

Comments to the
Federal Communications Commission

In the Matter of)
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Emergency Connectivity Fund for Educational)
Connections and Devices to Address the) WC Docket No. 21-93
Homework Gap During the Pandemic)
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EDUCATIONAL SERVICE UNIT #9
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April 1, 2021

Related to the implementation questions asked in Public Notice DA 21-317, the following comments are offered. The Commission asks enough questions in this process that comments will contain the same headings as are in the original Notice and are organized in the same order.

Administration of Emergency Connectivity Fund. Data collection among applicants is certainly not universal related to the broadband availability questions asked; therefore it will be difficult to set adoption goals. Even within Educational Service Unit #9's (ESU 9's) small, rural geographic area, school districts have significant variances in the available data. Most libraries will have much less data, as they have previously been concerned only with the amount of usage inside the walls of the facilities even though they know that is representative of a lack of access in their communities. Many schools gathered relevant information in preparation for remote learning, and Nebraska schools followed a standard for data gathered only because 2019 contained a significant amount of work in that area that could be standardized and implemented quickly. Certainly, these baseline assessments have already guided work in our area, but for communities with less preparation, it is difficult to understand and set specific goals. Further, when a very small number of students are unreachable, those are still students who need broadband. Indeed, in a remote learning environment, is anything less than 100% considered a reasonable goal?

Eligible Schools and Libraries. To most efficiently administer the fund, existing systems and processes should be utilized as much as possible. Regarding whether additional entities should be eligible, the purpose of this funding is specific to the "Homework Gap." While NGOs and for-profit entities may also be involved in activities that help address the homework gap, they are not in a position to provide the same accountability for the funding for such devices and services, nor have they previously been held to CIPA or other requirements for funding. The emergency nature of the situation does not mean that prior security and ethical standards should be discarded; therefore, eligible applicant types should not be expanded.

It is also reasonable to consider reducing the eligible entities. For instance, should ESAs and Libraries be able to apply? We suggest that they provide broadband opportunities for students and educators in their area, but it is not reasonable for them to seek reimbursement on devices

since they have no students. Should consortia, including states, be able to apply? Because of the large collection of other funding that has been made available to support both devices and broadband, we encourage the Commission to recognize that protections against waste, fraud, and abuse will already be difficult by allowing only applicants to apply. Allowing consortia and states to apply for reimbursement directly will significantly complicate the process of verifying that other federal and state funding for similar projects has not been used. While we stop short of suggesting they should not be included, the cost of program administration and opportunities for abuse are significant concerns.

Eligible Equipment and Services. Limiting equipment to only that which is necessary for remote learning is certainly the most reasonable approach to allocating funding. Additional specificity is required regarding some of the equipment. For instance, is the establishment of a mesh Wi-Fi network to extend the reach of the school network a creative use of Wi-Fi hotspots, or a self-provisioned network? Furthermore, if cabling, masts or towers, and other network equipment are required to implement a Wi-Fi hotspot in a school parking lot, are those items considered part of the cost, or are they not eligible? For schools and libraries who create a mesh network that extends beyond their property, such as bouncing off of a water tower, could all of those devices still be considered Wi-Fi hotspots? In other words, where is the boundary between a hot spot and a self-provisioned wireless network when a school has the capability, and perhaps no other provider options in the emergency situation created by the pandemic?

ESU 9 respects the exclusion on the construction of new networks given the time it takes to develop new construction and the potential overlap with CAF II. However, during emergency periods, it is possible that self-provisioned networks, especially of a wireless nature, are the only alternative to create a remote learning environment for some individuals. Schools and libraries should not be punished for doing what they could to maintain connection and continue relationships for staff and students whose lives were otherwise in turmoil.

Given the proposal that smartphones not be included, we urge the consideration of a minimum allowable screen size rather than a specific category of equipment. A tablet of sufficient size which includes a cellular modem has significant similarities to a smartphone, and for the purposes of this qualification may only differ from a smart phone by the size of the screen, yet it may also be the best device for some situations.

The discussion of and concern for disabilities is similarly related to screen size, though accommodation of disabilities is not restricted to this issue. The Commission could consider whether all staff and students should have connected devices to accommodate disabilities, or whether the district appropriately accommodated all staff and students with disabilities by requesting a narrative to this end. Adequate training on the accommodations is as important as having the appropriate device, so the device selection is not the end of the matter. Relay and interpretation services and applications themselves have other regular funding sources, and generally such issues are addressed in entirely different departments among applicant entities. We urge the Commission not to introduce organizational confusion into the process by also attempting to fund those types of services; it would create an undue burden on internal paperwork.

The broadband standards of 25 Mbps down and 3 Mbps up are legitimately challenged in some remote learning environments. Many variables are in play beyond broadband access, such as the density of wireless devices, proximity of neighboring access points, and specific videoconferencing software used by the school district. Schools and providers should not be defunded for implementing the Commission's current expectations. While this feedback provides the Commission an opportunity to set a new benchmark, implementation requirements should be consistent and based on an existing standard.

Service Locations. Patrons without broadband access in many locations were willing to walk (in a socially distanced manner) or drive to a location that provided access, such as a school or library parking lot or nearby playground. In most cases, such capabilities were added to the outdoor areas as a response to the pandemic. Is the Commission proposing that outdoor access on school or library property (which is not eligible for Category 2 funding) be excluded in this instance, though it might be the only place that unhoused individuals have such access? Such a network would be self-provisioned, but is also the only hotspot access available for some users.

Regarding the limitation of per-location connections, that will depend on the Commission's definition of a location. How will the Commission define hotel rooms that may have been used in quarantine or unhoused situations? What about individual apartments within an apartment building? When a hotspot has a limitation of five users, and a location has seven resident students, will one hotspot be denied funding?

We appreciate the need for accountability, and suggest that any location with more than one connection receive an opportunity for justification rather than automatic denial. Additionally, the Commission's proposals of other required documentation are appropriate. While we recognize the challenge and appreciate the Commission's concern, we have no feedback regarding the warehousing of unnecessary equipment as that is not an issue in the small, rural schools we serve.

Eligible Uses. Regarding devices, certainly only devices purchased for educational purpose by eligible entities should be covered. For services, many of the readily available services utilized were standard broadband packages that would require significant configuration and extra time to implement during an emergency. The Commission may consider different requirements for procuring services (requiring educational use) than for reimbursing services prior to June 30, 2020 (which may or may not require a limitation of educational use).

Reasonable Support Amount. March 13, 2020, seems a more appropriate start date based on President Trump's declaration of a national emergency. Dates prior to that time would have included action based on speculation unless local emergencies had been declared. Many school districts did adopt new actions to encourage connectivity and purchase devices immediately upon closure, or during the spring in order to provide remote learning in the fall of 2020. Certainly, a significant number of expenses have already occurred responding to the needs.

The Commission may reasonably question of whether reimbursement of prior expenses is reasonable or if should consider only future purchases. Given the "emergency" nature of this fund, reimbursement of prior expenses does seem appropriate to help schools and libraries

continue their operations including these extra expenses. Reimbursing projects that have already occurred will be more difficult to provide accountability and determine eligibility of providers; we do respect the Commission's concern and can understand that documentation requirements could be high as a result. We will discuss these concerns further in the *Reimbursement Process* section of our comments.

Regarding competitive bidding, many entities had emergency declarations that precluded the following of local bidding requirements, even when they exist. Quite possibly, little documentation regarding a bid or quote process would exist at all, even if all laws and requirements were followed at the time of purchase. Invoices may be the only documentation some districts have available. State and regional master contracts are a refreshing option in this situation, as they provide excellent documentation of their competitive bidding process and should be considered more than adequate during an emergency declaration.

Determining whether costs and the processes used are appropriate will be a challenge for the fund administrator. Further, the availability of new services during 2020 may have been reduced compared to a normal procurement, which could justify increased expenditures. On the other hand, many vendors were offering free or reduced-cost services to schools due to the new competition for online services during the same time period.

The Commission should consider reasonable per-service and per-device caps, along with a programmatic cap for devices. Understanding that most of the services in question will be for locations that would also be eligible for the Emergency Broadband Benefit Program, their reasonable rate evaluations are also reasonable for services procured for the same locations by a third party (the school or library). Service cost maximums make more sense than acceptable ranges, and applications for reimbursements higher than the maximum could still be eligible for the Commission's determined maximum. For locations with zero to one broadband options, with appropriate documentation, higher costs could be justified and fully reimbursed, or simply reimbursed at the maximum determined by the Commission.

Earlier, we advocated that self-provisioned wireless networks should be allowed. From the perspective of reasonable costs, the lesser of the reasonable rates per connection or the total cost of the project may be considered. For instance, if the reasonable support amount is determined to be \$600 per student (or family) connection per year, then that amount should also be applied to self-provisioned networks when the number of (simultaneous?) connections can be documented. If the connected users cannot be sufficiently documented, the Commission should consider whether other standards apply toward reasonable cost.

Device costs should also have a maximum. While a Chromebook should not be presumed to be standard, neither should the Commission be expected to reimburse the full purchase cost of a \$1,200 laptop. The vast range of possibilities will make the amount feel arbitrary no matter its value. As a comparison example, we submit that the Nebraska Governor's Emergency Education Relief fund determined a \$400 maximum per device for a similar program. This maximum was created based on a combination of a funding cap and survey to determine the quantity of devices needed. While a survey is unrealistic, setting a maximum per device, subject to reduction per

device based on a cap, would prevent the device requests from utilizing funding that should go to broadband.

Furthermore, the Commission should consider that device funding only apply to schools who can document that they do (did) not have adequate devices of an appropriate age (e.g., less than 5 years old) for students and staff to check out and take home. Without such a requirement, the Commission may anticipate device reimbursement requests totaling around 20% of the students and staff in all schools and libraries across the country. At \$400 each, that total will approach \$5 billion annually. The purpose of the fund is not to reimburse programs who already have sustainable funding, but to close the homework gap. Only applicants who needed devices to provide initial connectivity for staff and students should be eligible in this program, or broadband needs will have no funding due to an overrun of device requests.

Application Process. The proposed initial Emergency Connectivity Fund application window is the most reasonable option. This window is adequate for reimbursements and provides opportunities for quick funding on future purchases. In the event that future filing windows are needed for the fund, even though the nature of the need is an emergency, we will be in the third year of the situation and more planning can occur regarding the needs. We encourage the Commission to return to normal competitive bidding, though a second quarter window is helpful to balance the workload away from to the regular E-Rate filing window. Documentation of a needs assessment is also a reasonable expectation, both for reimbursements and future purchases. We provide a link to Nebraska's efforts at consistent needs assessment documentation as an example: <https://www.launchne.com/leadership-and-planning/technology/infrastructure/>

USAC and the FCC can reasonably utilize the existing E-Rate processes and EPC system to process requests. At the risk of getting too specific, an "ECF" or "Emergency Connectivity Fund" application type could be placed in the interface in addition to the "Category 1" and "Category 2" types that already exist. Within the ECF application, somewhat generic menu or application types should be adopted based on the Device and Advanced Telecommunications Services reimbursement categories set forth by the fund. All other aspects of the application appear applicable to this funding as well, though the Program Integrity Assurance may be a difficult yet important process, similar to the first year of self-provisioned network applications.

For devices, a mechanism to reconcile student and staff counts against the device inventory as of the start date (e.g., January 27, 2020) will be a key component in determining applicant eligibility. Verifying the accuracy of the inventory will not be as simple as the student population verifications that are currently accomplished through state E-Rate coordinators, though some states may require inventory counts in their technology plan reporting requirements.

Prioritization of Funding. A cap on either device reimbursements, the dollar amount per device, and presenting a documented need for devices rather than replacement of devices in a rotation, appears to be a high priority. Without such caps, the fund will be inadequate to accomplish anything else, based on our analysis in the *Reasonable Support Amount* section. We suggest that a maximum of no more than 50% of the total fund be made available for device reimbursement.

Future services do not yet have the funding committed in other ways, so it does seem reasonable to prioritize them over prior purchases, or at least to process such applications more quickly after the close of the application window. In the event that a cap is reached, the approach of funding by discount level seems most reasonable. If it is possible to reimburse at amounts other than 100% (only if the funding cap is reached), using the Category 2 discount percentages would allow more entities to receive reimbursements over funding all reimbursements at the 100% level and only working down the discount rates. We recognize that the verbiage of the American Rescue Plan will dictate some portion of these decisions.

Reimbursement Process. In our opinion, the opportunity for timely reimbursement is extremely hampered by the risk of fraud and abuse. We agree that applicant invoicing should be a requirement for this program. For any reimbursements of prior expenses, entities may not have used a provider with an existing SPIN. Adequate instructions and documentation should be provided to applicants to allow for pending SPINs and communication with such providers.

Further, because of the CARES and CRRSA funds, and perhaps other state reimbursement funds and gift issues, the Commission should require sufficient documentation at the time of reimbursement to prevent “double-dipping” as much as possible. CARES and CRRSA already require accounting controls at the state education department level, so perhaps reimbursements should require a state-level verification, at least for purchases made through June 30, 2021. Unfortunately, such a requirement could delay any payments until the state end-of-year accounting process is completed at some point into the following school year.

The controls implemented in the process will dictate the invoicing deadlines, and perhaps their availability dates. If those control documents can be submitted as part of the invoicing process (as opposed to a review process, which would be more cumbersome), we propose a new invoicing interface. Perhaps developing such an interface will lead to better integration with EPC for the ongoing E-Rate program as well.

Treatment of Eligible Equipment during and after the COVID-19 Emergency Period. We have no comments on this item and respect reasonable attempts to prevent both waste of funding and lack of use of devices after schools reopen.

The Children’s Internet Protection Act (CIPA). We believe that CIPA should be followed for future broadband purchases, and for all device purchases. Because of the emergency nature of the response, we respect the argument for a CIPA waiver on purchase of market broadband services from January 27, 2019 through June 30, 2021 as long as student devices individually had a technology protection measure installed.

Other Federal and State Funding for Remote Learning. Most of the other funding options for devices have oversight at the state level, though state accountability may come through different departments even then. Broadband funding, due also to the Emergency Broadband Benefit Program and CAF II planned implementations, have even more complications. While certifications are essential, we believe that additional checks and balances will be required compared to the traditional application process.

Given our advocacy for caps, and the possibility of partial reimbursement, we seek clarification from the Commission as to whether a portion of each device or broadband connection could be paid from alternate sources than a local school budget. For instance, could CARES funds be used to cover 50% of the device cost and this fund be used to cover the other half?

Other Protections Against Waste, Fraud, and Abuse. We have addressed many of our concerns about these issues in prior sections. Regarding gift rules, many local providers did gift broadband access to student homes in our State upon request from the school. Most were specifically from March, 2020, through July, 2020, though some offers extended into the next school year. Schools acted in this manner specifically due to the suspension of gift rules that happened at that time, and to help meet immediate needs of student learning, then some families and schools began paying for the access after the free period ended.

The fund administrator should not only be authorized to conduct audits, but we suggest a higher frequency of audits compared to the regular program due to the volume of overlapping federal funds involved in these processes.

Enforcement. As the Commission appears to be more concerned than with other programs regarding possible violations, a suspension and debarment process related to other Universal Service Fund programs is completely appropriate. A violation is not discouraged from a properly motivated applicant unless other, more strenuous consequences could result from that violation. The Commission could also consider similar suspensions and debarments of providers if a pattern of provider abuse also surfaces or if a provider is obviously a component of the violation.

Costs and Benefits. We believe that the costs and benefits within our recommendations are among the most efficient and effective methods to be considered, especially regarding software development. The PIA and invoice verification processes will be more labor intensive than the E-Rate program, and any timely software development that can occur to better automate the collection of related documents will be especially useful to the process and will result in overall savings.

We recognize that there may be delays in reimbursements of expenses incurred prior to June 30, 2021 and for that reason earlier suggested that forward-looking applications should be processed first, though we offer no guidance on how to balance the application types in the case of complete depletion of funds.

Paperwork Reduction Act Analysis. Utilizing a familiar process, such as the normal E-Rate application process, will help reduce the burden on applicants compared to learning a new paperwork process. By requiring applicants to handle the vast majority of paperwork including Form 472 invoicing, small business service providers will be minimally affected, only required in some instances to register for SPINs. While E-Rate consulting organizations may qualify as small businesses, their income is directly related to this process and therefore need not be considered as a component of this question.

Respectfully,
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