

The City of San José (“City” or “San José”) respectfully submits these reply comments in response to the Public Notice of the Federal Communications Commission (“Commission”) on Emergency Connectivity Fund. The San José Public Library (Library) is a department of the City of San José. For the purpose of these comments, the City and the Library are interchangeable.

Since the beginning of the public health emergency the City of San José has worked to employ several connectivity solutions for residents, completely free of charge. The City has opened nineteen new public wi-fi networks, expedited planning and development for five additional networks, deployed 12,800 hotspots to 32 local education agencies serving San José, and provided 3,000 hotspots for check-out through our local library system. At every level, we are focused on equitable access to connectivity, and have invested General Fund dollars to ensure that cost of service is not a barrier to our residents and families in need.

San José strongly supports the intent of this program. We urge the Commission to take steps to optimize this short-term, emergency benefit to schools and libraries that are doing significant work to connect the highest number of in need households with internet service. This includes acknowledging that contracting decisions were made on an emergency basis and may not meet standard eRate reimbursement requirements, simplifying reporting, and maintaining the 100% reimbursement of costs for devices procured under emergency circumstances.

At the start of the pandemic, the City of San José procured 12,800 hotspots through the San José Public Library on behalf of San José students attending public schools in San José. These devices were provided to 32 local education agencies free of charge. We acknowledge that for all intents and purposes, students are members of the public and would be free to receive a device through a public library. If, in the writing of the regulations or associated program documents, there is a distinction between students and members of the public for the purposes of reporting distribution or identifying library patron status, please note that some libraries may have taken the same action as we did. Procuring devices on behalf of our school partners was an important solution to the constrained budgets of our local school districts and leveraged the centralized purchasing power of our large organization, thereby lowering the cost for service and cost to the taxpayers. If there is any present or future question about the purchase of eligible equipment or advanced telecommunications and information services (or both) by a library on behalf of a school, students and staff, the City of San José feels strongly that these devices should be eligible for reimbursement.

I. Administration of the Emergency Connectivity Fund.

In administering the emergency distribution of devices, the Library made the community aware of the limited availability of devices for people that needed connectivity during the pandemic. The Library, in seeking to reduce the burdens and barriers to people managing through an emergency, did not require an assessment of need, or limit access to individuals in low/lower-income brackets. The reality of many households in San José is that if a household had connectivity, connectivity may have not been sufficient to fully support the

ongoing activities of a full household of individuals. With the high cost of living and the changing nature of public health orders impacting the wages of residents, an onerous assessment or proof of need would have undermined the trust in local government and the efficacy of the program. Further, the collection of documents as proof of need would have created a difficult and potentially dangerous extended interaction between staff and the customer and would have created privacy vulnerabilities for the customers.

The Library has utilized a voluntary customer post-survey which has produced meaningful data of the general demographics and uses of the hotspot device. If it is necessary to collect data on use and need, USAC should identify metrics and questions that should be included on voluntary surveys that can be reported in a deidentified and aggregated manner.

## II. Eligible Equipment and Services.

The City of San José has incurred significant expenses to procure and manage hotspot devices during this emergency period. The Library considers the following equipment necessary to operate the emergency hotspot program:

- a. Hotspot device
- b. Power cable/charging cord
- c. Wall outlet adapter
- d. Replacement power cords and wall outlet adapter
- e. Replacement hotspot devices

The Library considers the following services necessary to operate the emergency hotspot program:

- a. Data plan/cellular service
- b. Device management system
- c. Filtering service

This list is provided only to reflect the equipment and services necessary to operate our singular program, and is not meant to be reflective of the greater community of eligible applicants. The City strongly believes that eligible organizations should have the freedom to identify the services and equipment that are most effective to connecting students and library patrons without internet access at home.

Regarding connected devices, the City understands that mobile phones do not seem to meet the minimum qualifications as set by the Commission, but these devices should be considered eligible as a hotspot device. During the onset of stay-at-home orders the supply chain for hotspot devices and other connected devices was eviscerated, and dozens of San José school districts were forced to purchase iPhone 7 and other similar devices to use as hotspots in lieu of a more conventional option.

## III. Advanced Telecommunications and Information Services

At the outset of the pandemic, the City expedited the planning, design, and construction of previously unbudgeted community wi-fi networks for the purpose of supporting increased access to the internet through the pandemic response. Additionally, the City expanded wi-fi

access at seventeen (17) libraries and community centers by building outdoor networks on City property that could be accessed in parking lots or outside of buildings with enough bandwidth to support distance learning. Further, these enhancements were necessary when the City activated emergency child care and learning pods for students without adequate daytime supervision. The City is concerned that the limit on Category 2 reimbursements may have unintended consequences as school districts work to expand home access through their existing fiber backhaul.

While the City understands that the Emergency Connectivity Fund is limited by statute, the City implores the Commission to continue to seek solutions to these infrastructure improvements that were developed in direct response to the emergency measures necessary to respond to the pandemic and will continue to be necessary as education, employment, and service delivery remains virtual into the future.

Whenever possible, eligible expenditures should include all costs related to emergency measures, including installation costs, taxes, and fees.

#### IV. Service Locations.

The Commission should not create location restrictions for the Emergency Connectivity Fund. The Commission should understand that, depending on the level of service or data plan that a Library is providing on the hotspot being distributed, it is completely reasonable for a customer to request and be granted two hotspot devices. Data plans that meet the minimum bandwidth or speed limits are universally less expensive, making them more accessible for libraries to distribute. If a customer needs connectivity for him/herself to conduct telework, and their child needs connectivity for distance learning, a single device will not meet the connectivity needs of their household. It is appropriate for that customer to receive two devices. In our experience circulating devices, customers are appreciative of the additional support and are not seeking multiple devices unless they are absolutely necessary.

Replacement hardware is a necessity to maintain a functional hotspot program. In the six months the Library has been circulating devices, our hardware replacement rate is under 5% and mostly focused on power adapters and cords.

#### V. Eligible Uses.

The City of San Jose feels strongly, that education should be defined and applied broadly, and include lifelong learning, professional development, and access to information. While the City appreciates the need to create parameters for this emergency fund, the nature of this emergency was such that internet and technology access immediately became a non-negotiable utility for all purposes, including receiving critical information updates on health and safety. The Commission should not require libraries to restrict access to connectivity solutions to those with education credentials. Doing so would forsake the remaining population that may be seeking to connect to the thousands of skill development platforms for the purpose of finding a new job, continue their employment, or simply stay safe from the pandemic by accessing information.

#### VI. Reasonable Support Amount.

The City of San José strongly supports the proposed 100% reimbursement rate for eligible equipment and services, and submits that purchases after January 27, 2020 should be considered eligible. The City suggests that as the reasonableness of requests is determined, that the Commission do significant due diligence to understand how procurement decisions were made and for what purpose before determining that a request or portion of a request be considered unreasonable.

The City of San José procured hotspot services by soliciting proposals and ultimately leveraging an existing state master contract. This approach saved taxpayers approximately 50% off of retail costs. This approach and other similar approaches should be considered reasonable.

#### VII. Application Process.

The City appreciates the need to create a timely reimbursement submission process. To ensure that 30-days is sufficient for the initial filing, the City is hopeful that sufficient technical assistance will be available in advance of the window closure.

The undetermined length of the pandemic emergency and the funding available through the Emergency Connectivity Fund, a prospective assessment of need will be increasingly difficult to conduct accurately. If this approach is adopted, the City requests that the Commission provide for a variance of up to 20% over the previously estimated need. This approach will provide the fund with some stability, while also ensuring enough flexibility for schools and libraries to adapt to changing conditions and need.

Finally, the certification that organizations will make their best effort to prioritize those in highest need is sufficient to manage the program. At this time, hard to reach and vulnerable populations require a variety of distribution methods and approaches, which may or may not be fully considered at the time a policy or distribution plan is required.

#### VIII. The Children's Internet Protection Act (CIPA).

The City of San José procured devices in advance of this funding program and without respect or consideration that eRate requirements would be extended to these devices. While the City of San José did ensure that all devices delivered to schools and students were CIPA compliant, we did not extend that filtering service to the remainder of the devices circulating through the Library. Given the emergency nature of this purchase, we feel strongly that CIPA requirements should not be a disqualification of reimbursement.

#### IX. Reporting requirements/documentation:

The City of San José is supportive of the requirement that service providers continuously provide up to date and comprehensive management and reporting capabilities for the devices under contract.

We adamantly oppose the requirement that a device must be in use during every service period to receive a reimbursement. Practically, this type of reporting is exceptionally onerous. In our experience, these usage reports are approximations and can round down so that minimal use is tracked as zero use. Further, requiring monthly reporting of use and detailed invoices for large device inventories such as ours at 15,800 devices will cause an undue burden on our staff as well as the USAC staff, undermining the desire to have an

efficient and effective administration of the program. Additionally, in library operations there are natural periods of time after a device is returned, where it spends time in transit, receives repairs, or waits to be checked out by the next customer. These periods of zero-use are natural, and while the device is still being used to combat a pandemic, that natural period of zero-use should not impact the reimbursement eligibility of the Library.

Rather than set strict parameters for zero-use reimbursement the FCC should require a library to submit a policy or plan document for how it will encourage regular use, including how it will monitor and manage the device collection.

The City of San José and the San José Public Library appreciates and supports these efforts to expand access to connectivity through the Emergency Connectivity Fund. Thank you for the opportunity to provide comments and to share our experience delivering services during the pandemic.