

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: Chief, Wireline Competition Bureau

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”)<sup>1</sup> hereby responds to the Wireline Competition Bureau’s (“Bureau”) *Public Notice*<sup>2</sup> seeking comment on the implementation of the \$7.17 billion Emergency Connectivity Fund (the “Fund”) which is part of the recently enacted American Rescue Plan Act of 2021 (“American Rescue Plan Act” or “Act”).<sup>3</sup> The *Public Notice* specifically seeks comments on the establishment and

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<sup>1</sup> WISPA is the trade association representing the interests of wireless Internet service providers (“WISPs”) that provide IP-based fixed wireless broadband services to consumers, businesses, and anchor institutions across the country. WISPA’s more than 1,000 members include more than 700 WISPs, as well as equipment manufacturers, distributors and other entities committed to providing affordable and competitive fixed broadband services. WISPA estimates that WISPs serve more than six million people, many of whom reside in rural, unserved, and underserved areas where wired technologies like FTTH, DSL and cable internet access services may not be available. During the COVID-19 pandemic, WISPA members are working with local schools to enhance broadband access to meet dramatically increased student and teacher demand for reliable remote learning connectivity.

<sup>2</sup> See *Wireline Competition Bureau Seeks Comment On Emergency Connectivity Fund For Educational Connections And Devices To Address The Homework Gap During The Pandemic*, Public Notice, WC Docket No. 21-93, DA 21-317 (rel. March 16, 2021) (“*Public Notice*”).

<sup>3</sup> American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill). Section 7402 of the American Rescue Plan Act established the Emergency Connectivity Fund. The Act also designates that \$1 million from the Fund be available for use by the Inspector General of the Commission to conduct oversight of support provided through the Fund. *Id.* § 7402(c)(2)(B). Amounts appropriated to the Fund for fiscal year 2021 are appropriated out of any money in the United States Department of Treasury not otherwise appropriated and are to remain available until September 30, 2030. *Id.* § 7402(c)(2). Unlike other universal service programs, the Emergency

implementation of the program to make Fund support available consistent with Section 7402 of the American Rescue Plan Act.<sup>4</sup>

### **Introduction**

WISPA applauds Congress' recognition that the COVID-19 pandemic is a national health and educational emergency with far-reaching consequences for all segments of society. As the Commission implements Section 7402, it should do so in a manner that facilitates off-campus learning in an efficient and cost-effective manner.

As WISPA has previously stated, support for off-campus learning during the pandemic should be tailored to ensure that support does not supplant private investment or discourage market entry by commercial broadband providers and support should be tied directly to the needs of students struggling to learn remotely during the pandemic.<sup>5</sup> To this end, support should be directed at K-12 students within the footprint of a school or school district and should be limited to serving its essential purpose – education. Support also should be available to all technologies, including fixed wireless that can be quickly and cost-effectively deployed, to allow for flexibility based on a school or library's specific remote learning needs. As the *Public Notice* recognizes, the American Rescue Plan Act directs the Commission to reimburse 100% of the costs associated

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Connectivity Fund support will not be provided through contributions under Section 254(d) of the Communications Act of 1934. *Id.* § 7402(c)(4).

<sup>4</sup> WISPA previously filed Comments and Reply Comments on the Bureau's request for 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 2021) ("*Remote Learning Public Notice*") and incorporates those Comments and Reply Comments herein.

<sup>5</sup> See *Schools and Libraries Universal Service Support Mechanism, Connect America Fund, Modernizing the E-rate Program for Schools and Libraries*, Comments of WISPA, CC Docket No. 02-6 and WC Docket Nos. 10-90 & 13-184 (filed Nov. 3, 2016); *Schools and Libraries Universal Service Support Mechanism, Connect America Fund, Modernizing the E-rate Program for Schools and Libraries*, Reply Comments of WISPA, CC Docket No. 02-6 and WC Docket Nos. 10-90 & 13-184 (filed Dec. 5, 2016) ("WISPA Reply Comments").

with the purchase of eligible equipment and/or advanced telecommunications and information services, and requires that “any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library, is reasonable.”<sup>6</sup> The best way to effect this mandate is to: (a) require competitive bidding with cost being the primary factor; (b) not set minimum speeds for telecommunications and information services; (c) require that the distributed support be subject to review to prevent fraud, waste, and abuse; and (d) provide the Commission with the ability to order reimbursement of mis-used funds.

#### **I. SUPPORT FOR OFF-CAMPUS LEARNING SHOULD BE PROVIDER- AND TECHNOLOGY-NEUTRAL**

Support provided through the Fund to support remote learning off-campus should not be used to supplement, undermine, or discourage private investment by internet service providers. A central tenet of the E-Rate program has been its requirement of competitively neutral treatment of service providers and technology, as long as the funded services are cost-effective and included on the Eligible Services List.<sup>7</sup> Funding to support off-campus learning should likewise be provider- and technology-neutral to make available the wide range of services Congress intends to be supported and to spark competition among service providers willing and able to provide supported services and devices.

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<sup>6</sup> *Public Notice* at 10, quoting H.R. 1319, tit. VII, § 7402(b).

<sup>7</sup> See 47 USC § 254(h)(2)(A) (requiring the Commission’s E-Rate rules to be competitively neutral); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801, ¶ 46 (1997) (the E-Rate program and its rules should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another”) (subsequent history omitted) (“*First Report and Order*”).

The Act defines eligible equipment as (1) Wi-Fi hotspots,<sup>8</sup> (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices.<sup>9</sup> The *Public Notice* suggests limiting these eligible devices to those devices that “can support video conferencing platforms and other software necessary to ensure full participation in remote learning activities.”<sup>10</sup> WISPA agrees. Congress’ purpose in enacting Section 7402 funding was to limit the scope of eligible equipment to that which facilitates remote learning and library access. Any equipment that does not have the ability to (i) access video conferencing platforms, and (ii) to facilitate interactive video conferencing would be inconsistent with that statutory mandate and would not be useful for remote learning, and thus should be deemed ineligible equipment for purposes of the Fund. In sum, Eligible Equipment” should include any equipment necessary to establish connectivity for the telecommunication and information services covered by Section 7402, and should exclude any equipment that does not permit fully interactive remote video learning.

The *Public Notice* seeks comment on whether the Commission should impose minimum service standards and data thresholds in order to consider them eligible for advanced telecommunications services.<sup>11</sup> The Commission should *not* impose minimum speeds for participating providers. Section 7402 provides for a 100% reimbursement of “advanced telecommunications and information services,” which are defined as “advanced

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<sup>8</sup> A Wi-Fi hotspot is defined as “a device that is capable of (A) receiving advanced telecommunications and information services; and (B) sharing such services with another connected device through the use of Wi-Fi.” *Public Notice* at 9, quoting H.R. 1319, tit. VII, § 7402(d)(6).

<sup>9</sup> Connected devices are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services. *See id.*

<sup>10</sup> *Id.* at 5-6.

<sup>11</sup> *Id.* at 7.

telecommunications and information services, as such term is used in section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)).”<sup>12</sup> Section 254(h) does not specify any minimum speed or other quality of service standard. Although it could have done so, Congress elected to not establish any minimum speed threshold that would limit participation.

Congress made the same decision in adopting the Emergency Broadband Fund, and the Commission wisely did not adopt minimum speed requirements to enable flexible service offerings not be bound by artificial thresholds that may be unsuitable for the requested service.<sup>13</sup> The speeds required to enable video conferencing depend on a number of variable factors. A residence with only one user may be able to obtain broadband access for video conferencing with a 10/1 Mbps connection. By contrast, a residence with multiple, simultaneous users might require more robust service. So, while faster speeds “can better support concurrent use of multiple devices within a household,”<sup>14</sup> the number of connected devices within a given household able to facilitate video conferencing will necessarily vary. The same rationale should apply here. Schools and libraries should be permitted to select a speed tier suited to the specific needs of their students, staff, and patrons because they are in the best position to evaluate need.<sup>15</sup>

Accordingly, the Commission should, as it did in the Emergency Broadband Benefit Program proceeding, decline to apply minimum service standards for advanced telecommunications and information services.<sup>16</sup> Given the emergency nature of the Section 7402

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<sup>12</sup> *Id.* § 7402(b) and (d)(1)

<sup>13</sup> See *Emergency Broadband Benefit Program*, Report and Order, FCC 21-29, WC Docket No. 20-455 (rel. Feb. 25, 2021) (“*EBB Order*”) at 36 (¶ 73).

<sup>14</sup> See WISPA Reply Comments, WC Docket 20-445 (filed Feb. 16, 2021) at 9, fn. 30.

<sup>15</sup> A survey of WISPA members in the Summer of 2020 showed that the two most popular plans by WISP consumers were 25/3 Mbps and 10/1 Mbps; and the two most common uses by customers during the pandemic were virtual/webinars and distance learning.

<sup>16</sup> See *EBB Order*.

funding, the vital need to provide the benefits of broadband service for remote learning expeditiously, and the requirement for competitive bidding, it is not necessary to specify minimum speeds that would limit a school or library's options for students, staff and patrons. All that should be required is that: (a) the telecommunications and information services be adequate to permit distance learning and remote library access at a given location; (b) the service providers are selected by competitive bidding; and (c) the schools and libraries are required to certify that the service obtained meets their distance learning connectivity needs.

**II. SUPPORT FOR OFF-CAMPUS LEARNING SHOULD BE LIMITED TO HOUSEHOLDS WITH K-12 CHILDREN LEARNING REMOTELY THAT DO NOT HAVE ADEQUATE BROADBAND SERVICE**

Section 7402 provides emergency support for eligible equipment and advanced telecommunications and information services for use by schools, students, and the staff of schools at locations outside the school and patrons of public libraries at locations outside the library. During the pandemic access to in-school and in-library services has been severely limited by stay-at-home orders or families choosing to keep their children safe by not attending in-person classes. Therefore, WISPA supports the use of funds for the limited purposes of educating students at their residences during the pandemic. However, to avoid duplicate funding and to stretch the limited Fund resources, WISPA agrees with the *Public Notice's* proposal that schools and libraries should *not* be reimbursed for equipment and services to support households that have received funding through other federal programs funding (such as the Emergency Broadband Benefit program, the CARES Act, or other provisions of the American Rescue Plan Act) for those services, so as not to duplicate the benefit.<sup>17</sup> By definition, the households that benefit from these other programs already have access to broadband service and connected

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<sup>17</sup> *Public Notice* at 15.

devices and there is no reason to permit double-dipping by also allowing these households to obtain an additional connection through Section 7402 funding.

Support for off-campus locations also should not extend beyond the limits of the requesting school district.<sup>18</sup> Remote learning during the pandemic is conducted as an extension of the physical school classroom, bringing learning that would otherwise occur in the school building directly into the home. Accordingly, Section 7402 support for remote learning should be limited to those K-12 students that would otherwise be learning in the school building and should be tied directly to supporting students and school staff associated with the individual school or district.

During the pandemic when students are attending schools remotely, their residences are their classroom. Moving broadband from supporting classroom instruction to supporting at-home instruction should not diminish or act as an end run around the requirement that support be used for an educational purpose. As such, support for remote learning should be: (1) limited to only registered students and staff, either through specific credentialing or through the use of registered devices, (2) subject to CIPA compliance, and (3) subject to certification from the school that the connectivity is directly related to an educational purpose.

### **III. THE COMMISSION SHOULD USE THE COMPETITIVE BIDDING PROCESS TO PREVENT WASTE FRAUD AND ABUSE AND TO GUARANTEE REASONABLE PRICING**

The *Public Notice* asks whether the Commission should adopt a streamlined competitive bidding process to be used by eligible schools and libraries that have not yet purchased or entered into contracts to purchase eligible equipment and/or services.<sup>19</sup> WISPA believes that this

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<sup>18</sup> For private schools, the local school district where the private school is located would serve as the geographic proxy.

<sup>19</sup> See *Public Notice* at 11.

approach will best accomplish Congressional policies intended to make support available fairly and quickly, with all providers having the opportunity to participate as Congress intended. The Commission should reduce the waiting period from 28 days to 14 days the time that an applicant must wait to enter into a contract with a service provider after posting a request for bids. As it does under the E-Rate program, the Commission should continue to require that bids be evaluated using a comparison grid, with price being the primary factor<sup>20</sup>.

The Commission should not establish a range of reasonable costs in deciding what amount is reasonable to reimburse applicants for services and equipment.<sup>21</sup> The competitive bidding rules for E-Rate have been the cornerstone of the E-Rate program.<sup>22</sup> The rules “ensure that applicants are informed of all the options available to them whenever they seek a new service contract, ensure that service providers have sufficient information to submit a responsive proposal, generate the most efficient pricing for eligible services, and guard against waste, fraud, and abuse.”<sup>23</sup> Competitive bidding, with a requirement that price be the primary factor,<sup>24</sup> has worked well over the life of the E-Rate program in controlling costs and eliminating waste fraud and abuse. Congress did not impose any requirement for the Commission to limit cost-competitiveness, and neither should the Commission.

A competitive marketplace remains the most effective way to determine reasonable costs. There are too many variables at play in trying to predetermine a reasonable rate. An examination

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<sup>20</sup> See 47 CFR 54.503(c)(ii)(B).

<sup>21</sup> See *Public Notice* at 12.

<sup>22</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism*, Order, 32 FCC Rcd 9538 (¶14) (2017) (adopting, on an emergency basis, temporary rules to provide immediate relief to schools and libraries affected by Hurricanes Harvey, Irma, and Maria and retaining the competitive bidding rules).

<sup>23</sup> *Id.*

<sup>24</sup> See 47 CFR 54.503(c)(ii)(B).

of the comments filed in the *Remote Learning Public Notice* revealed a wide range of costs.<sup>25</sup> The *Public Notice* also identified a plethora of additional factors that need to be considered including locations, urban vs. rural, poverty levels, and competitive broadband availability. In addition, the Commission would need to consider factors such as density, total number of homes supplied by a provider, speed, and functionality. All of these factors legitimately affect reasonable cost as well as factors which have not been specifically identified. Competitive bidding, by its very nature, takes into consideration all relevant factors in establishing reasonable cost and permits the school and library to select the best choice, with the requirement that price be a primary factor. Competitive bidding has worked well for decades, across the full spectrum of information services, as a way to determine reasonable price. It will work equally as well in determining reasonable prices for this program. In addition, as discussed below, all prices paid should be subject to audit after the end of the emergency period. For equipment and services that were purchased prior to the adoption of Section 7402, the Commission should use data accumulated during the competitive bidding process to identify reasonable prices in the audit process.

#### **IV. E-RATE SUPPORT FOR REMOTE LEARNING SHOULD BE SUBJECT TO AUDIT**

The pandemic has created an educational emergency that must be dealt with swiftly and decisively if students are to be able to receive necessary instruction. Like many emergencies, it may become necessary to focus on expediency over accuracy at the time funds are allocated. That being said, waste, fraud, and abuse can never be tolerated. While there may be some

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<sup>25</sup> *Public Notice* at 11-12. Comments indicated hotspots for as low as \$0 (with a one-year commitment) to up to \$144.99 per device, plus an additional \$10.00 to \$40.00 per month for service. For connected devices, the price of Chromebooks reportedly ranged from \$160.00 to \$650.00 per device. Similarly examples of the monthly rates associated with students' home internet access ranged from \$9.95 to \$50.00 per month.

unintentional mistakes during this process, there may also be those that seek to game the system for private gain in violation of the rules. Accordingly, any funds disbursed during this emergency must be subject to audit, and where the rules have been violated, such entities should be required to return ill-gotten Emergency Connectivity funds.<sup>26</sup>

### **Conclusion**

The Commission should move expeditiously with implementing the Emergency Connectivity Fund by: (a) requiring competitive bidding with cost being the primary factor; (b) not setting minimum speeds for telecommunications and information services; (c) requiring the distributed support to be subject to audit to prevent fraud, waste, and abuse; and (d) providing the Commission with the ability to order return of mis-used funds.

Respectfully submitted,

**WIRELESS INTERNET SERVICE  
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April 5, 2021

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<sup>26</sup> See *Public Notice* at 17.