **V. THE FIFTH CIRCUIT'S CONCERNS MAY BE RESOLVED WHILE PRESERVING THE USF PROGRAMS.**

The Fifth Circuit's conclusions were incorrect. Section 254 is constitutional. See, e.g., FCC Br. and SHLB Coalition Br.

The FCC already actively oversees all USAC decisions and more than meets the private nondelegation tests employed by this Court. As detailed in Petitioner's briefs, the agency's rules determine who will serve on the USAC Board of Directors, and nominations are confirmed by the FCC Chair; USAC's budget is approved by the FCC; USAC provides financial projections to the FCC for calculation of the USF contribution factor; and USAC has no independent regulatory power. See FCC Br. 4-5; see also SHLB Coalition



Br. 40-47 (outlining the multitude of methods by which the FCC exercises control and authority over USAC).

Although not necessary for constitutional purposes, the FCC has also taken steps to increase its oversight, including by revising the Memorandum of Understanding earlier this year. See FCC, *Memorandum of Understanding Between FCC and USAC* (Oct 2024), <https://www.fcc.gov/sites/default/files/usac-mou.pdf>. As a last resort, to save the USF programs for millions who rely upon the benefits, if the Court deems it necessary, the agency could take additional steps. It could appoint one or more FCC employees to the USAC Board of Directors. It could assume the task of determining the USF budgets and resulting contribution factors. Finally, though we don't think the findings of the Fifth Circuit warrant it, the FCC could take the extreme step of moving the functions currently conducted by USAC into the agency. If the Court were to identify a double-delegation problem, any one of these responses would address the Court's concern.

To protect reliance interests, to limit judicial intervention, and out of respect for the coordinate branches, the Court should not eliminate the Universal Service Fund and E-Rate program that has proven so important to our nation's libraries and the communities they serve.

**CONCLUSION**

The judgment should be reversed.

Respectfully submitted,

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