

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Emergency Connectivity Fund) WC Docket No. 21- 93
Wireline Competition Bureau Seeks)
Comment on Emergency Connectivity)
Fund For Educational Connections and)
Devices To Address The Homework)
Gap During The Pandemic)

COMMENTS OF AT&T SERVICES, INC.

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COMMENTS OF AT&T

AT&T Services, Inc., on behalf of itself and its affiliates (collectively, “AT&T”), submits these comments in response to the Public Notice¹ seeking comment on the implementation of the Emergency Connectivity Fund established as part of the American Rescue Plan Act of 2021 (the American Rescue Plan or Act).²

INTRODUCTION AND SUMMARY

The historic Congressional action resulting in the recently enacted American Rescue Plan Act of 2021, affords the Commission a remarkable opportunity to impact our children’s future by providing desperately needed funds for broadband access for remote learning. Congress’s establishment of a \$7.171 billion Emergency Connectivity Fund will help bridge the “Homework Gap” for students who have long been unable to keep up with remote learning due to lack of broadband access at home.

¹ *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 (rel. March 16, 2021) (“Public Notice”).

² American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (“Act”).

The Act requires the Commission to reimburse 100% of the costs associated with the purchase of eligible equipment or advanced telecommunications services (or both) as long as the Commission determines the reimbursement for such costs is reasonable. While the reimbursement of 100% of the costs is a tremendous benefit to schools and libraries (and should be lauded), it differs fundamentally from the E-Rate regime where applicants get reimbursed only for a portion of their costs. As the Commission has acknowledged since the inception of the E-Rate program, the requirement that applicants pay their non-discounted share helps to prevent waste, fraud, and abuse by “encouraging them to avoid unnecessary and wasteful expenditures because they will be unlikely to commit their own funds for purchases that they cannot use effectively.”³ Thus, while E-Rate applicants have an inherent self interest in keeping costs low, applicants for the Emergency Connectivity Fund may not have the same motivation to do so.

With these challenges in mind, AT&T offers its comments below, which are designed to meet two of the most important goals of this new program: (i) enabling connectivity of remotely located students and teachers quickly and effectively for educational purposes; and (ii) safeguarding against waste, fraud and abuse of taxpayers’ dollars.

³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 493 (1997).

I. THE BUREAU SHOULD ADOPT STREAMLINED PROCESSES TO DISBURSE THE ECF FUNDS.

Congress has recognized the urgent need to fund remote learning by establishing a \$7.171 billion Emergency Connectivity Fund (“ECF”) and providing this Commission short deadlines for implementing the same. Time is of the essence and the Bureau should do everything in its power to create an efficient and effective process to ensure students and teachers receive the benefit of the program as quickly as possible. The Bureau should therefore streamline and clarify rules as they relate to (1) eligible equipment and services; (2) the application process; and (3) distribution methods and audits.

A. The Bureau Should Limit the ECF Program to Equipment and Services Needed to Facilitate Remote Learning.

The pandemic has created an unprecedented crisis in learning and has affected nearly 17 million students throughout the U.S., disproportionately impacting children of color and those from low income families.⁴ There is an urgent need to assist students immediately. Given the nature and the limited funding of the emergency program, the Bureau should limit the services and equipment eligible for support to those that are consistent with meeting the current, pandemic related emergency. Accordingly, the emergency program should provide support only for (1) wired and wireless *services*; (2) end user equipment, such as hotspots, routers, laptops, and tablets, that provide end to end remote learning to individual students outside of the school and library

⁴ See report titled, *K:12 Connections: How Schools and Wireless Providers Are Partnering to Get Students Online During Covid 19*, December 2020, by Chiefs for Change, a bipartisan network of state and local education leaders (prepared with support from CTIA).

premises; and (3) ancillary services to secure and manage such connections to facilitate compliance with the Children's Internet Protection Act.⁵

Similarly, the Bureau should not fund dark fiber or other facilities or devices that can be used to construct or provision new networks in this short term emergency program; construction related initiatives are inherently longer term projects that are not appropriate for the emergency goals of the program. The more appropriate vehicle for funding of construction related initiatives is the traditional E-Rate program, that funds connectivity to the campus.

B. The Bureau Should Establish A Separate and Streamlined Application Window to Disburse ECF Funds.

To provide speedy and effective relief to students and teachers under the emergency program, the Bureau should create a separate – and more streamlined - application process for this program. The Bureau must be able to readily distinguish between requests for funding from the Universal Service E-Rate fund program and the ECF program. Applicants, service providers and USAC should be able to track and discern the applications associated with the traditional USF E-Rate funding and Emergency Connectivity funding and the applicable compliance rules for each program.

A separate ECF application process will also ensure that remote learning applications get requisite attention. The existing E-Rate application window is a very hectic time for applicants and service providers alike. Generally, many applicants need the entire E-Rate application window to negotiate and finalize agreements with their service providers and complete the FCC Form 471 Application. Similarly, service providers are also very busy finalizing agreements during this time. Accordingly, the Bureau should adopt a separate application window for ECF to ensure applicants

⁵ Children's Internet Protection Act (CIPA), 47 U.S.C. § 254(h)(5)-(6), (l).

and service providers alike have ample time to focus on remote learning requirements and agreements.

C. The Bureau Should Simplify the Distribution of ECF Funds.

The Bureau should make the distribution of ECF funds separate and distinct from the distribution of E-Rate funds and should simplify it greatly. After a streamlined review, USAC should be directed to send the approved funding directly to the beneficiary as a lump sum. The beneficiary would then use the funds to pay its contracted service provider. No additional invoicing or coordination with the provider should be required. The Bureau should also include installation costs, taxes, and fees as allowable costs under the program, thus saving beneficiaries the time and effort of determining eligible vs. ineligible costs and streamlining the invoicing process. Further, while the Bureau should require applicants to retain documentation to validate their use of funds if audited; the Bureau should conduct no audits until after the pandemic ends. These simple steps will dramatically speed up getting funds in the hands of schools and libraries that need them urgently.

II. THE BUREAU SHOULD ENSURE THE ECF DISBURSEMENT PROCESS PROMOTES TRANSPARENCY AND FAIR AND OPEN BIDDING TO SAFEGUARD AGAINST WASTE, FRAUD AND ABUSE.

As discussed above, AT&T strongly supports an efficient and effective disbursement of ECF funds to address the “Homework Gap” and bring the benefits of remote learning solutions to students and teachers as soon and as efficiently as possible. At the same time, it is critical that any disbursement of taxpayer funds is protected by adherence to fair and transparent processes. Congress mandated that applicants may be reimbursed 100% of the cost associated with the purchase of eligible equipment or advanced telecommunications services (or both) as long as the Commission determines the reimbursement for such costs is reasonable. This is unlike the E-Rate

program where applicants are required to fund a portion of the cost of the eligible services, which provides applicants an incentive to make cost effective purchasing decisions. Applicants for ECF funding will have “no skin in the game” when making procurement decisions for services that will ultimately be paid for by the U.S. taxpayer. Accordingly, the Bureau must adopt sufficient safeguards to prevent waste, fraud and abuse.

First, the Bureau should require that applicants conduct a fair and open competitive bidding process for services and equipment eligible for ECF funding. As the Bureau notes in the Public Notice, the E-Rate competitive bidding rules are a crucial driver of cost-effective purchasing and protecting limited E-rate funds from waste, fraud, and abuse.⁶ As such, the Bureau should adopt competitive bidding rules that mirror the E-Rate requirements with minor modifications to ensure the integrity of the ECF program.

The process should include a requirement to file a simplified Form 470 on the USAC portal describing the applicants’ procurement goals at a high level, a transparent procurement process, an appropriate contracting period, and submission of less detailed funding requests. All E-Rate applicants and service providers are familiar and experienced with the Form 470 and 471 processes and it should be relatively easy for applicants to continue using the same forms for the ECF.

Similarly, the Bureau should also clarify that the E-Rate gift rule will apply to all E-Rate and ECF applicants. The Commission granted a temporary waiver from the gift rule “to provide relief to schools and libraries affected by Covid 19 and to enable service providers to continue

⁶ Public Notice at 10.

supporting remote learning efforts without concerns about an impact on E-Rate program support.”⁷ Importantly, the waiver permits schools to solicit and accept “Wi Fi hotspots, networking gear, or other things of value during the pandemic.”⁸ The waiver was intended largely to fill the same need that the remote learning program is now being designed to address. If the waiver continues to apply during the awarding of contracts eligible for Emergency Connectivity Funding, it could compromise fair and open procurement. Therefore, the Bureau should rescind the gift rule waiver moving forward.⁹

Finally, AT&T agrees with the Bureau’s proposal to limit reimbursements from the ECF program to those made for eligible equipment and services for which schools and libraries have not received funding from any other federal program (e.g., CARES Act, Emergency Broadband Benefit Program); state programs; other external sources of funding or gifts.¹⁰ This would ensure the integrity of the program and would stretch limited emergency resources to benefit additional schools and libraries.

⁷ *Rural Health Care Universal Service Support Mechanism, Schools and Libraries Universal Service Support Mechanism*, DA 14-79, Order, WC Docket No. 02-60, CC Docket No 02-6, released December 14, 2020.

⁸ *Id.*

⁹ Although it is helpful to harness some of the protections from the E-Rate Order for the protection of funds under the Emergency Connectivity Fund program, the Bureau should clarify that, for services sold to applicants prior to the Bureau’s orders in this proceeding, E-Rate rules like the Gift Rule, open bidding, document retention, etc. shall not apply. Those rules should only apply prospectively.

¹⁰ Public Notice at 15.

III. CONCLUSION

The Bureau has the opportunity with the Emergency Connectivity Fund program to make a meaningful difference in the lives of students and teachers. AT&T strongly supports the effective and efficient distribution of funds with safeguards against waste, fraud and abuse.

Respectfully submitted,

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