

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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

**COMMENTS OF MOTOROLA SOLUTIONS, INC.**

**I. INTRODUCTION AND SUMMARY**

Motorola Solutions, Inc. (“Motorola Solutions”) hereby files these comments in response to the *Public Notice* in which the Wireline Competition Bureau (“Bureau”) seeks input on the implementation of the Emergency Connectivity Fund (“Fund”) established by Congress as part of the American Rescue Plan of 2021 (“Plan”).<sup>1</sup> The Fund represents an historic opportunity for the Commission to solve once and for all some of the structural problems underlying the “homework gap.”

To seize that opportunity, Congress directed the Commission to use the Fund to pay for “advanced telecommunications and information services” – a term that Congress intended to be interpreted for Fund purposes consistent with the Commission’s interpretation of that term under the E-Rate program. To effectuate Congressional intent in implementing the Fund, the Commission should construe “advanced telecommunications and information services” to include self-provisioned broadband networks.

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<sup>1</sup> 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 (WCB, March 16, 2021) (“*Public Notice*”).

As the Commission concluded in its *E-Rate Modernization Order*, “self-construction undertaken by schools and libraries that participate in the E-rate program ... will fulfill the mandate of section 254(h)(2)(A).”<sup>2</sup> This same conclusion applies equally to the Fund. And giving schools and libraries the option to self-provision their own networks when doing so is the most cost-effective solution represents sound policy that the Commission should embrace in its efforts to facilitate remote learning and thereby bridge the homework gap.

## II. DISCUSSION

In the *Public Notice*, the Bureau proposes to exclude from the Fund “the construction of new networks, including the construction of self-provisioned networks.”<sup>3</sup> The Bureau attempts to justify this proposed exclusion based on “the underlying assumption that the construction of new networks is not supported by the statutory text enumerating eligible equipment in section 7402 of the American Rescue Plan.” But the Bureau misreads the statutory text, and its proposal would contravene Congressional intent.

In Section 7402, which created the Fund, Congress directed the Commission to “reimburse 100 percent of the costs associated with” three categories of supported equipment and services: (1) “eligible equipment”; (2) “advanced telecommunications and information services”; and (3) “eligible equipment and advanced telecommunications and information services.” Sec. 7402(b). Each of these categories must be considered in addressing whether Congress intended the self-provision of broadband networks to be eligible for the approximately \$7.1 billion that Congress appropriated for the Fund.

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<sup>2</sup> *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund, Second Report and Order and Order on Reconsideration*, 29 FCC Rcd 15538, ¶ 44 (2014) (“*E-Rate Modernization Order*”).

<sup>3</sup> *Id.* at 7.

Congress defined “eligible equipment” to include specific network components (such as “Wi-Fi hotspots” and “modems”) as well as “connected devices,” which is also a defined term. Network infrastructure outside the components enumerated in the definition of “eligible equipment” would not qualify for funding as “eligible equipment,” whether self-provisioned or obtained from a third party.

But Congress took a different approach with the term “advanced telecommunications and information services,” opting against enumerating the types of equipment and services that fall within the definition of this term. Instead, Congress defined the term to mean “advanced 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)).” Thus, “advanced telecommunications and information services” must be interpreted based on the meaning of that term at the time of enactment of the Plan as well as its historical construction.<sup>4</sup>

Self-provisioned networks have been eligible for E-Rate funding since 2016 based on the Commission’s conclusion that support for self-construction – “when it is demonstrated to be the most cost-effective solution to obtain high-speed broadband” – would fulfill Congress’s mandate in Section 254(h) to provide “access to advanced telecommunications and information services.”<sup>5</sup> According to the Commission, “Self-construction can be a useful tool for some schools and libraries when they receive insufficient responses to their FCC Form 470 and associated requests for proposals (RFPs),” giving “applicants that have been unable to find

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<sup>4</sup> See, e.g., *Sandifer v. U.S. Steel Corp.*, 134 S. Ct. 870, 876-879 (2014) (interpreting the statutory term “changing clothes” to reflect Congress’s presumed understanding of the term at the time of enactment as well as to reflect “the historical context surrounding § 203(o)’s passage”); *United States v. Fausto*, 484 U.S. 439, 453 (1988) (“it can be strongly presumed that Congress will specifically address language on the statute books that it wishes to change”); *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 99 (2006).

<sup>5</sup> *E-Rate Modernization Order*, ¶ 44.

providers willing to build affordable high-speed connections another option for purchasing such connections.”<sup>6</sup> Indeed, the benefits of self-provisioned networks are so profound that a school or library may receive E-Rate funds to construct or operate a broadband network that it shares with an E-Rate ineligible entity so long as that entity pays its fair share of the costs.<sup>7</sup>

Congress was plainly aware of the Commission’s decision to make self-provisioned networks eligible for E-Rate funding under Section 254(h). In crafting the Plan, Congress incorporated by reference the definition of “advanced telecommunications and information services” in Section 254(h), making no effort to carve out self-provisioned networks from that definition. “[C]onsistent administrative interpretation of a statute, shown clearly to have been brought to the attention of Congress and not changed by it, is almost conclusive evidence that the interpretation has congressional approval.”<sup>8</sup> As a result, legislative intent would be “correctly discerned” by including the construction of self-provisioned networks within the category of “advanced telecommunications and information services” eligible for the Fund.<sup>9</sup>

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<sup>6</sup> *Id.*, ¶¶ 45 & 50.

<sup>7</sup> *See Request for Review and/or Waiver of a Decision of the Universal Service Administrator by Park Hill School District, Kansas City, Missouri*, Order, DA 20-455, ¶ 12 (rel. April 27, 2020).

<sup>8</sup> *Kay v. FCC*, 443 F.2d 638, 646-47 (D.C. Cir. 1970); *see also Nat’l Fed’n of the Blind v. F.T.C.*, 420 F.3d 331, 338 (4th Cir. 2005) (holding “Congress intended for all conduct now encompassed under the broadened definition of ‘telemarketing’ to be subject to [prior] FTC regulations”); *N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 535 (1982) (“Where ‘an agency’s statutory construction has been fully brought to the attention of the public and the Congress, and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned’”) (quoting *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) (internal quotation marks omitted)); *see also Negusie v. Holder*, 555 U.S. 511, 546 (2009) (“Congress is aware of a judicial interpretation of statutory language and ‘adopt[s] that interpretation when it re-enacts a statute without change.’”) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)).

<sup>9</sup> *See N. Haven Bd. of Ed.*, 456 U.S. at 535 (quoting *Rutherford*, 442 U.S. at 554 n.10 (internal quotation marks omitted)).

Furthermore, there is nothing anomalous about Congress including certain network components in the definition of “eligible equipment,” while allowing other network infrastructure to be eligible for the Fund as “advanced telecommunications and information services.” Indeed, the Commission has employed this same approach in implementing the E-Rate program. Specifically, “self-provisioned broadband networks,” including “modulating electronics” and “other equipment” required to provide a broadband service, are eligible for E-Rate funding under Category One, while “access points” and “routers” are eligible for Category Two E-Rate funds.<sup>10</sup> Congress effectively directed the Commission to employ this same approach in implementing the Fund by authorizing support for “eligible equipment and advanced telecommunications and information services.” Sec. 7402(b).

In addition to being consistent with Congressional intent, making self-provisioned networks eligible for the Fund is good policy. First, for schools and libraries in areas without affordable high-speed broadband services – and in contrast to mobile carrier subscriptions – the self-provisioning option represents a long-term solution to support remote learning once the pandemic has eased. While Congress directed the Fund to be spent during the “COVID-19 emergency period,” the Commission can and should embrace alternatives such as self-provisioned networks that will have lasting effects in solving the homework gap.

Second, given the disparate circumstances facing educators and students alike during the pandemic, there is no “one-size fits all” solution that will address each such circumstance. Consequently, the Commission should provide maximum flexibility in the type of equipment and services for which the Fund may be used to meet students’ educational needs, including self-provisioned networks.

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<sup>10</sup> See, e.g., *Modernizing the E-rate Program for Schools and Libraries*, Order, DA 15-1012 (rel. Sept. 11, 2015).

Third, schools and school districts are best positioned to choose the technology platform that best meets their needs and the needs of their students, and the Commission should not favor or disadvantage any particular technology. For example, school districts are increasingly deciding that they can best achieve their educational mission by deploying a fixed wireless private LTE solution that connects a district’s network directly to student and teacher homes – a solution that may offer a higher-quality and financially sustainable alternative to monthly mobile carrier subscriptions.<sup>11</sup> The Commission should ensure that the Fund is available for whatever particular technology solution a school or school district may decide will best enhance their students’ educational experiences, which may include a self-constructed network deployment.

The Bureau’s proposal to exclude self-provisioned networks from the Fund is inconsistent with the twin goals of maximum flexibility and technological neutrality. As long as a self-provisioned broadband network is the most cost-effective solution, schools and libraries should have the option to use the Fund to provision their own network. This is particularly true when solutions such as a fixed wireless private LTE network can be deployed without significant construction and with minimal delay.

For example, schools in Pittsburg, Kansas and surrounding communities (Unified School District 250) used Motorola Solutions to deploy a private LTE network to provide high-speed

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<sup>11</sup> Michael Calabrese and Amir Nasr, “The Online Learning Equity Gap: Innovative Solutions to Connect All Students at Home, at 5 & 30-34 (Nov. 2020) (profiling school districts in Texas, California, and other states that are building out “private LTE mobile networks that connect students at home, and that are far more financially sustainable longer term than buying subscriptions from mobile cellular providers”).

Internet service to approximately 800 families that otherwise lacked broadband Internet access.<sup>12</sup>

The deployment, which involved the installation of antennas in multiple locations throughout the city of Pittsburg, was completed in approximately 40 days.<sup>13</sup>

In conclusion, the Commission should permit schools and libraries to use the Fund to self-provision a broadband network when doing so is the most cost-effective solution and should reject the Bureau's proposal to exclude such self-provisioned networks from the Fund.

Respectfully Submitted,

/s/ Frank Korinek

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<sup>12</sup> Lauren Johnson, *Pittsburg Works to Help Students Get Internet Access*, KSN.com (Nov. 4, 2020) (available at <https://www.fourstateshomepage.com/news/coronavirus/pittsburg-works-to-help-students-get-internet-access/>); Steffen Reals, *Pittsburg Schools Launch Internet Service*, KSN.com (Jan. 14, 2021) (available at <https://www.fourstateshomepage.com/news/pittsburg-schools-launches-internet-service/>).

<sup>13</sup> <https://www.youtube.com/watch?v=rMFAQGQQqXg&feature=youtu.be> (describing the project and network deployment).