

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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

**COMMENTS  
OF  
NTCA–THE RURAL BROADBAND ASSOCIATION**

**I. INTRODUCTION & SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these comments in response to the Public Notice released by the Federal Communications Commission’s (“Commission”) Wireline Competition Bureau on March 16, 2021 in the above-captioned proceeding.<sup>2</sup> The Public Notice seeks comment on the Emergency Connectivity Fund (“ECF”) established by the American Rescue Plan Act of 2021.<sup>3</sup>

NTCA and its members recognize the important role that the ECF will have in helping students continue their education as Covid-19 pandemic induced school closures persist. NTCA’s members have done a commendable job of delivering robust and high-quality connections to rural communities, including specifically getting and keeping students online to participate in remote learning. Yet initiatives such as the ECF are still needed to help fill availability “gaps” in urban and rural areas across the nation, as well as to ensure that households with students can better afford service on existing connections to facilitate access to virtual

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<sup>1</sup> NTCA represents approximately 850 providers of high-quality voice and broadband services in the most rural parts of the United States. In addition to voice and broadband, many NTCA members provide wireless, video, and other advanced services in their communities.

<sup>2</sup> *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. Mar. 16, 2021) (“Public Notice”).

<sup>3</sup> American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (“American Rescue Plan Act”).

education. It is in this spirit of supporting remote learning and leveraging the success of smaller rural operators in already taking significant steps to deliver high-quality broadband in their communities that NTCA offers comments on the Public Notice.

To help as many students as possible with the ECF, the Commission should move forward with the Public Notice proposal to target limited funding to where mechanisms such as the Emergency Broadband Benefit (“EBB”) program, the CARES Act and other mechanisms are not already facilitating consumers’ access to broadband. This will ensure that the ECF has the greatest reach in responding to the needs of students.

To make the available funds go the farthest, the Commission should also leverage where possible existing connections that already meet the needs of students unable to attend school in person. More specifically, households with a student should be eligible for an ECF-supported discount on either a connection to which they already subscribe or one already available to them at that location. By contrast, no ECF funds should be used for a hotspot or any other connectivity to serve any location that already has robust broadband service available to it. Instead, ECF support for these “already-served” locations should be devoted to help the student’s family at that location pay for service using such existing connections. Moreover, to the extent that the Commission chooses to adopt minimum service standards for the ECF, it should do so in a way that ensures the best possible service is available to the customer but facilitates consumer choice in the service they opt to purchase over such a connection.

In addition, given the focus on remote learning at individual locations and the potential to make effective use of existing connections, the Commission should ensure that reimbursement from the ECF is not given out on a “district-wide” basis to single providers or only to consortia groups that can serve the entire area. Such a provision is necessary to make sure that existing

connections to individual households, which may be provided by multiple operators in any given school district, are best utilized and not “disregarded” when it comes to the use of ECF funds to provide customers with services as quickly and effectively as possible. Finally, the Commission should exclude “self-provisioned” networks or similar uses of funding from ECF eligibility – these uses of support fall squarely outside the American Rescue Plan Act’s definition of eligible equipment or services.

**II. TO ENSURE THAT ECF DOLLARS CAN GO AS FAR AS POSSIBLE IN REACHING INTENDED BENEFICIARIES, THE COMMISSION SHOULD COORDINATE FUNDING INITIATIVES AND LEVERAGE EXISTING NETWORKS AND SERVICES.**

The Public Notice proposes to “avoid duplicate funding and to stretch the limited Emergency Connectivity Fund,”<sup>4</sup> by limiting the distribution of support to eligible beneficiaries that have not benefited from various mechanisms (such as the EBB, the CARES Act, and others<sup>5</sup>). NTCA supports this approach – no student caught up in a pandemic-induced school closure should be denied the benefits of this emergency program intended to enable them to continue their education because ECF funds are not used with precision and have thus been exhausted. Coordinating with the efforts of similar programs and precisely targeting ECF funding to where these other mechanisms are not already facilitating consumers’ access to broadband will ensure that the ECF has the greatest reach in responding to the needs of students.

That said, in aiming toward the objective of “stretching” limited ECF funds, the Commission should also seek wherever possible to leverage existing connections that are already capable of meeting the needs of students engaged in virtual education. More specifically,

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<sup>4</sup> Public Notice, p. 15.

<sup>5</sup> *Id.*

households with a student should be eligible for an ECF-supported subsidy on either an existing connection to which they already subscribe or one available from a provider at that location to which they do not subscribe currently. The “Bridge to Broadband” program provides an excellent example of how such an approach can work. Under this initiative, organizations such as NTCA have partnered with “Digital Bridge K-12,” an initiative overseen by the national nonprofit Education SuperHighway, to help rural broadband providers and school districts across the country work together to make sure that every student lacking an Internet connection at home gets one and that every student who already has an Internet connection at home can afford to make use of it.<sup>6</sup> Programs such as this and similar initiatives undertaken in various cities, counties, and states offer an effective framework for identifying precisely what it means to say students “lack access at home” and crafting solutions that solve the specific access challenge presented at a given location. The ECF should look to enable such collaborative and coordinated efforts by helping schools work with local providers in their area to identify households with students and then providing resources to subsidize the purchase of services by those households in furtherance of remote learning objectives at those locations where providers indicate connections already exist.

Such a process will only work, however, if all providers that have existing connections in place have equal opportunity to compete for any given household’s business. To promote such competition and leverage existing connections, the Commission should ensure that the process by which eligible schools and libraries seek ECF reimbursement does not perpetuate the “large buyers equals large sellers” problem that has long plagued the Schools and Libraries (“E-rate”)

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<sup>6</sup> *Promoting Student Use of Home Connectivity, Join NTCA in Helping School Systems Connect More Students at Home*, available at: <https://www.ntca.org/member-services/business-solutions/partner-programs/digital-bridge>.

program. As NTCA has previously noted, “district-wide” or consortium bidding, while often offering E-rate beneficiaries a more favorable rate on services, can often leave out smaller providers with robust and competitively priced connections.<sup>7</sup> In certain cases, contracts for E-rate supported service have been put out for bid in a manner that effectively “boxed out” smaller operators – only providers able to serve every location within a school district or consortia of schools/districts have been invited to bid.<sup>8</sup> This has taken place despite the *2014 E-Rate Modernization Order’s* directive that “consortia do not need to solicit or select a single vendor able to provide service to all members of a consortium.”<sup>9</sup> In one instance that was the subject of a petition,<sup>10</sup> this led to redundant connections, both supported by federal universal service programs, to a single institution – while the small carrier had High-Cost program supported connections available to a subset of the schools within the larger school district, they were not even able to offer them because the contract was put out seeking a single vendor.

Avoiding such outcomes is all the more important when one considers that the ultimate beneficiaries here – individual households with students in need of remote learning capabilities – are likely scattered far and wide across communities where no single provider may serve every home across a large school district. Thus, the Commission should make clear that a school or library seeking ECF support to subsidize the purchase of at-home services should not be able to structure the bids for services it would subsidize on a “district-wide” or consortia basis. In

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<sup>7</sup> Reply Comments of NTCA–The Rural Broadband Association, WC Docket No. 13-184 (fil. Apr. 14, 2014) (“NTCA April 2014 replies”).

<sup>8</sup> Petition for Rulemaking of Central Texas Telephone Cooperative, Inc. et al., RM-11841, CC Docket No. 02-6, WC Docket No. 13-184 (fil. May 22, 2019) (“Texas Carriers Petition”); NTCA April Replies, Declaration.

<sup>9</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, *Connect America Fund*, WC Docket No. 10-90, Second Report and Order and Order on Reconsideration, FCC 14-189 (rel. Dec. 19, 2014) (“*2014 E-Rate Second Report and Order*”), ¶ 179.

<sup>10</sup> See *fn.* 8, Texas Carriers Petition.

effect, the *2014 E-Rate Modernization Order*'s statement that "consortia do not need to solicit or select a single vendor able to provide service to all members of a consortium"<sup>11</sup> should be a rule and not a mere admonition for the purposes of the ECF subsidizing connectivity for individual households. Instead, a process such as that described above involving NTCA and the Digital Bridge K-12 Bridge to Broadband makes far more sense and offers the opportunity for as many providers as possible to participate – and as many existing connections as possible to be leveraged.

Similar caution and prudence should be exercised in determining where hotspots may be deployed using ECF funds. It makes little sense to procure, and then deliver to a household and perhaps assist in setting up, a Wi-Fi hotspot when a connection exists at a given location. Nothing in the American Rescue Plan Act indicates an intent to supply and support a hotspot where one is not needed because the household in question already has connectivity (and perhaps multiple options for such connectivity) available to it. It should also be noted that because a "permanent" connection already available from a broadband provider is often more robust and reliable than a hotspot (particularly in rural areas where access to a robust and reliable mobile wireless network may be lacking), compelling each consumer to take the latter in order to obtain the ECF discount when an existing connection is in place makes little sense at best – and it would be wasteful at worst should the hotspot turn out not to be capable of serving the household's needs given its location.

Finally, even as the ECF can be a powerful tool for allowing households with students to make more effective use of existing connections (or to afford services on such existing

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<sup>11</sup> *2014 E-Rate Second Report and Order*, ¶ 179.

connections in the first instance), the Commission should ensure that the ECF does not inadvertently burden consumers by interfering with their ability to purchase the service of their choice. While quality of service is of course essential to user experience (especially in a remote learning environment), the adoption of minimum service standards should not, for example, force a beneficiary to migrate from a service package to which that household already subscribes to a higher tier of service that may be unaffordable for that household.<sup>12</sup> Thus, minimum service standards for the ECF should be flexible and mirror those adopted for the EBB, focusing on whether the connection “permits households to rely on these connections for the purposes essential to participating in society during the pandemic, such as telework, remote learning, and telehealth.”<sup>13</sup>

### **III. THE AMERICAN RESCUE PLAN ACT INDICATES A CONGRESSIONAL INTENT TO PRECLUDE THE USE OF ECF SUPPORT FOR “SELF-PROVISIONED” NETWORKS.**

NTCA supports the Public Notice proposal to exclude dark fiber or other network construction (self-provisioning) from the ECF. For one, any other approach would run counter to the American Rescue Plan Act, which defines “eligible equipment” as Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices.<sup>14</sup> This narrow definition of “eligible equipment” indicates that Congress sought, at least for some

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<sup>12</sup> Here, NTCA hopes to keep the problem that continues to plague the Lifeline USF program from having a similar effect on the ECF. In the Lifeline program, minimum service standards that automatically increase every year force beneficiaries into higher broadband service tiers that come with increased rates even as the level of subsidy remains constant. *See* NTCA Petition for Temporary Waiver, WC Docket No. 11-42 et al. (fil. Jul. 23, 2018). Indeed, these ever-escalating minimum service standards can force a household to cease purchasing a service because it becomes unaffordable, whereas if the household had the choice of retaining its existing service, it would have done so.

<sup>13</sup> EBB Order, ¶ 73 (declining to adopt specific minimum service standards and instead finding that “qualifying Internet service offerings must include a broadband connection (as defined in section 904(a)(9))—fixed or mobile—that permits households to rely on these connections for the purposes essential to participating in society during the pandemic, such as telework, remote learning, and telehealth.”).

<sup>14</sup> American Rescue Plan Act, § 7402 (d)(6).

students, the quickest path toward delivering connectivity to those that lack it during this emergency – and one would be hard-pressed to argue that a “new-build” or other self-provisioned broadband access, as opposed to the use of either already-built networks or hotspots where such networks are lacking, is the most rapid path to connecting those in need during an emergency. Indeed, it would be hard to argue that, had Congress intended to authorize a school or library self-provisioning option, it would have done so via such a narrowly *targeted* definition of “eligible equipment.”

Moreover, the American Rescue Plan Act’s reference to providing support for advanced services is similarly narrow and also excludes self-provisioned networks. More specifically, the statute also allows ECF support for the “*purchase* during a COVID–19 emergency period of...advanced telecommunications and information services.”<sup>15</sup> Yet again, had Congress wanted to fund the *provision* of advanced telecommunications and information services by an eligible school or library, it would have done so and not limited the statutory language to the *purchase* of such services. Thus, while the statute allows for ECF support for a school or library to *purchase* broadband services from existing providers for the benefit of students engaged in remote learning (and thus the Commission would be on solid legal ground to enact the proposals made by NTCA in the preceding section), the language is limited to purchasing.

Further indication that the provision is so limited (and would exclude the *provision* of a broadband network by a school or library while allowing a *purchase of an available connection from a provider*) can be found in the “emergency” nature of the ECF and indeed the pandemic itself. The time involved in actually deploying new networks, in contrast to using already

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<sup>15</sup> American Rescue Plan Act, § 7402 (a) (emphasis added).

available connections, is likely to result in connections that will take months, if not longer, to come online. Simply put, the statute indicates a congressional desire to fund “eligible equipment” or the “purchase” of “advanced telecommunications and information services” by schools and libraries and not the self “provision” of such services as the latter is hardly suited to rapidly connecting students amidst an emergency.

To be clear, as NTCA has previously stated,<sup>16</sup> where a school/school district faces a “total unavailability” scenario – one in which no provider has or will step up – the Commission’s existing E-rate rules should not stand in the way of doing what is needed to connect a truly unserved school or student. Yet, that is a broader policy conversation than the one presented here, which is intended to respond to an emergency and authorized by a statute with narrow definitions of eligible equipment and services. Considering the emergency circumstances underlying the request at issue, the leveraging of any existing connection that can meet a student’s need and do so immediately is the most direct path toward addressing the urgent need for students’ access to remote learning.

#### **IV. CONCLUSION**

For the reasons stated above, the Commission should adopt ECF rules that leverage existing connections to the greatest extent possible.

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<sup>16</sup> See Comments of NTCA, WC Docket No. 13-184 (fil. Sep. 16, 2013); Comments of NTCA, WC Docket No. 21-31 (fil. Feb. 16, 2021).

Respectfully Submitted



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