

for our students.”³ By funding the purchase of broadband service and equipment at students’ and patrons’ homes, the ECF program helps serve that critical need, in a way that the E-Rate program currently does not.⁴

Viasat agrees with Acting Chairwoman Rosenworcel that the need for expanded broadband connectivity for students is more urgent today than ever before, so that “all our students can be connected to virtual classrooms, no matter who they are or where they live.”⁵ Satellite broadband services are poised to play a key role in these efforts. Indeed, with nationwide coverage, satellite operators can deliver service more quickly, to more locations, and more cost-effectively than other providers. As the Commission recently found, “[s]atellite broadband providers”—and Viasat in particular—“play a role in closing the digital divide in the United States” by providing connectivity in areas that are not otherwise served and offering high-quality, competitively priced alternatives in areas where terrestrial services exist.⁶

Viasat therefore urges the Commission to implement the ECF program in a manner that enables schools and libraries to choose from the widest array of providers and technologies possible, including satellite providers. In particular, as discussed below, the Commission should define “eligible services” and “eligible equipment” in a technology-neutral manner, to ensure

³ Press Release, “Acting Chairwoman Rosenworcel Hails Signing of American Rescue Plan That Provides \$7.1 Billion in Funds for Remote Learning,” Mar. 11, 2021, <https://docs.fcc.gov/public/attachments/DOC-370708A1.pdf>.

⁴ Notably, the Commission has sought comment on permitting the use of E-Rate funding to support remote learning during the COVID-19 pandemic, but that proceeding has not yet concluded. See Public Notice, *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, DA 21-98 (WCB rel. Feb. 1, 2021).

⁵ Press Release, “FCC Seeks Comment on Using E-Rate Funding to Support Remote Learning,” Feb. 1, 2021, <https://docs.fcc.gov/public/attachments/DOC-369632A1.pdf>.

⁶ *2020 Communications Marketplace Report*, FCC 20-188, at ¶ 98 (rel. Dec. 31, 2020).

that the program delivers robust and widespread connectivity to communities in need, and harnesses the capabilities of various types of broadband technologies in doing so.

A. The Commission Should Define “Eligible Services” in a Technology-Neutral Manner

Given the Commission’s overarching goal of connecting as many students, school staff, and library patrons to broadband services as possible, as quickly as possible, wherever in the country they may be located, the Commission should define “eligible services” in a technology-neutral manner that gives schools and libraries flexibility to choose an ECF-supported offering that meets their particular needs—including satellite offerings, which, as noted above, are particularly well-suited to serve this need.

The Act itself does not draw distinctions based on technology, and broadly authorizes support for any “advanced telecommunications and information services.”⁷ Indeed, the Act’s definition of that term cross-references Section 254(h) of the Communications Act,⁸ under which the Commission operates its E-Rate program—and the Commission has long included a variety of services, including satellite offerings, as supported services within that program.⁹ The Public Notice therefore appropriately contemplates a similarly wide array of supported services under the ECF program, including “DSL, cable, fiber, fixed wireless, satellite, [and] mobile wireless” services.¹⁰ Viasat supports this approach.

To facilitate the ability of different technologies to participate in the program, the Commission also should refrain from imposing minimum service standards that would have the

⁷ American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402(a) (2021).

⁸ *Id.* § 7402(d)(1) (cross-referencing 47 U.S.C. § 254(h)).

⁹ *See, e.g., Modernizing the E-Rate Program for Schools and Libraries*, Order, 35 FCC Rcd 13793 (WCB 2020) (continuing the Wireline Bureau’s longstanding designation of satellite services as eligible for E-Rate support).

¹⁰ Public Notice at 16.

effect of slowing program implementation and service deployment, and artificially limiting the ability of schools and libraries to select the service providers and offerings that best meet their needs. In establishing the related Emergency Broadband Benefit (“EBB”) program to support the provision of broadband services to low-income households during the COVID-19 pandemic, the Commission similarly declined to impose minimum service standards—noting that the authorizing statute “does not indicate [c]ongressional intent” to apply “minimum service standards for the EBB program,”¹¹ and that doing so would be inconsistent with “the emergency nature of the EBB Program and the vital need to maximize consumer choice and benefits in a short timeframe.”¹² Here, too, the Act does not contemplate the imposition of minimum service standards. And the urgent need to connect households to broadband services for remote learning and other educational necessities during the pandemic militates strongly against adopting artificial limits on the services that can qualify for support.

Minimum service standards also would limit the ability of schools and libraries to choose the optimal service provider for their particular factual circumstances and the needs of their communities. Congress designed the ECF program to provide funding directly to schools and libraries—and accordingly put schools and libraries in the position of determining the specific needs of their students, staff, and patrons and then identifying service providers that can best serve those needs. Specifying minimum service standards could undermine this framework by limiting the flexibility of schools and libraries to select the services that can best serve their communities. Among other things, such an approach would prevent schools and libraries from making the trade-offs that may sometimes be necessary to connect students, staff, and patrons to

¹¹ *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, ¶ 74 (2021).

¹² *Id.*

broadband efficiently and effectively—for example, where a rural school has limited options for connecting students dispersed over a wide area, and still must ensure that the cost of doing so is “reasonable” under the Act.¹³

To the extent that the Commission does contemplate imposing minimum service standards on eligible services,¹⁴ it should do so with a focus on serving students’ real-world educational needs, and on maximizing the ability to meet those needs quickly with limited funds. Thus, for instance, if the Commission were to consider a minimum speed threshold, it should do so through an objective, data-driven assessment of the speeds actually needed to support typical usage for remote learning and other educational applications. And under such an assessment, the Commission could readily find that 25/3 Mbps service is sufficient for the educational uses that the ECF program is intended to support. The Commission’s current “Broadband Speed Guide” already reflects this fact—finding that download speeds of “5 - 25 [Mbps]” are sufficient for “[s]tudent” usage, and that a download speed of only “6 [Mbps]” can support “HD Video Teleconferencing.”¹⁵

B. The Commission Should Define “Eligible Equipment” in a Technology-Neutral Manner

The Commission also should ensure that its definition of “eligible equipment” under the ECF program is technology-neutral and encompasses any home equipment necessary to connect to the broadband service chosen by the school or library. The Public Notice acknowledges that

¹³ H.R. 1319, tit. VII, § 7402(b).

¹⁴ See Public Notice at 7 (seeking comment on what minimum service standards, if any, would be appropriate).

¹⁵ Federal Communications Commission, *Broadband Speed Guide*, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Apr. 5, 2021).

the Act defines “eligible equipment” by reference to specific types of devices,¹⁶ but appropriately seeks input more broadly on providing funding for any equipment “needed to provide the connectivity required to enable and support remote learning for students, school staff, and library patrons.”¹⁷

Notably, the kinds of equipment listed as “eligible” in the Act already include devices that Viasat and other satellite operators make available to their subscribers, such as modems, routers, and Wi-Fi hotspots.¹⁸ Moreover, the Commission should conclude that ancillary equipment necessary for these listed devices to function properly likewise are eligible for support under the ECF program. In the case of satellite services, such equipment would include the home satellite antenna needed to connect a household’s modem/router to the satellite broadband network.

The Commission has ample statutory authority for reaching this conclusion and ensuring that ECF support is available for such equipment. The Commission could, for instance, interpret the Act’s provision authorizing support for “advanced telecommunications and information services” as including any “equipment necessary to deliver these services,” as the Public Notice proposes.¹⁹ The Public Notice correctly points out that home satellite antennas were made eligible for E-Rate support under a similar theory.²⁰ The Commission also could consider

¹⁶ See Public Notice at 5 (noting that “Section 7402(d)(6) of the American Rescue Plan defines eligible equipment as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices”).

¹⁷ *Id.*

¹⁸ See H.R. 1319, tit. VII, § 7402(b)(6).

¹⁹ Public Notice at 7.

²⁰ See *id.* at 7 n.34 (citing 1998 Schools and Libraries Eligibility List, *available at* https://www.usac.org/wp-content/uploads/e-rate/documents/ESL_archive/EligibleServicesList_032898.pdf).

exercising its authority under Section 4(i) of the Communications Act, which empowers the Commission to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.”²¹ This provision enables the Commission to engage in gap-filling where, as here, doing so is “reasonably ancillary to the Commission’s effective performance of its statutorily mandated responsibilities.”²² Certainly, providing support for the equipment needed for a broadband service and associated modems, routers, and hotspots to function is “reasonably ancillary” to supporting the service itself under the Act.

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Viasat agrees with Acting Chairwoman Rosenworcel that addressing the Homework Gap is of paramount importance, especially during the COVID-19 pandemic. By defining the services and equipment eligible for ECF support in a technology-neutral manner, the Commission can ensure that the ECF program leverages the capabilities of a wide array of broadband providers, and lives up to its promise of helping to close the Homework Gap as Congress intended.

Respectfully submitted,

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Date: April 5, 2021

²¹ 47 U.S.C. § 154(i).

²² *Am. Library Ass’n v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).