

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

In the Matter of)	
)	
Establishing Emergency Connectivity Fund)	WC Docket No. 21-93
to Close the Homework Gap)	
)	

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA supports the Commission’s plan to promote remote learning and close the homework gap through the new Emergency Connectivity Fund (ECF) created by Congress as part of the American Rescue Plan of 2021 (ARP).¹ NCTA’s member companies have taken many steps in recent years to ensure that their customers are able to access broadband services, including working with schools to identify and connect unserved student and teacher households. Providing additional resources to these ongoing efforts through the ECF program will ensure that everyone will be able to engage in remote learning necessitated by the pandemic.

INTRODUCTION

In creating the ECF, Congress for the first time explicitly directed the Commission to support the provision of broadband to students and teachers at “locations other than the schools.”² The explicit direction to create a program that focuses on supporting locations other than schools, and a substantial appropriation to implement this new program, will enable the Commission to address pandemic-related issues regarding remote learning as well as more longstanding concerns about the homework gap.

¹ American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (ARP); *see also Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic*, WC Docket No. 21-93, Public Notice, DA 21-317 (WCB, Mar. 16, 2021) (*ECF Notice*).

² ARP, § 7402(a).

NCTA’s members have been focused on this important goal for some time, as documented in our recent comments in the homework gap E-rate proceeding.³ Our member companies have implemented a broad range of initiatives designed to make broadband available and affordable, including by offering their own privately funded programs providing low-cost broadband service to eligible low-income customers, and by working with schools to identify and serve students that do not have broadband access.⁴ Based on this track record of working with schools to provide home broadband to students in need, we look forward to working with the Commission on the implementation of the ECF program.

I. NCTA SUPPORTS PROPOSALS TO FOCUS THE EMERGENCY CONNECTIVITY FUND ON REMOTE LEARNING AND CLOSING THE HOMEWORK GAP

The ARP explicitly calls for ECF support to be used by students and staff at “locations other than the school.”⁵ Many of the proposals identified in the *ECF Notice* recognize the significance of this grant of authority and seek to maximize the benefits of this new funding stream in addressing the challenges of remote learning and closing the homework gap. NCTA supports the proposals in the *ECF Notice* because they are appropriately targeted at achieving this important goal.

³ Comments of NCTA, WC Docket No. 21-31 (filed Feb. 16, 2021) (NCTA Homework Gap Comments); *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-rate Funds to Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31, Public Notice, DA 21-98 (WCB, Feb. 1, 2021) (*Homework Gap Notice*). The *ECF Notice* recognizes that the issues in the two proceedings overlap, but states that they are separate proceedings. *ECF Notice* at 2 n.4. Therefore we incorporate by reference our comments in response to the *Homework Gap Notice* in the current proceeding.

⁴ NCTA Homework Gap Comments at 1-8.

⁵ ARP, § 7402(a).

A. The Commission Should Target Support to Services and Equipment that Enable and Support Remote Learning Through a Robust Broadband Connection

NCTA supports the proposals in the *ECF Notice*, particularly those that would emphasize and prioritize the importance of schools using funding to ensure that students have access to a robust broadband connection in the home. For example, NCTA agrees that “the construction of new networks is not supported by the statutory text” of the ARP and therefore the ECF should “exclud[e] from funding dark fiber and the construction of new networks, including the construction of self-provisioned networks.”⁶ As explained in NCTA’s recent homework gap comments, “[d]eploying new facilities will cost more and take longer than utilizing existing services to connect households that require broadband and should therefore generally not be funded with limited E-rate support,” particularly “where existing broadband service can be utilized, or where government funding has been committed to build broadband networks.”⁷ That same analysis applies with respect to the ECF program.

Similarly, ECF support should be prioritized to connect households that currently do not subscribe to broadband service. ECF is an emergency program that aims to address the critical issue of students who lack access to reliable broadband service and have therefore been disconnected from remote learning. ECF support should target those households and aim to close the homework gap by expanding broadband access to as many homes that currently lack service as possible.

The *ECF Notice* also invites comment on whether there are “other approaches to funding broadband access to multiple students that the Commission should incorporate into its [ECF]

⁶ *ECF Notice* at 7.

⁷ NCTA Homework Gap Comments at 9.

rules,” such as bulk purchase programs.⁸ NCTA strongly supports the use of bulk purchase programs, which provide an effective and efficient way to provide connectivity to large numbers of students and are widely used by schools and their service provider partners today. The Commission should specifically allow for such arrangements in its rules.⁹

In addition, in light of the fact that many schools may be moving to a more hybrid approach, where teachers and some students may return to the classroom while others remain remote, NCTA encourages the Commission to allow schools to use ECF support to bolster services that will be used on school premises.¹⁰ The Commission should make clear that ECF support for these purposes is limited to funding on-campus services needed for hybrid learning environments during the pandemic.

NCTA also supports the proposal not to include mobile phones as eligible equipment.¹¹ That proposal is supported by the text of the ARP¹² and is consistent with the approach recently taken by the Commission with the Emergency Broadband Benefit (EBB) program.¹³ The approach proposed in the *ECF Notice* recognizes that most people already have access to mobile phones and that mobile access does not necessarily provide students with the type of robust broadband capability they need to fully participate in remote learning activities.

⁸ *ECF Notice* at 9.

⁹ The ECF should also provide support for schools to obtain leased connected devices for a recurring monthly charge, rather than buying that equipment outright and supporting it. *See* NCTA Homework Gap Comments at 7 (describing Managed Device as a Service (MDaaS), which provides students and staff a comprehensive, safe remote learning experience).

¹⁰ Specifically, the Commission could permit schools to use ECF support for internet access, Wi-Fi, Wide Area Networking services, managed services (including managed security services such as Distributed Denial of Service protection, and firewall and content filtering).

¹¹ *ECF Notice* at 6.

¹² ARP § 7402(d)(3) and (6).

¹³ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, ¶ 80 (Feb. 26, 2021) (*EBB Order*).

Finally, the Commission should ensure that the ECF covers all reasonable costs of delivering service, including installation costs, taxes, and fees.¹⁴ Congress specified in the ARP that the ECF was intended to provide 100 percent reimbursement of eligible costs, thereby relieving schools of the cost of connecting students in need.¹⁵ A requirement that schools pay for installation costs, taxes, and other fees associated with delivering service would undermine this congressional objective.

B. The Commission Quickly Should Establish a New Filing Window for the ECF with Appropriate Guardrails

NCTA agrees with the proposal in the *ECF Notice* to implement the ECF program through a new 30-day filing window.¹⁶ The Commission should use a streamlined review process, utilizing existing E-rate forms and procedures where feasible to facilitate rapid implementation of the ECF program. Many schools and broadband providers already participate in the E-rate program and using the same forms and procedures will simplify participation in the ECF. NCTA also agrees with the proposal to have applicants, as opposed to service providers, submit invoices for reimbursement from the ECF.¹⁷ To the extent the Commission requires an attestation that ECF support has been properly used and distributed as permitted as part of the reimbursement process, applicants are better positioned to certify and submit expenses for reimbursements since they are determining the process for utilizing the funds, rather than asking service providers to certify on the applicant's behalf.

The new filing window should include appropriate guardrails to protect ECF support against duplication and waste, fraud, and abuse. For example, ECF support should cover only

¹⁴ *Id.* at 7.

¹⁵ ARP, § 7402(b).

¹⁶ *ECF Notice* at 12-13.

¹⁷ *Id.* at 13-14.

one provider per household. This follows the EBB and will ensure that a single household is not drawing from limited ECF support through multiple streams.

NCTA also supports the proposal to limit the program to equipment and services that are not already funded by other federal government sources, such as the EBB program or the CARES Act.¹⁸ As explained in the *ECF Notice*, limiting ECF support to services and equipment that have not been funded by federal government support ensures that there is no duplicative funding and stretches the limited ECF budget to reach more students. The Commission should, however, clarify that its proposal to preclude ECF support for services or equipment provided as gifts or through “other external sources” only applies to the extent that the school itself did not pay for the service or equipment. To the extent the school does pay for eligible services or equipment, it should be reimbursed through the ECF, even if the payment was made possible by a financial gift or donation from an external source. Any other approach would add unwarranted complexity to the reimbursement process.

II. ECF SUPPORT SHOULD BE PRIORITIZED FOR PROSPECTIVE PURCHASES

The *ECF Notice* seeks comment on the period during which schools and libraries can seek reimbursement for purchases of eligible equipment and services.¹⁹ NCTA urges the Commission to focus on prospective purchase to maximize the impact of the ECF. Although purchases made since January 2020 occurred during the COVID-19 emergency period, those purchases were made with other sources of funding, including other federal programs, and not in anticipation of reimbursement through the ECF. Further, if the Commission were to reimburse for retrospective purchases dating back to January 2020, it would be difficult for the Commission to ensure that ECF support was not provided for purchases that were funded under another

¹⁸ *Id.* at 15.

¹⁹ *Id.* at 10.

federal program, such as the CARES Act. Thus, ECF support should be prioritized to fund prospective funding requests.

III. PROMOTING REMOTE LEARNING THROUGH THE EMERGENCY CONNECTIVITY FUND WILL REQUIRE FLEXIBLE APPLICATION OF EXISTING E-RATE REQUIREMENTS

The existing E-rate rules generally are premised on the assumption that supported services and equipment will be used within school premises and will therefore require some modifications or flexibility in the way in which they are applied to off-campus use.

A. The Commission Should Take a Flexible Approach to Defining “Educational Purposes” in the Context of Remote Learning

Under the existing E-rate program, “the Commission requires schools and libraries [] to use E-Rate supported services ‘primarily for educational purposes’ and has established a presumption that activities that occur on a school campus or in a library building serve an educational purpose, and therefore, are eligible for E-Rate funding.”²⁰ The Commission similarly should adopt a presumption that broadband services and equipment used in a household where one or more students or teachers are engaged in remote learning during the pandemic serve an educational purpose and are eligible for ECF support. As discussed in the record of the homework gap proceeding, the home is the classroom for purposes of remote learning during the pandemic, so service provided to a student or teacher engaged in remote learning at home is necessarily being used for educational purposes.²¹

The Commission should not require schools and libraries to restrict the use of ECF-supported services or equipment solely to students or school staff while they are engaged in remote learning but should allow flexible use of these services by the household, including

²⁰ *Id.* at 9.

²¹ *Homework Gap Notice*, DA 21-98 at 7 (citing SHLB Petition, WC Docket No. 13-184 at 22-24 (Jan. 26, 2021) and Colorado Petition, WC Docket No. 13-184 at 6 (Sept. 2, 2020)).

services that are purchased under a bulk billing arrangement. This approach will encourage the deployment of broadband to additional households that lack it, consistent with Congress's and the Commission's goals. Imposing overly stringent restrictions on the use of ECF services and equipment would make it less likely for schools, households, and providers to participate in the program. Moreover, such restrictions could lead to unwarranted monitoring by the school or the service provider of how the service is being used in the home, which is invasive for consumers, and inconsistent with other government programs that fund goods and services for eligible households.

The *ECF Notice* invites comment on whether the Commission should “prohibit the sale, resale, or transfer of purchased equipment for anything of value consistent with current E-Rate program rules during and after the emergency period.”²² NCTA believes that the educational purpose requirement should apply throughout the useful life of any equipment purchased with ECF support, and that resale or transfer of any such equipment should not be permitted during its useful life.

B. The E-Rate Competitive Bidding Rules Should Be Adapted to the ECF's Temporary Nature and Circumstances

The *ECF Notice* proposed to adopt a streamlined competitive bidding process for eligible schools and libraries to make future purchases of eligible equipment and service.²³ NCTA agrees that the Commission should adopt a streamlined process for competitive bidding. There should be separate competitive bidding processes for (i) eligible equipment; (ii) in-home broadband service; and (iii) E-rate equivalent services.

²² *ECF Notice* at 14 (citing relevant prohibitions in statute and rules).

²³ *Id.* at 11.

The Commission should structure the competitive bidding process to allow multiple providers to serve the same district, without requiring the district or a particular school to work exclusively with a single provider. To give eligible schools choice between the providers and services that best fit their needs, schools should consider a provider's quality of service, its ability to meet ECF requirements, and its ability to deliver a service that students can use to facilitate effective remote learning when choosing between providers of in-home broadband access under the ECF program.

C. The Commission Should Reduce the Proposed Document Retention Requirements

The *ECF Notice* includes a proposal to “require Emergency Connectivity Fund participants to retain records related to their participation in the Fund sufficient to demonstrate their compliance with the rules adopted by the Commission for at least 10 years from the last date of service or delivery of equipment.”²⁴ This 10-year document retention period is excessive in light of the limited nature of the program and the funding. Instead, the Commission should require ECF applicants to retain relevant documentation for six years, which is the same period required of participants in the Emergency Broadband Benefit program.²⁵ There the Commission found that the six-year requirement “is long enough to cover the statute of limitations under the False Claims Act laws for federal wire fraud, and ensures that documentation is available to confirm program compliance.”²⁶ The Commission therefore should adopt a document retention requirement no longer than six years for the ECF program.

²⁴ *Id.* at 15.

²⁵ *EBB Order*, FCC 21-29, ¶ 67.

²⁶ *Id.* (citations omitted).

D. The Commission Should Take a Flexible Approach to CIPA Compliance in the Context of Remote Learning

As explained in the *ECF Notice*, the Children’s Internet Protection Act (CIPA) requires schools and libraries to certify their compliance with specific Internet safety requirements, including the operation of a technology protection measure.²⁷ The CIPA requirements in section 254 of the Communications Act clearly apply to school and library computers that provide Internet access on school or library networks,²⁸ but it is unclear whether CIPA obligations apply to: 1) devices that are not owned by a school or library but are used on a school or library run network; and 2) devices that are owned by a school or library but that are used on a network not run by a school or library. Indeed, the Commission previously sought comment on whether CIPA covers such situations,²⁹ but did not reach a decision on this question.

For purposes of the ECF program supporting remote learning during the pandemic, the Commission should confirm that the CIPA goals can be met in a variety of ways using a range of methods, standing alone or in combination. Some examples of appropriate safeguarding methods could include, among others, certifying that the broadband providers with which the E-rate applicant partners to provide off-campus connectivity offer content filtering technology with their ECF-subsidized services; providing content filtering tools on school provided equipment; providing VPN or similar access to the school network that enables access to content filtering capability; or providing a parent or guardian in the household a list of available free online content filtering tools or information on content filtering tools provided on their home device.

²⁷ *Id.* at 14.

²⁸ *See* 47 USC § 254(h)(5)-(6).

²⁹ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11378-79, ¶¶ 273-74 (2013) (“We also seek comment on whether the phrases ‘having computers with Internet access’ and ‘with respect to any of its computers with Internet access’ and other similar language in the statute means that schools and libraries are required to comply with CIPA only with regard to those computers that they own or control.”).

CONCLUSION

NCTA supports the Commission's efforts to efficiently and effectively adopt and administer the Emergency Connectivity Fund to ensure that students and teachers are able to safely engage in online learning away from school premises during the pandemic.

Respectfully submitted,

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