

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireline Competition Bureau Seeks)	WC Docket No. 21-31
Comment on Petitions for Emergency)	
Relief to Allow the Use of E-rate Funds)	
To Support Remote Learning During)	
The COVID-19 Pandemic)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Federal Communications Commission’s (“Commission” or “FCC”) *Public Notice* seeking comment on 11 petitions for emergency relief (collectively, “Petitions”) asking the Commission to address the widening “homework gap” by permitting the use of E-rate program funds for remote learning and virtual studies during the COVID-19 pandemic.¹

INCOMPAS generally supports these Petitions and urges the Commission to take immediate action to make E-rate program funds available for remote learning.²

¹ See *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6 (rel. Jan. 4, 2021) (“*Public Notice*”).

² The Schools, Health & Libraries Broadband Coalition (“SHLB Coalition”) asserts that the requested action “would not require the collection of any additional Universal Service funds” and that the Commission could release “hundreds of millions of dollars—currently not designated for use but held in the E-rate program—to support remote learning.” See *Petition for Expedited Declaratory Ruling and Waivers* filed by the Schools, Health & Libraries Broadband Coalition, *et al.*, WC Docket No. 13-184, at i-ii (filed Jan. 26, 2021) (“SHLB Petition”). While INCOMPAS supports this approach, the association does not support any request that would require the Commission to collect additional Universal Service funds or that would lead to an increase in the USF contribution factor. Should the Commission require additional funding or seek permanent modification of the E-rate program to support remote learning, it should rely on

Over the past year, the Commission has laudably taken dozens of actions to provide emergency assistance and to connect the most vulnerable Americans to broadband services as the COVID-19 crisis has widened the digital divide in this country. However, the petitions for emergency relief filed by the SHLB Coalition, the State of Colorado, and the State of Nevada³ identify another group in critical need of Commission assistance during the pandemic—students without adequate broadband connectivity that are falling into the “homework gap” due to their inability to regularly attend virtual classes or engage in remote learning while their schools are closed. Families with school-aged children have seen bedrooms, kitchen tables, and automobiles turned into classrooms as school districts across the country have shifted to remote learning during this pandemic. Schools and libraries have taken heroic steps to connect their students to virtual classrooms, but continue to experience significant challenges such as device and account management concerns, bandwidth limitations, and Internet security issues.⁴ Additionally, schools have reached the limits of the current rules of the Commission’s Schools and Libraries program (“E-rate”) as the Commission has yet to declare that the off-campus use of broadband services and equipment is eligible for program support. After a year of virtual instruction, it is clear that these limitations have led to digital inequality that is having a devastating impact on

legislative solutions such as the *Emergency Educational Connections Act*, which would appropriate funding through the Emergency Connectivity Fund, rather than the Universal Service Fund, to help close the homework gap during the pandemic. *See* Emergency Educational Connections Act of 2020, S. 3690, 116th Cong. (2020).

³ *See* SHLB Petition SHLB Petition; Petition for Waiver on behalf of the State of Colorado, WC Docket No. 13-184 (filed Sept. 2, 2020) (“Colorado Petition”); Letter from Elaine Wynn, President, Nevada State Board of Education, to Chairman Pai, FCC, CC Docket No. 02-6 (filed Aug. 10, 2020) (“Nevada Petition”).

⁴ *See* Comments of the E-rate Management Professionals Association, WC Docket No. 21-31 (filed Feb. 12, 2021).

children, particularly those in low-income, rural, Black and Latinx communities across the country.⁵

Given these concerns and due to uncertainty over when students will return to traditional classrooms, INCOMPAS supports the Petitions' request that the Commission issue a declaratory ruling clarifying that broadband services and equipment used for remote learning activities are eligible for E-rate support during the pandemic. INCOMPAS concurs with the legal analysis of the SHLB Coalition and the majority of commenters in this proceeding that remote learning should qualify for universal service support as a service provided to schools and libraries for "educational purposes."⁶ As interpreted by the Commission, the technological solutions that schools have employed to connect students to broadband services during the pandemic are "activities that are integral, immediate, and proximate to the education of students."⁷ As schools have transitioned from traditional classrooms to virtual classrooms, so too should the Commission transition its thinking about how to provide public and nonprofit elementary and secondary schools with access to advanced telecommunications and information services. Dedicating E-rate funding to off-campus broadband connectivity efforts, devices, and services

⁵ See Kevin McElrath, *Nearly 93% of Households with School-Age Children Report Some Form of Distance Learning During COVID-19*, U.S. CENSUS BUREAU (Aug. 26, 2020), <https://www.census.gov/library/stories/2020/08/schooling-during-the-covid-19-pandemic.html> (reporting that low-income households were less likely to report computer and internet availability for educational purposes, compared with higher-income households); Libby Pier, *et al.*, *COVID-19 and the Educational Equity Crisis: Evidence on Learning Loss From the CORE DATA Collaborative*, PACE (Jan. 25, 2021), <https://www.edpolicyinca.org/newsroom/covid-19-and-educational-equity-crisis> (finding a lack of reliable access to computers or Wi-Fi make it difficult for low-income, Black, and Latinx communities to access online instruction).

⁶ 47 U.S.C. § 254(h)(1)(B).

⁷ 47 C.F.R. § 54.500 (definition of "educational purposes").

also represents the best use of that funding during the 2020-2021 school year as public health and safety dictates that students stay home to decrease the spread of COVID-19.

With respect to the specific equipment and services that E-rate should support to fund off-campus access to broadband, INCOMPAS encourages the Commission to rely on section 254(h)(2) which requires the Commission to adopt competitively neutral rules to enhance access to broadband for schools and libraries.⁸ Establishing a competitively neutral approach to support remote learning should ensure that schools, libraries, and consortia continue to receive the E-rate supported services that best meet their needs. The record in this proceeding contains multiple examples of connectivity solutions that could be used to expand broadband accessibility for remote learning or to better support virtual classrooms. For instance, the SHLB Coalition describes various solutions for connectivity that should be included in a list of eligible services and equipment, including direct broadband connections to a student or teacher’s home, personal hotspots with mobile data connections, and school or library Wi-Fi networks, among others.⁹ Where solutions such as hotspots, mobile wireless towers, or equipment that can reasonably be expected to support remote learning (such as devices that combine a modem and a router) require waivers of the eligible service rules, INCOMPAS urges the Commission to grant such a waiver to permit this equipment. Additionally, private LTE networks can be designed and managed “to fit a community’s unique needs”¹⁰ and cloud computing services can be used to support virtual

⁸ 47 U.S.C. § 254(h)(2) (“The Commission shall establish competitively neutral rules— to enhance . . . access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”).

⁹ See SHLB Petition at 9.

¹⁰ See Comments of ENA Services, LLC, WC Docket No. 21-31 (filed Feb. 16, 2021), at 3.

classroom operations.¹¹ In looking at how to make the program support for remote off-campus activities competitively neutral, INCOMPAS urges the Commission to take an expansive view of the equipment and services that should be added to the eligible services list during this temporary expansion of the E-rate program. Ultimately, the Commission should aim to ensure that school districts and consortia have as wide a range of options as possible to address the “homework gap,” including the current daily remote learning gap, in their communities.

As the Commission examines what level of service is required to support and enhance remote learning, INCOMPAS recommends that the broadband services and equipment employed in the E-rate program at least meet the current speed benchmark of 25/3 Mbps for fixed services at a residence. If a school district elects to extend connectivity for remote learning to an anchor institution, the service level should match that of the school or library. INCOMPAS has recommended that the Commission should increase its performance benchmark for fixed broadband services to 1 Gbps, however in this instance, INCOMPAS believes that students at risk of falling further behind will benefit from their schools and libraries having more service options.

As school districts across the country grapple with public health questions about when to bring students and faculty safely back into traditional classroom environments, families have been left guessing about whether their children will be returning to school in the fall. With respect to the Commission’s timing, SHLB’s request to waive federal restrictions on off-campus use of E-rate supported services through at least the 2020-2021 school year should serve as a baseline,¹² however, the Commission should give serious consideration to the State of

¹¹ See Comments of Amazon.com, Inc., WC Docket No. 21-31 (filed Feb. 16, 2021), at 3.

¹² See SHLB Petition at 19-20.

Colorado’s proposal to waive the program’s restrictions through the public emergency period.¹³ School districts are expected to return to school in phases, with some virtual learning expected to continue at least through the end of the current school year, and some students who need to quarantine can still attend classes remotely if they have broadband internet access service. Bolstering school districts remote learning efforts through the pandemic by extending network connectivity or creating new Wi-Fi hotspots will ensure that schools and libraries have the resources to meet the needs of those students without adequate home Internet access.

Additionally, while INCOMPAS supports temporarily extending emergency relief for remote learning through the duration of the COVID-19 pandemic, the Commission should consider further rulemakings that would modify the E-rate program to allow the use of funds for remote learning should future variants of the coronavirus or another public health emergency cause similar school closures. The Petitions and the record highlight that the Commission has been considering ways to address the “homework gap” and student’s off-campus connectivity needs since 2010.¹⁴ The Commission must build on the lessons it learns from this temporary expansion of the E-rate program and ensure that agency is prepared to assist and support schools in the future if similar emergency situations again forces students to continue their education via remote learning.

¹³ See Colorado Petition at 3, 5.

¹⁴ See SHLB Petition at 6 (referencing the Commission’s *2010 E-rate Sixth Report and Order* which established a pilot program based on the recognition that “the statutory goals of the E-rate program may warrant dedicating funds to off-campus facilities, so that learning can continue at home”).

For the reasons stated herein, INCOMPAS urges the Commission to grant the petitions for declaratory ruling and emergency relief and allow E-rate funded services and equipment to be used off-campus to enable remote learning for the duration of the pandemic.

Respectfully submitted,

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