

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Addressing the Homework Gap) WC Docket No. 21-31
Through the E-rate Program)

REPLY COMMENTS OF EDUCATIONSUPERHIGHWAY

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EducationSuperHighway respectfully submits these reply comments in response to the Public Notice from the Wireline Competition Bureau requesting comments in the above-referenced proceeding.

INTRODUCTION AND SUMMARY

EducationSuperHighway commends the Federal Communications Commission’s decision to seek comment on the petitions made by states, school districts, and national advocacy groups.¹ We agree with these petitioners on the need for emergency relief to allow the use of E-rate funds to support remote learning during the COVID-19 pandemic. During the pandemic, when student homes have become classrooms and access to public education hinges on whether a student’s home has broadband access, the Commission has the obligation, and the legal purview, to support students in getting and remaining connected to broadband at home.

To date, school districts and states have not been able to access E-rate for home connectivity solutions, despite ten to seventeen million students lacking home connectivity.² Instead, they have relied on a combination of local, state, federal, and philanthropic donations³ and have been unable to close the homework—now home learning—gap.⁴ Since its

¹ Public Notice in WC Docket No. 21-31, Appendix A.

² Analysis conducted by EducationSuperHighway, Common Sense Media, Alliance for Education, Funds for Learning; <https://digitalbridgek12.org/resources/why-many-students-lack-internet-access/>

³ For example, Oakland Unified raised \$10M from philanthropic partner <https://www.mercurynews.com/2020/05/15/twitter-ceo-dorsey-to-donate-10-million-so-every-oakland-kid-h-as-a-computer-internet-access/>; List of philanthropic partners of Chicago Connected here: <https://www.cps.edu/strategic-initiatives/chicago-connected/program-partners/>

⁴ An estimated 3 million students have gotten connected since the pandemic began, leaving 7 to twelve million students still unconnected. Approximately 2 million students were connected through school or state purchased wireless hotspots: <https://www.ctia.org/news/blog-the-wireless-industry-commitment-to-connecting-america-students-during-covid-19>; Approximately 1 million were connected through wireline sponsored service agreements: <https://www.ncta.com/whats-new/how-the-cable-industry-is-bridging-the-digital-divide>

modernization, E-rate has been the reliable mechanism of ensuring America's K-12 students have equitable broadband access, and it should be used during the pandemic as a means of supporting home connectivity. Upon reviewing the initial comments, EducationSuperHighway urges the Commission to make unused E-rate funds eligible for home connectivity and take the following actions to ensure the most cost-effective use of these resources so that the maximum number of students can participate in remote learning:

1. The Commission should permanently update its rules regarding the *Community Use of E-rate Funded Facilities and Services*⁵ by eliminating the restriction that community use only be allowed during non-operating hours.
2. The Commission should limit the use of E-rate funds to Internet connectivity solutions and the hardware required to access these solutions, including wireline broadband modems, routers, and devices that combine a modem and router and hotspots with no data caps. Only services that meet or exceed the Commission's 25/3 broadband standard should be eligible for E-rate support unless no such service is available at the student's home.
3. The Commission should require applicants to pay their non-discounted share of home broadband purchases to limit waste and maximize the number of students connected with E-rate funds.
4. The Commission should collect and provide transparent access to cost and usage data for home broadband services as it has done with all E-rate supported services.
5. The Commission should utilize its current system for prioritizing the allocation of E-rate funds, based on the applicant's Free and Reduced Lunch population and rural status, when allocating resources for home broadband.
6. The Commission should limit the use of E-rate funds for home broadband to future purchases only (no retroactive reimbursements) and should make funding available through Funding Year 2021.

EducationSuperHighway agrees with commenters who urge the Commission to find a sustainable funding source to close the homework gap so that all students have equal access to education.

I. THE COMMISSION SHOULD ALLOW COMMUNITY USE OF E-RATE FUNDED FACILITIES AND SERVICES AT ALL TIMES SO LONG AS SUCH USE IS PRIMARILY FOR AN EDUCATIONAL PURPOSE AND FREE OF CHARGE

EducationSuperHighway appreciates that the Commission has recognized the need to address the remote learning and homework gaps. Lacking home Internet access prevents students from participating in remote learning during the COVID-19 pandemic and places them at a

⁵ Sixth Report and Order, FCC 10-175, September 23, 2010, paragraphs 20-27.

substantial disadvantage relative to their connected peers when it comes to doing homework when attending school in-person. With 70% of teachers assigning digital homework before the pandemic and millions of students required to attend schools remotely during the pandemic, there is likely to be a dramatic increase in demand for distance learning and digital homework once schools are back in-person. By updating its rules regarding the *Community Use of Schools E-rate Funded Facilities and Services*, the Commission can help school districts prepare to meet these needs.⁶

Specifically, the Commission should update its rules to eliminate the limitations that community use is only allowed during non-operating hours so long as such use is primarily for an “educational purpose” and free of charge. With this change, the Commission should clarify that schools and libraries may, at their own cost, extend their networks into the community to enable such community use in any way they see fit. They should further clarify that in doing so, schools and libraries will not be required to cost allocate the E-rate Funded Facilities and Services that provide connectivity to their buildings and these network extensions.

Eliminating restrictions on the community use of E-rate funded facilities and services will meet the Commission’s objective of promoting broadband access and Congress’s directive to consider how anchor institutions, such as schools, can ensure access to broadband services.⁷ Moreover, as the Commission itself has concluded, such enhanced access comes at no additional cost to the E-rate program⁸, particularly when students participate in remote learning and therefore not at school to use E-rate supported services. It is also consistent with the Commission’s conclusion that community use of E-rate supported services supports the overarching goals of universal service to promote access to telecommunications and information services and that no provision of the Communications Act prohibits community use of E-rate supported services.⁹

Finally, permanently eliminating restrictions on the timing of community use of E-rate funded facilities will allow schools to determine the best ways to leverage E-rate supported services to meet their students’ learning objectives. This is consistent with the Commission’s conclusion that schools are in the best position to establish their own individualized community use policies, including determining hours of use.¹⁰

In addition to the above-recommended changes to the Community Use rules, EducationSuperHighway supports the comments made by SECA, advocating that “the FCC

⁶ FCC 10-33 Order, “E-rate Community Use Order”, February 19, 2010.

⁷ Sixth Report and Order, FCC 10-175, September 23, 2010 paragraph 23.

⁸ The Sixth Report and Order prohibits schools participating in the E-rate program from requesting funding for more services than are necessary for educational purposes to serve their current student population (paragraph 24).

⁹ Sixth Report and Order, FCC 10-175, September 23, 2010 paragraph 23.

¹⁰ Sixth Report and Order, FCC 10-175, September 23, 2010 paragraph 25.

should issue a Declaratory Order as soon as possible to waive the off-campus cost allocation requirement as of March 13, 2020, when the pandemic emergency was first declared.”¹¹

II. ONLY WIRELINE BROADBAND CONNECTIONS AND MOBILE HOTSPOTS WITH NO DATA CAPS OR THROTTLING SHOULD BE ELIGIBLE FOR E-RATE SUPPORT

In the course of our Digital Bridge K-12 initiative, in partnership with the Council of Chief State School Officers, EducationSuperHighway has collected feedback from school districts and state departments of education. Our findings make it clear that both the speed of a broadband connection and the amount of available data to students significantly impact their ability to participate in remote learning. Specifically, school districts have reported that a 25/3 Mbps connection appears to be the minimum wireline speed to enable consistent remote learning participation. They also note that even this is insufficient when more than two students try to participate in remote learning over a single connection.

We support Common Sense Media’s analysis that explains the need for higher speeds: “Households with multiple users—including parents and family members—will require speeds directly proportional to the number of concurrent users. For example, if two students live in a household and rely on distance learning videoconferencing at the same time, the bandwidth required for a quality experience would be double the minimum requirement: 50 Mbps / 6 Mbps.”¹² This 50 Mbps / 6 Mbps is achievable for many broadband providers, with evidence coming from Comcast’s increasing of bandwidth speeds delivered to homes through Chicago Connected: “Recently both Comcast and RCN speeds increased from 25/3mbps to 50/5mbps and 50/10mbps, respectively.”¹³ While we support the need for higher speeds, we also understand that higher-speed connections are not available in some circumstances. School districts should be allowed to use E-rate funds to support connections less than 25 / 3 Mbps if higher-speed connections are not available.

In addition, for students who are connecting via a wireless hotspot, school districts utilizing synchronous video conferencing applications such as Zoom or Microsoft Teams as part of their instructional model have required service providers to equip students with data plans with no data caps or throttling to ensure that students can fully participate throughout the entire month.¹⁴ We support the assertion made by Los Angeles Unified School District, which “strongly urge[s] the FCC to prohibit providers from deprioritizing web traffic used for

¹¹ SECA’s Initial Comments to WC Docket No. 21-31, page 4.

¹² Common Sense Media’s Initial Comments to WC Docket No. 21-31, page 4.

¹³ City of Chicago, Chicago Public Library, and Chicago Public Schools Initial Comments to WC Docket No. 21-31, page 7.

¹⁴ Consumer Reports, March 2020,

<https://www.consumerreports.org/internet-providers/isps-respond-to-coronavirus-raise-speeds-suspend-data-caps-keep-america-connected-pledge/>

educational purposes, data caps, and/or throttling.”¹⁵

Given how limited the funding is, we recommend that the Commission limit the eligibility list to only equipment and services for broadband access. Although laptops and tablets are essential for remote learning, without specific new funding and direction from Congress, EducationSuperHighway does not advise that E-rate be the funding vehicle for these purchases. Limiting the list will remove the burden on the already-stretched Universal Service Administrative Company to review new eligibility list items and will significantly increase the number of students that are connected to broadband using E-rate supported services. As they did with the initial CARES relief funding, school districts can rely on the recently passed ESSER and GEER funds in the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act to fund device purchases.

III. REQUIRING APPLICANTS TO PAY THE NON-DISCOUNT PORTION OF HOME BROADBAND SERVICES WILL ENSURE COST-EFFECTIVENESS, LIMIT WASTE, AND MAXIMIZE THE NUMBER OF STUDENTS CONNECTED

The E-rate program’s discount structure has been a cornerstone of ensuring that schools; only buy the services they need and endeavor to do so at the most competitive price. To maximize the number of students supported by the limited E-rate funds being made available for home broadband connections, the Commission must continue to utilize its well-established discount rate structure.

In addition, EducationSuperHighway agrees with the Commission in that “Competitive bidding is a cornerstone of the E-Rate program, ensuring that applicants are informed of their options and service providers have sufficient information to provide services.”¹⁶ While many commenters have requested a suspension of the competitive bidding rules, we note that in 2014 the Commission established an exception for competitive bidding for school districts to purchase commercially available Internet access.¹⁷ We encourage the Commission to rely on this precedent rather than waiving its competitive bidding rules. As the vast majority of solutions school districts are purchasing for families are low-cost wireline, and wireless data services, school districts should be able to utilize this exception.

If the Commission decides to modify the competitive bidding process, EducationSuperHighway supports Funds For Learning’s argument that “the Commission should retain the competitive bidding rules with limited modifications,” specifically those modifications

¹⁵ Los Angeles Unified School District Initial Comments to WC Docket No. 21-31, page 3.

¹⁶ Public Notice, page 5.

¹⁷ First E-rate Modernization Order, "Exempting Low-Dollar Purchases of Commercially Available Business-Class Internet Access from Competitive Bidding Rules", paragraphs 199 - 202.

the Commission made in the 2017 Hurricanes Order.¹⁸ If the Commission decides that no competitive bidding process is necessary for this emergency relief, the Southern Education Foundation made the salient point to still “set minimum speed requirements for participating ISPs.”¹⁹

IV. THE COMMISSION SHOULD COLLECT AND PROVIDE TRANSPARENT ACCESS TO COST AND USAGE DATA TO ENSURE LONG-TERM COST-EFFECTIVENESS

Data transparency was perhaps the most important driver for closing the digital divide for America’s K-12 public schools and can be for future home connectivity purchases. By making E-rate procurement data transparent at the line item level, applicants could see what school districts were paying for their broadband connections and then use this information to negotiate better deals with ISPs that provided more bandwidth at lower costs. This resulted in the school broadband costs decreasing 90%, with the median cost per Mbps dropping from \$22 in 2013 to \$2.24 in 2019.²⁰

The Commission needs to ensure that these same principles of transparency are instituted in this emergency relief. As it does with all E-rate data, the Commission should make available E-rate procurement data disclosing the following for each school district that receives E-rate funds for home connectivity:

- Provider
- Service type (e.g., cable, fiber, hot spots with no data caps)
- Upload and download bandwidth speeds
- Number of households served or hotspots purchased
- Cost of plan
- Contract start date
- Contract end date

The availability of this data will ensure that school districts can negotiate for the best possible prices for home connectivity and that E-rate funds connect the maximum number of students.

¹⁸ Funds For Learning Initial Comments to WC Docket No. 21-31, page 9.

¹⁹ Southern Education Foundation Initial Comments to WC Docket No. 21-31, page 5.

²⁰ “The State of Connectivity in America’s Schools.” 2019 State of the States Report. EducationSuperHighway, <https://stateofthestates.educationsuperhighway.org/>, (October 2019).

V. THE E-RATE PROGRAM'S EXISTING DISCOUNT RATE SYSTEM ADEQUATELY TARGETS STUDENTS THAT FALL INTO THE HOMEWORK GAP

As the Commission seeks to prioritize funding to close the Homework Gap as much as possible, it can rely on the fact that the overwhelming majority of unconnected households with a K-12 student are eligible for the free and reduced lunch program. In Wisconsin, 81% of students without home broadband, whose homes could be served by existing broadband infrastructure²¹ across urban, suburban, small-town, and rural geographies, were on the free and reduced lunch program. In West Contra Costa Unified School District, a suburban California district, over 90% of unconnected students were on the free and reduced lunch program. And in a large urban school district in Georgia, 100% of students without home broadband were economically disadvantaged.²²

To help ensure that this limited funding goes to connecting students who currently lack home Internet connections, the Commission should prioritize funding to school districts with the highest discount rates as established by the combination of a school district's Free and Reduced Lunch population and rurality.

VI. FUNDING SHOULD BE USED FOR FUTURE PURCHASES, THROUGH FUNDING YEAR 2021

EducationSuperHighway supports SHLB's petition, which advocates that the emergency relief should be made available through Funding Year 2021.²³ To ensure that this funding helps connect students who are not yet connected, the unused E-rate funds should go toward future purchases, including any costs yet to be incurred on previously negotiated service agreements between districts and providers.

School districts have been working with Internet Service Providers throughout the pandemic to connect students' homes to wired broadband service at the lowest possible costs. As noted by NCTA, broadband providers during the pandemic have implemented "hundreds of sponsored service agreements with school districts and community partners across the country," representing "more than 12,000 schools with roughly 7 million enrolled students."²⁴ In situations where year-long deals were forged between school districts and providers, school districts should be allowed to receive E-rate funding for future months of existing sponsored service agreements.

²¹ i.e. broadband infrastructure was available to the household and they could have subscribed to a commercially available home broadband service.

²² Data collected through EducationSuperHighway outreach in January 2021.

²³ SHLB Petition, January 26, 2021.

²⁴ NCTA analysis, <https://www.ncta.com/whats-new/how-the-cable-industry-is-bridging-the-digital-divide>

CONCLUSION

Students need home connectivity to receive a public education today, whether to attend schools remotely or have an equal opportunity to succeed in their homework. This problem existed before the COVID-19 pandemic and will continue once schools re-open. It is crucial that our collective focus remains on closing the homework gap and digital divide at large. The Council of Great City Schools put the need for a long-term solution very well: “We have known for years that home connections are essential for all students and yet completely inaccessible for too many. We need to start preparing for the future – not just an extended catch-up and recovery period for students, but a long-term prioritization of reliable broadband access for all of our students.”²⁵

For the reasons discussed above, the Commission should allow the use of E-rate funds to support remote learning during the COVID-19 pandemic. By implementing the appropriate rules, the Commission can maximize the number of unconnected students receiving broadband service, and thus a public education.

Respectfully submitted,

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²⁵ Council of the Great City Schools Initial Comments to WC Docket No. 21-31, page 4.