

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

In the Matter of)
)
Establishing Emergency Connectivity Fund to) WC Docket No. 21-93
Close the Homework Gap)

COMMENTS OF T-MOBILE USA, INC.

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T-Mobile USA, Inc. (“T-Mobile”)¹ submits these comments in response to the Wireline Competition Bureau’s *Public Notice* seeking comment on the administration of the Emergency Connectivity Fund (“ECF”) Program² of the American Rescue Plan Act, 2021.³

I. INTRODUCTION AND SUMMARY.

T-Mobile supports Congress’s goal of making ECF funding available to close the homework gap and bridge the digital divide and urges the Commission to adopt a discrete number of changes to the current E-rate program to promote the rapid distribution of ECF support. The American Rescue Plan Act directs the Commission to expand E-rate eligibility beyond school campuses and library facilities to the places where students, staff, and library patrons need connectivity the most—at home and on the go. Mobile broadband is often the best method to meet both needs. The ECF Program offers an ideal opportunity for the Commission to

¹ T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., a publicly traded company. T-Mobile and Sprint are now one company operating under the name T-Mobile. The merger closed on April 1, 2020.

² *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*”).

³ 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> (enrolled bill) (“Section 7402”).

explore how best to modernize the E-rate program to serve the needs of students, educators, and staff both during and after the pandemic.

T-Mobile recommends adopting nine measures to ensure schools and libraries have a fair opportunity to apply for ECF funds for a wide array of broadband devices and services:

1. Affirm that mobile broadband services are “advanced telecommunications and information services” for “the connectivity required to enable and support remote learning for students, staff, and library patrons”;
2. Clarify that “eligible equipment” includes mobile devices, including hotspot-capable smartphones and standalone Wi-Fi hotspots, because these types of devices can serve as “Wi-Fi hotspots” and that smartphones should be treated as “connected devices”;
3. Prohibit the use of ECF funds for costly and time-consuming construction of new networks;
4. Create an invoicing and reimbursement process that allows schools and libraries to directly file and seek payment for eligible services and devices;
5. Avoid duplicative funding by limiting ECF reimbursements to eligible devices and services that are not already funded by another federal, state, or local program;
6. Limit reimbursements to one device and one connection per student, staff member, or library patron—subject to a bulk-purchasing option;
7. Promote competition among would-be ECF providers and rural availability by avoiding minimum service standards and onerous reporting obligations;
8. Clarify that free and highly discounted service and device offerings do not count against providers in determining whether they are offering schools and libraries their lowest corresponding prices; and
9. Encourage robust participation by schools, libraries, and providers by creating a broad safe harbor and declining to use violations of other Commission rules to withhold ECF funds.

Adopting these nine measures will extend the benefits of the ECF Program to more people more quickly than the available alternatives and allow schools and libraries to promote offsite education and combat learning loss during and after the present crisis.

II. SCHOOLS AND LIBRARIES SHOULD HAVE THE FLEXIBILITY TO DETERMINE HOW TO BEST KEEP THEIR STUDENTS, STAFF, AND PATRONS CONNECTED UNDER THE FUND.

The primary goal of the Emergency Connectivity Fund is to support remote broadband connectivity for students, staff, and library patrons. With that goal in mind, the FCC’s *Public Notice* proposes to limit ECF funds to “equipment and services that are needed to provide the connectivity required to enable and support remote learning for students, staff, and library patrons.”⁴ T-Mobile agrees that focusing on connectivity and support for students, staff, and patrons should inform the Commission’s ECF rules and guidance. Avoiding unnecessary and excessive administrative burdens should be a key objective of the ECF Program for the sake of all stakeholders. Increasing flexibility, limiting overhead, and promoting choice will empower schools and libraries to meet the needs of students, staff, and patrons.

A. Mobile Broadband Services and Devices Are Key Tools for Closing the Homework Gap and Fulfilling the Congress’s Mandate under Section 7402.

Our nation’s homework gap has existed for decades, and the pandemic has made a bad situation worse. For many years, stakeholders, including regulators, educators, and telecommunications providers, have sought to close the gap. As Acting Chair Rosenworcel has previously noted, students without robust internet access have “a serious handicap” both academically and as they enter the competitive job market, a “loss is more than individual. It’s a loss to our collective human capital and shared economic future.”⁵

⁴ *Public Notice* at 5.

⁵ Remarks of Commissioner Jessica Rosenworcel, “*Closing the Homework Gap*,” *Cue16*, Palm Springs, California, DOC-338474, at 2 (Mar. 17, 2016).

T-Mobile has long advocated for the expansion of the FCC’s E-rate program to include off-campus use in a technology-neutral fashion.⁶ Doing so would allow the broadband market to meet the variable, ever-shifting preferences for connectivity with other critical, *cost-effective* solutions.⁷ Now with T-Mobile’s nationwide 5G network, for example, schools’ and libraries’ solution options are all but endless. T-Mobile’s wireless network can provide connectivity in the classroom, at home, and on the go. Importantly, this solution ensures that children living in temporary housing, such as shelters, and those that require afterschool care outside the home can continue to participate in school and keep up with their homework. T-Mobile’s wireless network is widely available and simple to use, meaning that schools and libraries face no complex installation logistics or high setup costs. Nor do schools and libraries have to manage network facilities or worry about replacing outdated and ineffective equipment.

T-Mobile offers wireless hotspots and handsets with maximized hotspot functionality for situations in which a direct connection is preferable over a handset solution. These affordable and easy-to-distribute wireless devices, which ride on top of the mobile wireless network, allow educators and students a robust, direct connection to the internet. The connection is not fixed, which provides additional flexibility to meet changing demands. A wireless hotspot device is

⁶ See, e.g., Reply Comments of T-Mobile USA, Inc., WC Docket No. 13-184 (filed Nov. 8, 2013) (arguing that the E-rate rules should be updated to reflect that off-campus broadband is an essential part of students’ educational needs and that mobile technology had the distinct advantage of creating an “anywhere, anytime” learning environment).

⁷ The Pew Research Center, for example, found that between 2015 and 2019, smartphone-only broadband users’ “most important reason for not having [fixed] broadband” shifted from the cost of the service and the device (down 37 percent) to “[s]martphone does everything you need” (up 92 percent). Monica Anderson, *Mobile Technology and Home Broadband 2019*, Pew Research Center (June 13, 2019), <https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/>. That same study found that nearly a fifth of all Americans live in smartphone-only households. *Id.* The study also found that “[r]acial and ethnic gaps are also present: One-quarter of Hispanics and a comparable share of blacks are smartphone only internet users, compared with about one-in-ten whites.” *Id.*

cost-effective, with low-cost monthly plans available to meet the educational demands of today, tomorrow, and post-pandemic.

T-Mobile's 5G deployments bring a new and very relevant option to schools and libraries everywhere: fixed wireless High-Speed Internet.⁸ High-speed 5G connections have zero installation costs. T-Mobile can offer schools and libraries stationary routers to serve large swaths of students while on campus, which maximizes the benefit of devices provided to students and allowing for consistent delivery of educational materials both during school hours and after. This type of seamless flexibility, largely demonstrated in today's reality, will prove especially important as teachers and students start to transition back to campus and employ hybrid approaches that stagger the times students participate remotely and in the classroom. T-Mobile also recently announced the broader deployment of its Home Broadband service,⁹ an especially important development for the millions of rural American households that still lack access to fixed terrestrial broadband.¹⁰

⁸ Letter from Elaine Wynn, President, Nevada State Board of Education, to Ajit Pai, Chairman, FCC, CC Docket No. 21-31, at 2-3 (July 30, 2020) (discussing advantages of fixed wireless installations).

⁹ Press Release, T-Mobile, *T-Mobile Outlines Supercharged Plan for Un-carrier to Further Extend Lead Throughout the 5G Era with Growth in Wireless and Beyond... Creating Significant Benefits for Customers and Shareholders* (Mar. 11, 2021), available at <https://investor.t-mobile.com/news-and-events/t-mobile-us-press-releases/press-release-details/2021/T-Mobile-Outlines-Supercharged-Plan-for-Un-carrier-to-Further-Extend-Lead-Throughout-the-5G-Era-with-Growth-in-Wireless-and-Beyond-Creating-Significant-Benefits-for-Customers-and-Shareholders/default.aspx> (“[T]he Un-carrier is gearing up for its commercial launch of in-home broadband for consumers later this month and shared broader plans to expand the service to between seven and eight million broadband customers in five years.”).

¹⁰ *Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Fourteenth Broadband Deployment Report, GN Docket No. 20-269, FCC 21-18 ¶ 33 (rel. Jan. 19, 2021) (“*2021 Broadband Deployment Report*”) (reporting that more than 11 million rural Americans lack access to fixed terrestrial broadband with minimum speeds of 25/3 Mbps).

With a wireless solution, schools and libraries can easily choose the devices that best meet their needs, knowing they will have access to advanced telecommunications and information services through cellular or Wi-Fi connectivity, further expanding the anywhere, anytime learning model. In implementing the ECF Program, the Commission should broadly interpret Section 7402 of the American Rescue Plan Act to ensure that schools and libraries that purchased eligible devices to transition to remote learning can recoup costs and that they can choose the devices that best meet their needs. With a modern wireless network, many devices—laptops, Chromebooks, tablets, handsets, and hotspots—can help schools and libraries deliver remote learning solutions. The FCC should allow schools and libraries this necessary flexibility by broadly interpreting the equipment that can be used in end-user solutions.

The focus of the ECF Program should remain on cost-effectiveness, flexibility, and today’s reality. While situations may exist where wireline technologies offer the most timely, effective, and efficient means of establishing connectivity in a dynamic learning environment, local schools and libraries—not federal agencies—are best positioned to assess the cost and benefits for their students, staff, and patrons. By directing the Commission to use the E-rate framework,¹¹ Congress intended Section 7402 to empower schools and libraries on an emergency basis to choose the technologies that best suit the remote connectivity needs of students, staff, and patrons, and the ECF Program rules should reflect that intent.

B. The Commission Should Clarify that Mobile Broadband Services are Advanced Telecommunications and Information Services.

T-Mobile agrees with the *Public Notice*’s pragmatic proposal to define “advanced telecommunications and information services” as services “that can be supported by and

¹¹ Section 7402(a) (“[T]he Commission shall promulgate regulations providing for the provision . . . of support under [the E-rate provisions] of the Communications Act of 1934 . . .”).

delivered with eligible equipment.”¹² Wi-Fi hotspots are eligible equipment.¹³ Wi-Fi hotspots remain eligible equipment whether the Wi-Fi hotspot uses fiber, hybrid fiber-coax, or wireless for backhaul. The backhaul mechanism is incidental to the device performance and does not transform the Wi-Fi hotspot into some other product or service. Because Wi-Fi hotspots are eligible equipment and can rely on mobile broadband, eligible services must necessarily include mobile wireless broadband. Indeed, elsewhere the *Public Notice* refers to “mobile wireless” as among the broadband service options available to schools and libraries.¹⁴

Recognizing the tension between the Commission’s historic “educational purposes” presumption that effectively limited E-rate funding to on-campus locations and Congress’s clear intent to use the E-rate paradigm for off-campus connectivity,¹⁵ the *Public Notice* asks “what guidance should the Commission provide schools and libraries about how eligible equipment and services can be used.”¹⁶ T-Mobile recommends that the Commission clarify that the “educational purposes” presumption includes any location where broadband service is delivered to a student, staff member, or a library patron. T-Mobile also urges the Commission to clarify that “patron of the library” under Section 7402(a)(2) includes library staff.

¹² *Public Notice* at 7.

¹³ Section 7402(d)(6)(A).

¹⁴ *Public Notice* at 16 (“Similarly, we propose requiring Emergency Connectivity Fund participants to maintain a record of the services purchased with these funds, recording at a minimum: (1) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, *mobile wireless*)”) (emphasis added).

¹⁵ Section 7402(a) (“[T]he Commission shall promulgate regulations providing for the provision . . . of support under [the E-rate provisions] of section 254(h) of the Communications Act of 1934”).

¹⁶ *Public Notice* at 10.

T-Mobile agrees with the Commission’s proposal to exclude funding for dark fiber and new network construction.¹⁷ The text of Section 7402 does not support the use of ECF funds for network construction costs, which would not fall within the enumerated categories of eligible equipment. Section 7402 also states that funding is for the “purchase” of eligible equipment and services, which would not reasonably include schools’ and libraries’ costs to self-provision connectivity. Moreover, given the limited ECF funding available and very short time in which it can be used, authorization of costly, time-consuming infrastructure projects that would not be completed until years after the COVID-19 pandemic has abated would not serve the statutory purpose of ameliorating the deleterious effects of the pandemic on students, staff, and patrons of schools and libraries.

C. The Commission Should Broadly Construe “Wi-Fi Hotspot” and “Connected Device” to Give Schools and Libraries the Flexibility to Use the Devices That Best Meet their Remote Connectivity Needs and Reflect the Current Reality.

The Commission seeks comment on the types of device that should be eligible for ECF funding. T-Mobile urges the Commission to adopt eligibility guidance that reflects the capacious, flexible definitions provided by Section 7402. In particular, the Commission should clarify that smartphones capable of (1) providing other devices with internet connectivity (2) through a local network under IEEE standard 802.11, which (3) is backhauled through a mobile wireless network, meets the definition of “Wi-Fi hotspot” under Section 7402(d)(11). Also, mobile phones that provide similar functionality as “tablet computers” should be considered “connected devices” for the purposes of the ECF Program since schools and libraries have realized such benefits during the pandemic.

¹⁷ *Id.* at 7.

Hotspots continue to be a critical emergency option for households during the pandemic, and they are particularly useful in multi-student households for remote learning. Indeed, as T-Mobile has seen with EmpowerED and Project 10Million, Wi-Fi hotspots are an efficient and effective way to connect students, staff, and library patrons.¹⁸ Smartphones with hotspots can prove especially important for low-income households that suffer from caregiver and housing instability, such as uncertain childcare, multiple moves, eviction, and difficulty paying rent, mortgage, or utilities. A low-income student, for example, may be under the care of a grandmother on Tuesdays, a parent on Wednesdays, an aunt on Thursdays, and a grandfather on Fridays. Under these circumstances, access to a portable, multi-purpose hotspot that can support both broadband connectivity to the school and commonplace voice communications has proven particularly useful. A single device not only supports remote learning (either directly or through the use of widely available, low-cost peripheral devices such as wireless keyboards) but also allows the child to communicate with his or her multiple caregivers, whose only practical connection to the child may be through access to the public switched telephone network.

The treatment of a smartphone as a Wi-Fi hotspot would adhere to Section 7402, which broadly defines a Wi-Fi hotspot as a device capable of “receiving advanced telecommunications and information services [and] sharing such services with a connected device through the use of Wi-Fi.”¹⁹ Indeed, the House Budget Committee’s report on the American Rescue Plan Act makes clear that Wi-Fi hotspots can be “incorporated into [a] mobile phone”:

¹⁸ T-Mobile, Project 10Million, <https://www.t-mobile.com/business/education/project-10-million> (last visited Mar. 24, 2021).

¹⁹ Section 7402(d)(11). “Wi-Fi,” in turn, is defined as “a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).” Section 7402(d)(10).

Additional emergency funding will ensure that students and low-income Americans have access to reliable high-speed internet in locations other than schools and libraries through different technological solutions, including residential broadband service provided in different forms, or through *WiFi hotspots, either incorporated into mobile phone* or provided on a standalone basis, among other things.²⁰

For the avoidance of doubt, there are no relevant differences between the version of Section 7402 passed by the House and the version eventually enacted into law.²¹

Including smartphones as Wi-Fi hotspots also would be consistent with the Commission’s interpretation of the meaning of “hotspot” within the remote broadband connectivity context. For example, in the most recent Communications Marketplace Report, the Commission referred to the hotspot functions made available in T-Mobile’s, AT&T’s, and U.S. Cellular’s smartphone service plans.²² Including smartphones as hotspots would also avoid potential supply chain issues that may result if the Commission narrowly limits the types of devices that are eligible to be treated as Wi-Fi hotspots.

On a technical level, there is no difference between a wireless hotspot provided through a smartphone and a wireless hotspot provided through a standalone device. Both operate over the same mobile wireless networks using the same spectrum and standards (e.g., 4G LTE and 5G

²⁰ H.R. Rep. No. 117-7, at 306-07 (2021) (emphasis added).

²¹ The House version of the bill appropriated \$7,599,000,000 and clarified the definition of “Tribal library,” but the text is otherwise the same.

²² See *Communications Marketplace Report*, 2020 Communications Marketplace Report, GN Docket No. 20-60, FCC 20-188 ¶ 39 (rel. Dec. 31, 2020) (“In contrast to T-Mobile ONE, the Magenta plan adds 3 GB of high-speed smartphone hotspot—or tethering—per line”); *id.* ¶ 40 (“The largest plan, AT&T Unlimited Elite, includes 30 GB of mobile hotspot data per line”); *id.* at n.130 (“U.S. Cellular’s new Everyday Unlimited Plan comes with bonus features such as HD video streaming, roaming in Mexico and Canada, 15 GB of hotspot access”); *id.* ¶ 43 (“For one line at \$60 per month, [Metro by T-Mobile] customers get: Unlimited 4G LTE data (reduced after 35 GB, 480p streaming only), a 15 GB 4G LTE mobile hotspot”); *id.* ¶ 44 (“Premium plans typically offer increased mobile hotspot data limits”).

NR), produce a local network using the same IEEE 802.11 networking standards, and use the same hardware and software. In a sense, a smartphone is essentially a Wi-Fi hotspot with more functionality (e.g., a screen, cameras, and a microphone that can be used for remote learning). For all these reasons, a smartphone should generally be treated as an ECF-eligible Wi-Fi hotspot.

The *Public Notice*, however, proposes to exclude smartphones from being treated as “connected devices.”²³ No rational basis exists for the exclusion. Smartphones with 4G LTE or 5G capability can support all manner of broadband activities, including video conferencing for remote learning, and should be treated as “connected devices” for the ECF Program. As a practical matter, very little distinguishes a “tablet computer,” which is ECF-eligible, from a smartphone. Smartphones’ capabilities and functions are often comparable to, and may even exceed, the capabilities and functionality of a tablet computer, and these mobile phones deliver the very kind of connectivity that Congress intended when it referred to “mobile phones” as ECF-eligible.

In its proposal to exclude smartphones, the *Public Notice* briefly cites the Commission’s recent decision to not interpret “tablet” as including smartphones for the Emergency Broadband Benefit (“EBB”) Program.²⁴ That rationale does not apply to Section 7402. The statutory language for the EBB Program limited “connected device” to “a laptop or desktop computer or tablet.”²⁵ In contrast, Section 7402 defines a “connected device” as “a laptop computer, tablet

²³ *Public Notice* at 5-6.

²⁴ *Id.* at n.27.

²⁵ See *Emergency Broadband Benefit Program*, Report and Order, WC Docket No. 20-445, FCC 21-29 ¶ 79 (rel. Feb. 26, 2021) (“*EBB R&O*”) (“The Consolidated Appropriations Act clearly and narrowly defines a ‘connected device’ eligible for a separate, one-time reimbursement as ‘a laptop or desktop computer or tablet.’”).

computer, or *similar end-user device*” that can connect to the same advanced telecommunications and information services that laptops and tablet computers can.²⁶

The *Public Notice* reasons that a smartphone is not “similar” to a laptop or tablet computer because it does not “allow students, school staff, and library patrons to meaningfully participate in remote learning activities.”²⁷ This line of argument suffers from at least three flaws. *First*, this standard ignores the unambiguous statutory language of Section 7402, which focuses on whether the device “is capable of connecting to advanced telecommunications and information services.”²⁸ *Second*, no statutory or public policy basis exists for the newly announced “meaningful[] participat[ion]” test. *Third*, the *Public Notice* fails to explain how a tablet computer can allow “meaningful[] participat[ion] in remote learning activities” in a manner that a smartphone does not.

There is no relevant communications service or standard, including Wi-Fi, for which “tablet computers” can access that a smartphone cannot. Neither tablet computers nor smartphones have built-in keyboards. Both nearly invariably include front- and rear-facing cameras with built-in microphones and video functions.²⁹ While not required under the text of Section 7402, both smartphones and tablet computers are “accessible to and usable by people with disabilities.”³⁰ The *only* colorable distinction between a tablet and a smartphone is the average size of the screen. But smaller tablets and larger mobile phones commonly have touch-

²⁶ Section 7402(d)(3) (emphasis added).

²⁷ *Public Notice* at 6.

²⁸ Section 7402(d)(3).

²⁹ *Public Notice* at 6 (“[S]hould the Commission require that connected devices be Wi-Fi enabled and have video and camera functions to enable remote learning?”).

³⁰ *EBB R&O* ¶ 82.

screens with comparable sizes, capabilities, and virtually indistinguishable user interfaces. For example, T-Mobile carries the Moxee tablet, a 4.89” x 8.58” device with an 8” HD screen, 3 GB of RAM, and expandable memory of up to 128 GB.³¹ Those specifications resemble many of the mobile phones T-Mobile offers.³²

Construing Section 7402’s definition of “connected device” in a manner that renders both tablets and smartphone devices eligible for reimbursement reflects the functionally indistinguishable nature of these devices. Doing so also serves the public interest by allowing students, staff, and library patrons to use these devices directly and indirectly to connect even more devices in their households. Many students today use 4G LTE and 5G mobile phones for the same purposes that they use laptops and tablets computers. Bluetooth keyboards and other inexpensive and widely used peripherals readily transform a smartphone into a device that is indistinguishable from a laptop. And for many students, their mobile phone serves as their sole or primary link to the internet. Some mobile phones may be superior to certain conventional tablets in terms of performance and functionality, making it both inequitable and illogical to exclude the former but include the latter. Students are also likely to be more familiar with using mobile phones than other types of connected devices. Including at least smartphones with larger screens will ensure that digital literacy is no barrier to connectivity under the ECF Program.

Finally, by including smartphones in the ECF Program, the Commission will avoid the

³¹ See Moxee Tablet, T-Mobile, <https://www.t-mobile.com/tablet/moxee-tablet?sku=610214663795> (last visited Mar. 27, 2021).

³² To take just one example, the Samsung Galaxy S20 FE is a 2.93” x 6.29” mobile phone with a 6.5” FHD screen, 6 GB of RAM and 128 GB of native memory, with expandable memory of up to 1 TB. See Samsung Galaxy S20 FE 5G, T-Mobile, <https://www.t-mobile.com/cell-phone/samsung-galaxy-s20-fe-5g?sku=610214666376> (last visited Mar. 28, 2021). Aside from a slight difference in screen size, the two devices are perfectly comparable for the purposes of remote learning. In fact, the Samsung mobile phone has twice as much RAM and up to eight times more memory.

cumbersome and fraught tasks of distinguishing smartphones from tablet computers and adjudicating whether a panoply of different devices are “mobile phones” or “tablet computers” under the ECF Program.

If the Commission still determines that certain smartphones should be ineligible, it should do so based on a clear eligibility standard that gives both ECF applicants and providers certainty about which smartphones and tablets are eligible. ECF applicants should not be put in the position of guessing whether seeking reimbursement for a 4G LTE- or 5G-enabled tablet risks violating the Commission’s ECF rules, which could chill overall participation in the program.

III. STREAMLINED ECF RULES WILL MINIMIZE ADMINISTRATIVE BURDENS ON APPLICANTS AND PROVIDERS.

The *Public Notice* observes that a key objective of the ECF Program is “to most efficiently and effectively distribute funding.”³³ T-Mobile agrees and supports adopting processes and rules that extend ECF funding as much as possible when and where students need it most. Adopting a streamlined and pragmatic set of rules governing eligibility, administration, and reimbursement of ECF support will advance the twin goals of expanding remote instruction and remediating learning loss for children throughout the United States.

A. Disbursement of ECF Funding Directly to Schools and Libraries Will Ensure ECF Funds Are Allocated Fairly and Efficiently.

The *Public Notice* proposes that schools and libraries directly submit invoices for reimbursement.³⁴ T-Mobile agrees that this process would quickly make funds available for educational purposes while minimizing the risk of waste, fraud, and abuse.

³³ *Public Notice* at 3.

³⁴ *Id.* at 13-14.

T-Mobile would also support a streamlined invoicing form for ECF applicants so long as the form did not create confusion or delay in the distribution of ECF funds. For example, if applicants could not determine how a type of expense should be submitted, then the limited staff resources of applicants, the FCC, and Universal Service Administrative Company might need to be spent resolving the issue, defeating the purpose of a streamlined invoicing form. Similarly, whether to develop a streamlined invoicing form should be weighed against the risk of development delays that then result in delays to the distribution of ECF funds. It should also be kept in mind whether the Office of Management and Budget would need to approve a streamlined invoicing form and how long that approval process could take.

T-Mobile agrees with the *Public Notice*'s proposal to permit schools and libraries to forgo a competitive bidding process for already executed contracts for eligible devices and services.³⁵ Applicants would then be able to obtain expedited access to ECF funds, allowing schools and libraries that self-funded their remote learning technology needs to recoup their costs as quickly as possible. This approach worked well in California when the California Teleconnect Fund Distance Learning Discount program (in which T-Mobile participates) and the California Public Utilities Commission significantly streamlined the application approval and invoicing processes and granted service providers significant flexibility to apply for retroactive discounting and invoicing.³⁶

³⁵ *Id.* at 10.

³⁶ *COVID-19 Distance Learning Discount on Mobile Data Services for California K-12 Public School Students*, Cal. Pub. Utils Comm'n, <https://www.cpuc.ca.gov/General.aspx?id=6442464777> (last visited Mar. 31, 2021) (stating that support provided for “[m]onthly recurring costs for mobile broadband data services to connect students’ personal devices or hotspots for distance learning purposes”).

For ECF applicants that have not yet entered into agreements for eligible equipment or services, the *Public Notice* also seeks comment on the shortest possible invoice filing deadline period that would not unduly burden applicants and proposes a 14-day competitive bidding window.³⁷ While the shortened competitive bidding window rightly prioritizes the need for timely action to respond to the dire learning environment the pandemic has created, even a 14-day window may impose an unnecessary barrier to rapidly responding to the needs of children and library patrons during the present crisis. Schools and libraries should not be required to seek, review, compare, and process competitive bids amid a pandemic because they already have strong incentives to find the lowest-cost solutions for their students and patrons. Competitive bidding works best when schools and libraries do not have an urgent need for service and are unfamiliar with the providers who would respond to the tender. Neither consideration applies here: schools and libraries need connectivity immediately, and they are familiar with both broadband services and the broadband service providers offering service in their respective areas. Under these circumstances, imposing a 14-day mandatory competitive bidding window would needlessly delay relief without material public interest benefit.

Clarifying that schools and libraries may enter broadband service agreements for any commercially reasonable duration would help eliminate uncertainty in the marketplace about the duration of federal support. Many enterprise contracts for broadband services last one or two years after the effective date. In this case, however, the COVID-19 Emergency Period may or may not end June 30, 2022. This uncertain duration raises questions about whether a contract entered now for broadband services through the end of 2022 would be supported. Clarifying that schools and libraries may enter a contract of any commercially reasonable duration during the

³⁷ *Public Notice* at 11, 14.

emergency period would eliminate commercial uncertainty in the marketplace. Alternatively, the Commission could adopt a safe harbor indicating that any eligible service contracts that extend through June 30, 2023 would be considered presumptively reasonable, which would provide schools and libraries the option for one- or two-year agreements for eligible services. Whether the Commission provides clarity by adopting a commercially reasonable standard or a safe harbor, providing schools, libraries, and vendors with greater clarity about the permissible duration of broadband service contracts would eliminate confusion and help accelerate the deployment of broadband services under the ECF Program. In the same spirit, clarifying that ECF funds can be used to prepay eligible services will help applicants and service providers avoid confusion about payment structuring.

B. Avoiding Duplicative Funding Will Expand the Benefits of ECF Support.

T-Mobile agrees with the *Public Notice*'s proposal to limit ECF funds to eligible equipment and services that have not already received funding through other federal and state programs.³⁸ Without this limitation, ECF applicants could be pressured to shift other state or federal funding obligations that were already incurred for remote learning. For example, an applicant that already received state funding for eligible services or equipment may be asked to return those funds if it receives duplicate ECF funding.

As a general matter, shifting dollars across multiple fiscal years and using various funding sources (i.e., state, federal, and local) can be very complex and create challenging reporting and accountability issues. The Commission's proposal would help ECF applicants avoid these potential issues altogether. The proposal would also limit the risk of duplicative funding and ensure that the finite amount of ECF funding is used optimally.

³⁸ *Public Notice* at 15.

To ensure that schools and libraries comply with this requirement, the *Public Notice* proposes that applicants certify that they *will not* seek and *have not* sought other federal or state funding for ECF-funded equipment and services.³⁹ T-Mobile agrees with this approach. For the avoidance of doubt, ECF applicants should also certify that they are not *currently* applying for other federal or state funding for ECF-funded equipment or services.

Finally, if there are certain federal and state funding programs that ECF applicants should consider when certifying their applications, those programs should be identified in accompanying guidance or application instructions. For example, the Elementary and Secondary School Emergency Relief Fund permitted the use of funding for equipment and services that likely overlap with ECF-eligible equipment and services.⁴⁰ To the extent that the Commission is aware of these sorts of potential application footfalls, all stakeholders will benefit from those issues being communicated long before the application window opens.

C. Limiting ECF Reimbursement to One Line and One Device per User Will Fairly Distribute ECF Funds, but a Bulk Purchase Program May Further Improve the Cost-Effectiveness of the ECF Program.

The *Public Notice* proposes to limit ECF reimbursement to one connected device and one supported connection per student, staff member, or library patron.⁴¹ T-Mobile generally supports this approach. This policy will help ensure that limited ECF funds are fairly distributed among applicants and maximize the number of students, staff members, and library patrons served.

³⁹ *Id.*

⁴⁰ Coronavirus Aid, Relief, and Economic Security Act, P.L. 116-136 § 18003(d)(9) (2020) (permitting the use of covered funds for “[p]urchasing educational technology (including hardware, software, and connectivity”).

⁴¹ *See Public Notice* at 8.

The *Public Notice* also seeks comment on whether bulk purchase programs should be ECF eligible.⁴² T-Mobile supports ECF reimbursement eligibility for bulk-purchase programs, which have always been eligible for E-Rate and used by schools.⁴³ As Qualcomm recently noted, “[m]obile broadband service offerings, with bulk rate discounts, geared toward schools and their students are now common and are proliferating.”⁴⁴ For applicants, providers, students, students’ families, staff, and library patrons, a bulk-purchase option could be cost-effective, administratively efficient, and a simple way to quickly close the digital divide and homework gap.

If the Commission permits bulk-purchasing using ECF funds, it should not impose a strict one-device or one-service-line policy. Instead, applicants should be permitted to calculate a good-faith estimate of the number of lines and devices needed for students, staff, or library patrons. Since the *Public Notice* already envisions per-individual inventory tracking, the Commission will be able to verify the accuracy of schools’ and libraries’ bulk estimates.⁴⁵ The ECF order and rules also should make clear that parties are free to negotiate terms and limitations associated with bulk purchase orders. For example, enterprise agreements typically impose constraints on bulk purchase orders to mitigate the risk of loss from cancelation. Likewise, vendors may seek administrative charges for cancelation, shipping charges for returned products, or liquidated damages for lost opportunities. The ECF rules should not constrain these sorts of typical commercial terms.

⁴² *Id.* at 9.

⁴³ See Comments of City of Chicago *et al.*, WC Docket No. 21-31, at 6-9 (filed Feb. 16, 2021).

⁴⁴ Comments of Qualcomm Incorporated, WC Docket No. 21-31, at 7 (filed Feb. 16, 2021).

⁴⁵ *Public Notice* at 16.

D. The ECF Rules Should Not Include Onerous Service and Administrative Requirements That Would Keep ECF Applicants From Choosing the Service Options That Best Suit Their Needs.

The ECF Program represents an important opportunity for the Commission to reimagine what the E-rate program could do and how it could best meet schools' and libraries' connectivity needs. T-Mobile agrees that the existing E-rate framework is generally workable, but there are certain elements that should not be imposed on ECF providers. In particular, the *Public Notice* seeks comment on minimum throughput requirements, data thresholds, and a non-usage rule for ECF-funded services.⁴⁶ Rather than setting arbitrary standards, allowing schools and libraries to determine how best to use the funding to purchase available services that meet their remote learning needs would more efficiently further the ECF Program's goals.

1. Minimum Throughput

The *Public Notice* asks whether to impose the Commission's *fixed* 25/3 Mbps broadband speed requirement.⁴⁷ Such a requirement would not be consistent with the purposes of Section 7402. Congress intended ECF funding to be used for mobile broadband options. Imposing a non-mobile broadband standard could foreclose certain schools and libraries from using ECF funding for mobile broadband—an outcome contrary to congressional intent.

The Commission recently rejected proposals to impose such a requirement in the EBB Program, noting “the emergency nature of the EBB Program and the vital need to maximize consumer choice and benefits in a short timeframe.”⁴⁸ The Commission acknowledged the importance of sufficient data throughput but found that “allowing consumers to select offerings

⁴⁶ *Id.* at 7-8, 16.

⁴⁷ *Id.* at 7-8.

⁴⁸ *EBB R&O* ¶ 74.

that work best for their household[,] as well as permit[ting] participating providers to serve eligible households as quickly,” militated against imposing additional service requirements.⁴⁹

The same is true here. Schools and libraries are best positioned to determine how ECF funds can most efficiently meet the connectivity needs of their constituents. Moreover, without knowing in advance where every student, staff member, and library patron is located, it could be difficult for a provider to verify *ex ante* that it can deliver 25/3 Mbps service to remote locations. Not only would it be harder for some providers to meet this standard, it may also be impossible in certain areas of the country—particularly in the millions of rural households that do not already have 25/3 Mbps service available—to receive ECF-eligible support.⁵⁰

2. Data Caps

Data limits on ECF service plans will unnecessarily hamper the flexible approach that Congress intended for the ECF Program. In the *EBB R&O*, the Commission explained that data caps “would be contrary to the law’s purpose of supporting robust modern broadband service during an unprecedented pandemic.”⁵¹ Again, the same is true here. A data cap could prevent students, staff, and library patrons from the advanced telecommunications and information services that ECF funding is intended to support. That said, the Commission also should not prohibit schools and libraries from selecting plans with data limits, which could reduce costs and preserve ECF funding where schools and libraries determine such data-restricted plans would best meet their needs.

⁴⁹ *Id.*

⁵⁰ *2021 Broadband Deployment Report* ¶ 33.

⁵¹ *EBB R&O* ¶ 72.

3. Non-Usage Reporting

The *Public Notice* asks whether providers should be required to notify a school or library if a supported connection is not used in a month.⁵² T-Mobile strongly supports the goal of this type of requirement, but a mandatory reporting obligation is likely to yield little benefit relative to the cost and complexity of implementing it. While reviewing and conveying usage data to school and library administrators would not materially affect service provider costs, school and library administrators would still need to review and analyze usage information and then make individualized determinations about whether good cause existed for each unused connection. Depending on the number of students and the particular situation of the school or library, the personnel resources required to review and analyze usage data each month could prove extensive enough to discourage participation. In effect, requiring service providers to submit documentation about non-usage will impose on schools a monthly recurring regulatory obligation to review that data and make individualized judgments about it. Participating schools and libraries already are subject to potential enforcement actions for failing to satisfy their obligations. In light of this overarching responsibility, the cost of imposing an additional, recurring, monthly regulatory duty on schools likely outweighs the potential benefit of identifying and removing unused connections.

In the event the Commission nevertheless decides to adopt a non-usage tracking requirement, a few minor changes could reduce the burden imposed on program participants. *First*, usage could be reviewed on a quarterly rather than monthly basis. *Second*, the initial remedy for non-usage should not be de-enrollment. Unlike Lifeline or the EBB Program, where benefits are conveyed to individuals, the ECF Program benefits are delivered to collective

⁵² *Public Notice* at 16.

entities, which will not know the particular circumstances affecting program beneficiaries. As a result, schools and libraries should have the opportunity to reallocate a supported connection or device to another student, staff member, or library patron. *Third*, no forfeitures or penalties should be imposed on providers so long as non-usage data is timely conveyed from providers to school or library administrators.

IV. PROVIDERS' ECF PARTICIPATION MAY BE CHILLED IF THEIR FREE AND HIGHLY DISCOUNTED PROGRAMS MANDATED BY RULE OR OFFERED WITH A CHARITABLE PURPOSE ARE NOT EXCLUDED FROM LOWEST CORRESPONDING PRICE ASSESSMENTS.

Adopting a definition of the lowest corresponding price (“LCP”) pegged to the terms and conditions offered in the competitive marketplace would allow ECF beneficiaries to capture the largest possible discount without frustrating charitable or government-mandated programs. By contrast, tying the LCP to free or low-cost programs mandated by law or adopted to promote charitable purposes would discourage ECF participation, reduce charitable programs, or both.

Service providers cannot charge applicants a price above the LCP for E-rate services.⁵³ LCP is the lowest price that a service provider charges to nonresidential customers who are *similarly situated* to a particular applicant (school, library, or consortium) for *similar services*.⁵⁴ A similarly situated applicant is one that is located in the service provider’s geographic service

⁵³ See 47 C.F.R. § 54.511(b).

⁵⁴ See 47 C.F.R. § 54.500 (“*Lowest corresponding price*. ‘Lowest corresponding price’ is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.”).

area (i.e., the area in which the service provider is seeking to serve customers with any of E-rate services).⁵⁵ Similar services include those provided under contract or tariff.⁵⁶

Free and highly discounted service and device offerings should not count against providers. For example, Project 10Million is T-Mobile’s unprecedented \$10.7 billion initiative aimed at delivering internet connectivity to millions of underserved student households at no cost to them. Over five years, T-Mobile is making available to 10 million eligible households with school-age children *free* broadband connectivity and a mobile hotspot device, including 100 GB per year and an *at-cost* device. Likewise, T-Mobile’s EmpowerED 2.0 program provides wireless devices and service plans to eligible schools and their students through affordable mobile data plans, deployment support, and tools to protect children from inappropriate content. Providing connectivity via a mobile hotspot provides far more flexibility than plans that rely on fixed connections. Students get the highest-speed nationwide service currently available—better connecting isolated schools outside urban areas.

The LCP rule was not designed to sweep in broadband providers’ limited programs aimed at closing the digital divide and homework gap. In establishing this standard, the Commission reasoned that “all carriers would be able to receive a *remunerative price*”⁵⁷ by allowing program applicants, including those “that a lack of experience in *negotiating* in a competitive telecommunications service market,”⁵⁸ to “take advantage of any cost-based rates

⁵⁵ *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 ¶ 487 (1997).

⁵⁶ *Id.* ¶ 485.

⁵⁷ *Id.* (emphasis added).

⁵⁸ *Id.* ¶ 484 (emphasis added).

that other customers may have *negotiated*.”⁵⁹ But in ultra-low-cost programs like Project 10Million and EmpowerED 2.0, rates are not negotiated or subject to competitive bidding, rates are not remunerative, and eligibility is restricted. In other words, the rationale for the LCP rule is wholly inapplicable to Project 10Million and EmpowerED 2.0.

An overly rigid application of this standard could render T-Mobile’s LCP down to \$0, effectively foreclosing T-Mobile and its nationwide, industry-leading 5G network from participating in the ECF Program. It could similarly affect other broadband providers’ ability to participate in the ECF Program. For example, Comcast’s Internet Essentials Partnership Program “enables cities, school districts, and community-based organizations to connect large numbers of low-income students,” including “two months of *free* Internet service.”⁶⁰

Without upfront Commission clarity on charitable service offerings, broadband providers that stepped up during the pandemic may be less willing to do so here or in the future. T-Mobile urges the Commission to clarify that following programs are not attributable for LCP calculations: (1) no-cost broadband programs, (2) highly discounted programs in which expenses and fees are less than 70 percent of the average costs offered to other schools that do not meet the qualifications to participate in free or highly discounted programs, (3) broadband service programs with a special application process,⁶¹ and (4) programs offered to fulfill

⁵⁹ *Id.* ¶ 485 (emphasis added).

⁶⁰ Comcast, *Comcast Launches New Internet Essentials Programs as Nation Gears Up for the Academic Year* (Aug. 13, 2020), <https://corporate.comcast.com/press/releases/new-internet-essentials-programs-schools-students-families-connected-academic-year> (emphasis added).

⁶¹ For example, T-Mobile for Education’s EmpowerED 2.0 program applicants are subject to an interview, and the program prefers candidate schools and districts in which “[a]t least 40% of students receive free or reduced lunch at each school.” T-Mobile, EmpowerED® 2.0 Program Application, at 1, https://www.t-mobile.com/content/dam/tfb/pdf/EmpowerED_2.0_Application.pdf (last visited Mar. 26, 2021).

regulatory conditions. Doing otherwise could effectively create a disincentive for providers from proactively offering ultra-low-cost programs out of fear of being put at a competitive disadvantage in future Commission affordability programs. It should also be kept in mind that for schools and libraries that already entered into agreements and are seeking retroactive reimbursement, the Commission can assume that applicants subscribed to services that were efficient and cost-effective because, at the time of selecting the provider, they alone bore the cost of the services.

For similar reasons, T-Mobile urges the Commission to not impose gift rule restrictions and, to the extent necessary, extend the current gift rule waiver or adopt a new waiver.⁶² Doing otherwise would conflict with the clear intent of Section 7402 and would effectively punish schools for accepting critical connectivity support when they needed it most.

V. THE COMMISSION SHOULD ADOPT A ROBUST SAFE HARBOR BASED ON GOOD-FAITH IMPLEMENTATION OF THE ECF PROGRAM’S RULES AND GUIDANCE.

The *Public Notice* seeks comment “on the ability of the Commission to impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements.”⁶³ With respect to enforcement, T-Mobile submits that the same guiding principles discussed above—encouraging participation and the efficient delivery of benefits to schools and libraries—should apply.

The ECF Program is of limited duration and is designed to provide emergency relief for consumers. Indeed, funding may only last for a few months, limiting the window for schools

⁶² See *Public Notice* at 16-17; *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, Order, 35 FCC Rcd 2741 (2020); *Schools and Libraries Universal Service Support Mechanism*, Order, 35 FCC Rcd 14544 (2020).

⁶³ *Public Notice* at 17.

and libraries to benefit and the number of opportunities that providers have to fine-tune their processes for implementing the ECF Program. Moreover, an unduly strict approach to enforcement would likely limit participation and undermine the goals of Congress. With these limitations in mind, the Commission should avoid adopting harsh enforcement provisions that would penalize good-faith efforts to implement the ECF Program as quickly and efficiently as possible.

A. A Robust Safe Harbor for Good-Faith Implementation Is Critical.

As a general matter, so long as ECF applicants and participating service providers show good faith in their efforts to determine eligibility, seek reimbursement, and otherwise comply with the ECF Program rules, the Commission should not seek to impose forfeitures or other penalties on those providers for mistakes in their administration of the ECF Program. Nor should the Commission engage in a “clawback” of subsidies paid in error resulting from factors not under the service provider’s control. For example, if a carrier provides ECF service in good faith to a school that mistakenly received ECF funding for a service that was already subsidized through another program, that carrier should not be subject to any penalty or forfeiture. Exposing service providers to a risk of substantial liability while implementing a novel and short-term program would only discourage participation and squander a chance to bring much-needed relief to consumers across the country. That approach would also discourage participation in any similar programs the Commission might adopt in the future. A robust safe harbor for good-faith efforts to implement the ECF Program is therefore critical.

The Commission has extensive experience in evaluating good-faith actions of regulated entities in both negotiation and cost reimbursement.⁶⁴ Good faith should be determined based on the totality of circumstances surrounding the applicant’s or provider’s actions or statements. Due consideration should be given to the novel and short-term nature of the ECF Program. The Commission should also clarify that “good faith” is understood as including the absence of knowledge on the part of an applicant or provider that eligible equipment or services were not, in fact, ECF-eligible. The Commission should also consider an applicant’s or provider’s efforts to comply with the ECF Program’s rules. Taken together, this approach will ensure that applicants and participating providers implement reasonable processes to make reliable, good-faith determinations about eligibility without punishing applicants or providers for mistakes that cannot be reasonably avoided.

B. The Commission Should Not Use Violations of Other Rules as a Basis for Withholding ECF Program Funding or Eligibility.

The *Public Notice* seeks comment on whether the Commission should “withhold program funding from participants found to be in violation of other Commission rules.”⁶⁵ For similar reasons, the Commission should generally not treat incidental violations of the Commission’s other rules as a basis for withholding ECF Program funding or eligibility. Doing so would only discourage providers from participating in the ECF Program.

⁶⁴ See *DIRECTV, LLC and AT&T Services, Inc. vs. Deerfield Media, Inc., et al.*, Memorandum Opinion and Order, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695 ¶¶ 2-8 (2020) (discussing the Commission’s good-faith obligations in retransmission consent); 47 C.F.R. § 27.1182 (requiring good-faith submission of cost sharing plan for AWS relocations); 47 C.F.R. § 54.711 (requiring good-faith estimates of contributor’s policies and procedures).

⁶⁵ *Public Notice* at 17.

VI. THE COMMISSION SHOULD USE PANDEMIC-RELATED CHANGES TO INFORM ITS ANALYSIS OF POSSIBLE FUTURE E-RATE PROGRAM REFORMS.

As discussed above, the COVID-19 crisis has brought to light the inability of the E-rate rules, which were written for a different time and a different place, to solve the homework gap. The Commission should consider updating the rules to reflect the realities of how students access broadband technology. The Commission could use the ECF proceeding to inform an analysis of a possible future modernization of the E-rate program and other universal support measures. Adopting streamlined eligibility standards and the more efficient procedures described in these comments could serve as a model for future reforms. Moreover, robust but streamlined reporting requirements would allow the Commission and the public to better track how many additional students have been able to connect remotely to classrooms, what technologies they are using, and what mechanisms were most effective at facilitating remote learning while preparing students and library patrons to successfully navigate the 21st century digital economy.

VII. CONCLUSION.

T-Mobile is proud of its commitment to serve schools and libraries with robust broadband connectivity and applauds the Commission for its efforts to implement the ECF Program. T-Mobile encourages the Commission to adopt streamlined rules that encourage broad participation and efficient administration of the ECF Program, and it looks forward to working

with the Commission on this and other efforts to help students, staff, and library patrons get and stay connected.

Respectfully submitted,

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