

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
)	
Emergency Connectivity Fund)	WC Docket No. 21-93
)	
)	

COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

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Executive Summary

USTelecom members have stepped up to provide solutions to schools and families in these challenging times and, from the onset of the pandemic, we have supported targeted government emergency relief for consumers, including by the Commission. USTelecom supports the goal of getting every student connected during the duration of the COVID-19 pandemic and suggests the following specific suggestions for how the Commission implement the Emergency Connectivity Fund, ensuring that this new source of funding can be accessed quickly and efficiently while also creating guardrails to ensure that scarce government resources are not duplicating other broadband deployment efforts:

- Equipment and services funded through the ECF should be used for an “educational purpose,” including remote learning for a limited time given that the COVID-19 pandemic has necessitated widespread remote learning; however, equipment such as wireless towers, radios, and equipment associated with extending Wi-Fi networks and fiber is not eligible under the law.
- There should be a blanket prohibition on duplicative support – both retroactively and prospectively – and applicants should be required to retain invoices and contracts and be subject to USAC audits as well as make certifications that eligible equipment and services have not already been supported by other federal funding.
- The Commission should open a separate funding window for the ECF and give priority to prospective funding year 2021 eligible expenses, allowing for retroactive reimbursement only if there is ECF support remaining.
- The Commission should streamline its competitive bidding and application and payment processing rules in order to disburse ECF funding in the most efficient way possible.

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COMMENTS OF USTELECOM—THE BROADBAND ASSOCIATION

I. INTRODUCTION

USTelecom—The Broadband Association¹ (USTelecom) respectfully submits these comments in response to the Federal Communications Commission’s (Commission) Public Notice seeking comment on its implementation the \$7.171 billion Emergency Connectivity Fund (ECF) established by Congress as part of the American Rescue Plan Act of 2021² (Public Notice).³ In creating this fund Congress is responding to the fact that the pandemic has turned what was once a homework gap into an education chasm. USTelecom continues to support an all of the above approach to ensure no students are left behind merely because they cannot access

¹ USTelecom is the premier trade association representing service providers and suppliers for the communications industry. USTelecom members provide a full array of services, including broadband, voice, data, and video over wireline and wireless networks. Its diverse membership ranges from international publicly traded corporations to local and regional companies and cooperatives, serving consumers and businesses in every corner of the country.

² American Rescue Plan Act of 2021, Pub. L. No. 117-2, Title VII, § 7402 (2021).

³ *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Connectivity Fund For Educational Connections and Devises To Address the Homework Gap During the Pandemic*, Public Notice, WC Docket No. 21-93, DA 21-317 (WCB Mar. 16, 2021).

or afford Internet connectivity at a time when such access is the only on ramp to educational opportunity. Solving this challenge requires a combination of industry leadership and government support. USTelecom members have stepped up to provide solutions to schools and families in these challenging times and, from the onset of the pandemic, we have supported targeted government emergency relief for consumers, including the Commission. In addition to commitments made by both national and regional individual USTelecom member companies to support remote learning, USTelecom’s members are also working to connect students through the K-12 Bridge to Broadband initiative, which as of December 2020, has helped over 800 school districts in 41 states identify and connect students without home broadband connections.⁴

USTelecom has supported multiple proposals to solve the homework gap on an emergency basis, in particular the need for a Congressional appropriation like the ECF to fund potential solutions to the homework gap problem.⁵ In fact, last March USTelecom suggested to the Commission that it open a new funding window precisely to allow for E-Rate funds to be used for remote learning during the pandemic.⁶ Additionally, in our proposal to the new Administration and Congress for how to prioritize broadband in its first 100 days, we focused on addressing the needs of the millions of school-age children who have no broadband connection at home. Specifically, USTelecom called on the Administration to “launch and fast-track a major

⁴ <https://www.educationsuperhighway.org/bridge-to-broadband>.

⁵ See Comments of USTelecom – The Broadband Association, WC Docket No. 21-31 (Feb. 16, 2021) (“USTelecom Homework Gap Comments”).

⁶ Letter from Jonathan Spalter, President and CEO, USTelecom – The Broadband Association to Chairman Ajit Pai, et al. Federal Communications Commission, WC Docket Nos. 01-92, 02-60, 07-135, 09-197, 10-90, 11-42, 13-184, 14-58, 17-310, 18-89, 19-126, 19-195 at 4-5 (Mar. 27, 2020) (“USTelecom March 27 Letter”).

initiative that makes public resources available to ensure low-income students and all at-risk Americans have access to broadband at home.”⁷

As USTelecom has previously outlined in its advocacy on the Emergency Broadband Benefit program,⁸ in creating a program for emergency circumstances it is important to utilize as many existing resources as possible and keep the process simple, which can be done by maintaining the framework of the E-Rate program in distributing the new ECF funds. The E-Rate Program has been an overwhelming success since its inception, and, as a result of the important E-Rate modernization efforts of 2014,⁹ in getting libraries and school facilities connected to broadband. According to a 2019 report from the EducationSuperHighway, 99 percent of schools are now connected to fiber and nearly 50 million students have Wi-Fi access in their schools.¹⁰ This is amazing progress and the Commission, schools, libraries and participating providers are to be commended for that success. Post-pandemic, E-Rate support will continue to be needed for the critical purpose of keeping schools and students and libraries and patrons connected when activity returns to where these institutions are physically located. The Commission should identify and utilize existing mechanisms to ensure that the ECF funds are targeted to where they are most needed and get them out the door as quickly as possible to assist educators and students alike. Thus, in these comments, USTelecom suggests specific ways

⁷ Open Letter from Jonathan Spalter to President-Elect Biden and the 117th Congress, at 3, https://www.ustelecom.org/wp-content/uploads/2020/11/USTelecom_First-100-Days.pdf.

⁸ Letter from Jonathan Spalter, President & CEO, USTelecom—The Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 20-445 (filed Jan. 4, 2021).

⁹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870 (2014) (*First E-Rate Modernization Order*); *Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, 29 FCC Rcd 15538 (2014) (*Second E-Rate Modernization Order*).

¹⁰ See EducationSuperHighway 2019 State of the States Report at 4 - <https://3x4u3i1w2onf4vhj418itzm1-wpengine.netdna-ssl.com/wp-content/uploads/2019-State-of-the-States-Full-Report-EducationSuperHighway.pdf>.

the Commission can ensure that the necessary funding can be accessed quickly and efficiently while also creating guardrails to ensure that scarce government resources are not duplicating other broadband deployment efforts.

II. ECF FUNDS SHOULD SUPPORT SERVICES AND DEVICES USED FOR AN EDUCATIONAL PURPOSE

As noted in the Public Notice, the American Rescue Act language is silent on permitted uses of eligible equipment and services, but does specify that the Commission should promulgate rules based on the E-Rate program as set forth in Section 254(h)(1)(B), and therefore the Commission seeks comment on whether it should require that equipment and services purchased with funding from the Emergency Connectivity Fund be primarily for educational purposes.¹¹ Consistent with our prior advocacy, USTelecom agrees that it is appropriate to require that the equipment and services funded through the ECF be used for an “educational purpose.” USTelecom also supports the expansion of the definition of “educational purpose” for remote learning for a limited time given that the COVID-19 pandemic has necessitated widespread remote learning.¹² However, as explained below, while the off-campus services and equipment specified in the Act are eligible for ECF support, such as broadband internet access service and/or associated hot-spots, modems, and routers, other equipment is *not* eligible, including wireless towers, radios, and equipment associated with extending Wi-Fi networks. Adopting rules limiting what is eligible under this program in this way is required by the legislation and is consistent with the public interest and the Commission’s prior findings.

¹¹ Public Notice at 9.

¹² See USTelecom Homework Gap Comments at 4-5.

Eligible Equipment and Service

In order to meet the requirements of this legislation, the Commission notes that, “it must allow for (i) eligible equipment and/or (ii) ‘advanced telecommunications and information services’ as the term is used in section 254(h) of the Communications Act for use by students, school staff, and library patrons at locations that include locations other than schools or libraries.”¹³ Therefore, the Commission proposes to provide funding only for equipment and services that are needed to provide the connectivity required to enable and support remote learning for students, school staff, and library patrons and should include only the equipment and services needed to connect students where they live/study whether it is wireless or wireline service.¹⁴ USTelecom supports schools and libraries being able buy new service or supplement their existing service to connect students where they live and study, as well as buy eligible devices for student use. However, schools and libraries should not be permitted to self-provision services using ECF support and/or resell ECF-supported services. More specifically, eligible services should be restricted to the following: an eligible service connection and eligible equipment such as Wi-Fi hotspots, modems, and routers.

The Commission should also permit support to be used without cost allocation for ancillary management tools and services to protect security to make sure the service is only used for educational purposes. The inclusion of ancillary management tools and services would enable schools to comply with the Children’s Internet Protection Act (CIPA) and educational purpose requirements, and make sure that the schools’ networks are secure. Doing so would allow schools and libraries to pay for VPNs and other network management and security tools

¹³ Public Notice at 5.

¹⁴ *Id.*

which can block or control the use of the educational institution's services for non-educational purposes. For example, it would be contrary to the Commission's goals and bad public policy to allow a school or library to use E-Rate funds to share its service to a student's home only to have the entire family use the broadband service to watch non-educational programming or use bandwidth on online gaming services or other non-educational purposes. The Emergency Broadband Benefit Program is better suited for broadband connectivity for non-educational purposes.

On the other hand, any ECF funding used for remote learning should be limited to a use that is consistent with the current standard for the E-Rate program, "integral, immediate, and proximate to the education of students or the provision of library services to library patrons."¹⁵ The expansion of educational services to the remote environment necessitates the addition of these tools as eligible services. When the service is within the confines of the school or library by its nature there is little to no opportunity for it to be used for non-educational purposes; however, once it is beyond the educational institution's walls it is vulnerable to use for non-educational purposes. Therefore, the Commission should provide in its eligible services list tools that allow the school to limit the purposes for which their service is being used.

The Commission also specifically seeks comment on excluding from funding dark fiber and the construction of new networks, including the construction of self-provisioned networks.¹⁶ Excluding support for network construction such as dark fiber and self-provisioning is required by the Act. Not only does the legislation not include equipment required for self-provisioning

¹⁵ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 35 FCC Rcd 13793, 13804 (WCB 2020) (adopting the eligible services list for funding year 2021, which requires that off-campus use be cost-allocated from a funding request, among other things); 47 CFR § 54.504(e) (detailing the requirement to cost-allocate ineligible services from requests).

¹⁶ Public Notice at 7.

(such as fiber or transmission equipment) in its list of eligible equipment and services, but the sole purpose of this effort is to provide broadband connectivity to children and teachers for educational purposes as quickly as possible, which necessitates the Commission relying on existing services. Allowing support to be used for the construction of new infrastructure to serve students or teachers at their homes is contrary to the goal of getting service to those in need as soon as possible. The creation of new networks for this purpose is not an efficient use of resources and is not expedient. For example, trenching for new fiber deployments or construction of new towers is costly and a time consuming process that would not allow for immediate access to broadband services by students in need right now. Furthermore, such construction could prove to be duplicative of broadband deployment supported by the Connect America Fund and the Rural Digital Opportunity Fund or other government programs, contrary to the Commission's established policy of prohibiting duplicative universal service support.

It appears there is a risk that the entire ECF could be used up solely reimbursing schools for their purchases of mobile computing devices, such as Chromebooks, which would leave no money for the broadband services, modems, and routers that are at the heart of the statute.¹⁷ The Commission could address this risk in several ways. It could limit funding for computers to those that are used in households that did not have mobile computing devices, or it could limit funding to single connected device per student or staff member. Limiting the number of user devices that can be funded by the ECF to a single connected device, as opposed to permitting

¹⁷ It has been estimated that schools may have purchased in the neighborhood of 18 million mobile computing devices in 2020, reflecting an increase of approximately 30% over the prior year. David Saleh Rauf, "K-12 Demand for Mobile Devices 'Skyrocketing' Due to COVID-19 Remote Learning," *EdWeek Market Brief* (Jun.30, 2020) (<https://marketbrief.edweek.org/marketplace-k-12/k-12-demand-mobile-devices-skyrocketing-due-covid-19-remote-learning/>). The Public Notice cited record evidence that the "price of Chromebooks reportedly ranged from \$160.00 to \$650.00 per device." If the average price paid for the 18 million mobile computing devices was close to the mid-point in that range (\$405), then schools spent more than the \$7.1 billion allocated for the ECF.

schools to purchase laptops for all of its students and then needing to separately buy modems, router and hotspots to enable them to connect helps ensure the budget, particularly with respect to user devices goes as far as possible. In any event, with respect to any laptop or tablet purchases by the school as part of this program it is important that this equipment remain the property of the school.

Furthermore, it is of the utmost importance that the ECF program be technologically neutral and provide support for eligible services regardless of whether they are fixed or wireless services. Indeed, Section 254(h) requires that the benefits of the E-Rate program are technology neutral and competitively neutral¹⁸ so consumers can select the provider and technology that works best for them. Allowing for schools to purchase services at the school provides such technological and competitive neutrality.

Duration of Relief

USTelecom recognizes the truly unprecedented nature of the pandemic and supports the provision of this support on an emergency basis. The legislation creating the ECF permits support to be used for purchases during an emergency period that begins on January 27, 2020, and continues through June 30 of the year following the end of the public health emergency. USTelecom has previously expressed concerns that providing support retroactively is impractical and raises real policy concerns because in many instances there may be services and devices that have already been paid for by CARES Act or other federal funding during the 2020 funding year, and it would not always be possible for applicants to determine what services are eligible for this emergency relief and what are not.¹⁹ In its Public Notice, the Commission proposes to guard

¹⁸ 47 U.S.C. § 254(h).

¹⁹ See USTelecom Homework Gap Comments at 5.

against duplicative COVID-19 relief funding by limiting reimbursements to those made for eligible services or equipment for which the schools and libraries have not already received funding.²⁰ USTelecom supports this and the Commission's further proposal to require applicants to certify that they are not seeking duplicative funding.²¹ Additionally, applicants should be required to retain such invoices and contracts so that at a later date, once the pandemic has ended, applicants could be made subject to USAC audits. Such guardrails are necessary to not only ensure that ECF funds are not used to duplicate other support, but also to aid in stretching the ECF budget as much as possible. The prohibition on duplicative support should also apply prospectively.

While measures such as these will guard against duplicative funding concerns, prioritizing retroactive funding is also bad policy because it favors those school systems that already had the budget, without federal support, to be able to make purchases for their schools from the start of the pandemic. Those schools that could not afford such purchases without support are essentially put to the back of the line if retroactive purchases are reimbursed first. In order to correct for this the Commission should prioritize prospective purchases so that there is a level field for all schools in need of support. Then subsequently, if there are funds still available the Commission can support retroactive eligible expenses.

USTelecom supports the Commission opening a short, separate funding window for each of these purposes. Indeed, since the start of the pandemic the Commission²² has already opened a separate funding window within the E-Rate program due to the unprecedented disruptions and

²⁰ Public Notice at 15.

²¹ *Id.*

²² While we refer to the Commission throughout this document, USTelecom acknowledges that many of the COVID-19 relief measures taken in the last year have been on delegated authority via the Wireline Bureau.

challenges presented by the pandemic.²³ The Commission should expand on its proposal to open a funding window for purchases between January 27, 2020 and June 30, 2021²⁴ to include those purchases made during the 2021 funding year (July 1, 2021 to June 30, 2022), and give priority to prospective 2021 funding year eligible expenses. The Public Notice does not specifically address how to administer purchases that are part of the 2021 funding year, but the Commission should consider those purchases in the same funding window as prior expenses. The Commission should then direct USAC to determine the amount of support requested for funding year 2021 as well as retrospectively to support expenses incurred from January 27, 2020 to June 30, 2021 and prioritize funding to prospective funding year 2021 support. If additional ECF funds are available, the Commission should direct USAC to support eligible retrospective expenses going back to January 27, 2020. To the extent funds remain for purchases for the 2022-23 funding year and beyond,²⁵ the Commission should open a separate funding window in the second quarter of every year, as necessary, for any prospective purchases.

Reimbursement Process

Given the emergency nature of this funding program, it is necessary for the Commission to establish a reimbursement process that is both efficient in getting funding to the schools, but is also transparent so that the risk that schools can utilize this program to pay for equipment and services previously supported by government funds, and to generally mitigate waste fraud and abuse. USTelecom supports the Commission's proposal to require the applicants, rather than the

²³ See *Schools and Libraries Universal Service Support Mechanism*, Order, 35 FCC Rcd 10347, CC Docket No. 02-6 (Sept. 16, 2020).

²⁴ Public Notice at 12.

²⁵ *Id.*

service providers, submit invoices.²⁶ This cuts unnecessary time and administrative burden out of the process. Doing so not only reduces burdens on service providers, but also applicants because it takes an unnecessary middleman out of the transaction. That said, at a minimum schools should be required to provide contracts and invoices reflecting proof of payment with any reimbursement request and certify that those services and equipment have not previously been supported by CARES Act or other federal government funding.

III. DISBURSE ECF FUNDS UTILIZING CURRENT E-RATE RULES ON AN EMERGENCY BASIS

In order to disburse ECF funding in the most efficient way possible, the Commission should adopt its proposal to utilize streamlined E-Rate program procedures for disbursing ECF funds.

Competitive Bidding Rules

The Public Notice specifically asks if the Commission should streamline its competitive bidding rules²⁷ and USTelecom supports such a measure. The emergency nature of this request dictates that speed is of the essence with respect to providing the funding to those most in need; therefore, consistent with our March 2020 recommendation, the Commission should streamline the competitive bidding rules for this emergency funding program.²⁸ For example, the Commission should permit schools to claim reimbursement for services and equipment purchased under existing contracts if they certify that they have complied with applicable state,

²⁶ *Id.* at 13-14.

²⁷ *Id.* at 11.

²⁸ *See* USTelecom March 27 Letter at 5 (“On a targeted, temporary basis to address this crisis, waive certain provisions of the competitive bidding process to allow schools and libraries fast access to emergency funds (i.e., waive the 28-day waiting period for Form 470 postings, increase the pre-discount amount exempt from the competitive bidding requirements).”).

Tribal, or local procurement requirements with respect to those contracts.²⁹ Additionally, for purchases from a vendor or service provider where that same equipment and/or service has already been competitively bid, the school should be able to make additional purchases utilizing the same contract terms without having to rebid for those services or equipment. In doing so, the Commission can significantly streamline the process and increase the speed of the flow of funds to schools. This is also consistent with the Commission’s decision in the Rural Health Care COVID-19 Telehealth program.³⁰ For new contracts, the Commission should at a minimum adopt a streamlined competitive bidding process, as is discussed in the Notice.³¹ Importantly, the Commission should leverage tools of the E-rate competitive bidding process designed to inject transparency in procurement processes ultimately supported by ECF. In particular, the Commission should require applicants seeking ECF funds to post on the USAC portal requests for funding for remote connections and or related equipment for a reasonable minimum timeframe. Doing so will inject transparency into these procurement processes and maximize potential competitive bids. Transparency into procurement processes is particularly important when administering the ECF program which grants reimbursement for 100% of eligible costs. As such, and since applicants will not have “skin in the game” as they do under the E-rate program, it is important to ward against fraud, waste and abuse that the Commission inject transparency and guardrails designed in the E-rate competitive bidding process to ECF-related procurement processes.

Application and Payment Processing Rules

²⁹ Public Notice at 10.

³⁰ See *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, 35 FCC Rcd 3366 (2020).

³¹ Public Notice at 11.

Furthermore, the Commission can simplify and expedite the implementation of this funding program by not bogging the processes down in a lengthy invoicing and payment process. USTelecom supports the proposal to reimburse applicants directly (rather than indirectly via service providers).³² One way to do this would be to require all applicants to utilize the existing Billed Entity Applicant Reimbursement (BEAR) methodology. Doing so would streamline the invoicing process so that schools can seek reimbursement directly from USAC for contracted services, which allows funding to go directly to the schools in a more efficient manner. Additionally, the Commission could consider accelerated reimbursement processes for purposes of this temporary emergency effort. For example, the Commission could instruct schools to estimate how much support they will need under their contract based on the number of connections. USAC could pay the schools an upfront lump sum quarterly payment for the estimated amount and do true ups at a later date as necessary. This process would allow the schools to get the funds they need to implement the remote resources quickly so that they can in turn pay the service provider promptly.

The Public Notice specifically asks whether the Commission should utilize audits to ensure compliance with the rules and requirements for the ECF.³³ USTelecom supports the use of audits to ensure funds are used in a manner consistent with the legislative intent of the ECF program as implemented by the Commission. It is appropriate in the context of this program to instruct the schools to maintain records of all invoices and provide documentation related to their participation in the ECF in connection with any such audit.

³² Public Notice at 13-14.

³³ Public Notice at 17.

IV. CONCLUSION

USTelecom and its members stand ready to work with schools who need access to services to help fill the remote education gap for their students. We offer these comments based on our practical experience as broadband providers already participating in the E-Rate and other USF programs which reflect our viewpoint on how processes can be streamlined to allow rapid implementation of this program so that more Americans students can get connected quickly.

Providing connectivity to all during this national emergency is a top priority for Congress, the new Administration and the Commission. It is also a top priority for USTelecom and we look forward to working with all stakeholders on this critical issue. We are hopeful that the implementation measures we suggest herein will assist educational institutions in providing the connectivity necessary to educate children in a meaningful way during this challenging and unprecedented time.

Respectfully submitted,

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