

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of:  
Emergency Connectivity Fund

WC Docket No. 21-93

**COMMENTS OF THE  
CALIFORNIA PUBLIC UTILITIES COMMISSION**

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## **I. INTRODUCTION**

The California Public Utilities Commission (CPUC or California) submits these comments in response to the Federal Communications Commission’s (FCC) March 16, 2021 *Public Notice* seeking comments on the provision of support from the Emergency Connectivity Fund (ECF) consistent with section 7402 of the American Rescue Plan Act of 2021 (Act).<sup>1</sup>

The CPUC submits these comments in response to issues raised in the *Public Notice* including eligible schools and libraries, eligible equipment and services, reasonable support amount, other federal and state funding for remote learning, protections against waste and abuse of funding, and end of program transition. The CPUC also encourages the FCC to use the E-Rate program to support remote learning. Silence on other issues connotes neither agreement nor disagreement.

## **II. DISCUSSION AND RECOMMENDATIONS**

### **A. Eligible Schools and Libraries**

The *Public Notice* seeks comment on measures the FCC can take “to ensure Tribal schools and libraries have access to the Emergency Connectivity Fund.”<sup>2</sup> The FCC should expand the definition of “library”<sup>3</sup> for the purposes of this benefit to

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<sup>1</sup> FCC Public Notice, *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, (FCC Rel. March 16, 2021) (*Public Notice*).

<sup>2</sup> *Public Notice* at 5.

<sup>3</sup> 20 USC § 9122(1) Library The term “library” includes— (A) a public library; (B) a public elementary school or secondary school library; (C) a tribal library; (D) an academic library; (E) a research library, which for the purposes of this subchapter means a library that— (i) makes publicly available library

include Tribal cultural centers, museums and other places which serve to preserve and protect the cultural heritage of a Tribe and its people. Libraries are, by definition, repositories of knowledge. For Tribes, the preservation of their cultural knowledge is a cornerstone of their culture and frequently, these local repositories of knowledge are held in buildings that are different from the FCC’s current definition of libraries. Further, the FCC should allow for the Library Services and Technology Act partnership provision<sup>4</sup> to use this expanded definition of library to more completely capture the many places and institutions which Tribes use to preserve their cultural heritage.

**B. Eligible Equipment and Services**

**a) Minimum Eligible Equipment Requirements**

The Act defines ECF eligible equipment as Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices,<sup>5</sup> which are defined as “a laptop computer, tablet computer, or similar end-user device that is capable of connecting to advanced telecommunications and information services.”<sup>6</sup> The *Public Notice* proposes to not include mobile phones (i.e. smartphones) as eligible connected devices “because such devices do not sufficiently allow students, school staff, and library

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services and materials suitable for scholarly research and not otherwise available to the public; and (ii) is not an integral part of an institution of higher education; and (F) a private library or other special library, but only if the State in which such private or special library is located determines that the library should be considered a library for purposes of this subchapter.

<sup>4</sup> 20 U.S.C. § 9141. 4 “Develop public and private partnerships with other agencies, tribes, and community-based organizations.”

<sup>5</sup> H.R. 1319, tit. VII, § 7402(d)(6).

<sup>6</sup> *Id.* § 7402(d)(3).

patrons to meaningfully participate in remote learning activities.”<sup>7</sup> The CPUC agrees that smartphones are not suitable devices through which students can perform schoolwork (e.g. writing reports, creating presentations, etc.). Smartphones are insufficient primarily due to their smaller screen sizes relative to that of other connected devices like laptops and tablet computers.

The CPUC also agrees the FCC should limit one connected device (laptop or tablet) per student, school staff member, or library patron to avoid unnecessarily providing funding for multiple connected devices to individuals.<sup>8</sup> This limitation will protect funding from waste and stretch it to cover more schools and libraries. Further, the FCC should implement minimum system requirements for laptops and tablets to ensure devices can be used for video calling and other educational work. Video software companies like Zoom<sup>9</sup> and WebEx<sup>10</sup> provide system requirements necessary to run their products. At a minimum, the FCC could require subsidized laptops and tablets to meet these system requirements. Students, school staff, and library patrons should not be frustrated by poor functioning devices. The FCC should also reevaluate the minimum system requirements annually to ensure the standards keep pace with the rapid evolution of technology and applications.

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<sup>7</sup> *Public Notice* at 6.

<sup>8</sup> *Id.* at 8.

<sup>9</sup> See Zoom Video Communications System Requirements for Windows, macOS, and Linux at: [https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h\\_a79491c9-bcd0-4ce5-97a2-3739971edf59](https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#h_a79491c9-bcd0-4ce5-97a2-3739971edf59).

<sup>10</sup> See Webex Meetings Suite System Requirements at: <https://help.webex.com/en-us/nki3xrq/Webex-Meetings-Suite-System-Requirements>

## b) Minimum Speeds Requirement

The *Public Notice* asks whether the FCC should implement a minimum service standard of 25 Megabits per second (Mbps) downstream and 3 Mbps upstream.<sup>11</sup> The FCC should implement this standard, but only on a per student/household basis and not for locations with more than one end users. The standard should apply to purchases on a going-forward basis only as many schools and libraries have already purchased equipment and services. Also, in cases where 25/3 Mbps speeds are unavailable, schools and libraries should be able to receive a waiver for this requirement.

Speeds of 25/3 Mbps are generally considered sufficient to conduct online video calls, a necessity for remote learning. For example, Zoom recommends 1.8 Mbps downstream and 2.6 Mbps upstream for 720p HD video group calling purposes.<sup>12</sup> However, the CPUC recognizes the 25/3 Mbps standard was set prior to 2020, and the new reality of multiple simultaneous end users in a household (given the increased frequency of remote work *and* remote school) might require faster speeds, especially upload speeds. The FCC should investigate the impact and frequency of multiple end users in a household and the speeds they require. In the meantime, the CPUC supports both 25/3 Mbps as a *minimum* threshold per student/household and the inclusion of faster service speeds, for example 100/20 Mbps. Unfortunately, not all areas have access to 100/20 Mbps, and wireless and mobile connections rarely support these fast speeds. Schools and libraries should be able to receive funding for faster speeds whenever

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<sup>11</sup> *Public Notice* at 7-8.

<sup>12</sup> See footnote 7.

possible but at minimum they should be 25/3 Mbps. The FCC should also reevaluate the minimum speed thresholds annually to ensure the standards keep pace with the rapid evolution of technology and applications.

### **C. Reasonable Support Amount**

The CPUC makes several recommendations to ensure as many eligible schools and libraries receive ECF funding as possible. These are:

- **Allow Retroactive Reimbursement:** The FCC should allow retroactive reimbursement for eligible equipment and services purchased as of January 27, 2020.<sup>13</sup> Many schools took immediate action to purchase equipment and services to help students participate in remote learning. These schools should not be excluded from receiving the ECF benefits.
- **Set Aside Funding for Tribes:** The FCC should set aside funding for Tribal schools and libraries since Tribal areas tend to have lower rates of broadband access and adoption. Tribal areas have unique needs that require dedicated funding, which will help avoid Tribal entities getting lost in the nationwide applications.
- **Establish Range of Costs for Eligible Equipment and Services:** The FCC should establish a range of costs, or maximum costs, that are reasonable for each category of equipment and service eligible for funding through the Emergency Connectivity Fund, in part by relying on costs for eligible equipment and services identified in response to the Remote Learning Public Notice, used in the Emergency Broadband Benefit Program, and/or the existing E-Rate program. Any range or maximum costs should be set separately for urban, rural, and Tribal areas.
- **Impose Reimbursement Caps per Entity:** The Act requires the FCC to calculate a maximum reimbursement amount, which will help prevent unreasonable requests for funding. The FCC can consider calculating this amount per school/library as

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<sup>13</sup> *Public Notice* at 10.

recommended by Funds for Learning, LLC.<sup>14</sup> The calculation should consider economic metrics such as how many of a school's students are enrolled in the National School Lunch program. Schools with higher rates of enrollment will likely require more funding for remote learning. Any cap the FCC adopts should allow schools with greater needs in low- or middle-income areas to receive more funds than schools with lesser needs in higher income areas.

#### **D. Other Federal and State Funding for Remote Learning**

The CPUC opposes the proposal to exclude from ECF funding eligible services and equipment that received state funding for remote learning.<sup>15</sup> While applicants should not be allowed to recover costs already covered by other state/federal programs, applicants should be allowed to recover remaining costs that schools and libraries paid for with their limited funding. For example, the CPUC implemented the California Teleconnect Fund Distance Learning Discount in March 2020 to provide a 50 percent discount on the monthly recurring service charges for mobile data services (hotspots) to qualifying K-12 schools, libraries, community colleges, government-owned hospitals and health clinics, and community-based organizations.<sup>16</sup> The CPUC currently provides the Distance Learning Discounts for over 100,000 connections purchased by 412 public school districts and charter schools.

It would be unfair to exclude these 412 public school districts and charter schools from receiving ECF funding because they already received a 50 percent state subsidy.

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<sup>14</sup> Funds for Learning, LLC *Ex Parte*, March 18, 2021, WC Docket No. 21-93; WC Docket No. 13-184.

<sup>15</sup> *Id.* at 15.

<sup>16</sup> CPUC President Marybel Batjer and Commissioner Martha Guzman-Aceves March 2, 2021 *Ex Parte* detailing the Distance Learning Discount and responding to the Remote Learning Public Notice; WC Docket No. 21-31, *Addressing the Homework Gap through the E-Rate Program*.

The FCC should allow these school districts, and others in a similar situation, to recover the remaining 50 percent from the ECF in retroactive reimbursements.

The Act states the FCC shall reimburse 100 percent of the eligible equipment and service costs except that reimbursements may not exceed a reasonable amount set by the FCC.<sup>17</sup> Congress clearly intended to minimize the financial burden on schools and libraries related to remote learning costs. Funding eligible services *up to* 100 percent is a reasonable interpretation of the statute and would allow the ECF to close the gap in funding between state and other federal programs.

#### **E. E-Rate for Remote Learning**

The \$7.1 billion represents a significant amount of funding to help tackle the homework gap problem in America. However, the ECF is a temporary program, and the homework gap problem will likely persist. Additional investment and policy changes are necessary to address the problem. The FCC should open a rulemaking to review how the E-Rate program can be used to address the homework gap problem on a long-term basis. Several organizations have urged the FCC through petitions to consider E-Rate support for remote learning and filed comments in response to the FCC's February 1, 2021 Remote Learning Public Notice.<sup>18</sup>

CPUC President Marybel Batjer and Commissioner Martha Guzman Aceves submitted an *ex parte* letter in response to the Remote Learning Public Notice making

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<sup>17</sup> H.R. 1319, tit. VII, § 7402(d)(6).

<sup>18</sup> FCC Public Notice, *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31, (FCC Rel. Feb. 1, 2021).

several recommendations. One is that the FCC should allow schools to broadcast Wi-Fi beyond school premises and allow schools to use otherwise unused capacity on E-rate funded infrastructure, including middle mile, to make broadband available for students at home. This would help provide broadband to areas where mobile service is not an available or viable solution.

#### **F. Protections Against Waste and Abuse of Funding**

As with all public programs, it is important to implement measures to protect funding from waste, fraud, and abuse. The CPUC generally supports the measures proposed in the *Public Notice*. Specifically, the FCC should require the Universal Service Administrative Company (USAC) to perform audits to ensure compliance with ECF rules and requirements.<sup>19</sup>

Further, the FCC should require “service providers providing monthly services reimbursed through this Fund to report and validate usage of the supported services provided after adoption of new rules.”<sup>20</sup> These reports should be submitted to both the FCC and state commissions. It would be useful for state commission to see this data and potentially inform policy decisions.

#### **G. End of Program Transition**

It will be important for schools and libraries and interested stakeholders to know when ECF funding will run out. The FCC can issue regular reports on remaining funds,

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<sup>19</sup> *Public Notice* at 17.

<sup>20</sup> *Id.* at 18.

so schools and libraries are not caught unaware. The FCC should also specify rules that allow for gradual transition once the funding is exhausted.

### III. CONCLUSION

The CPUC appreciates the opportunity to provide this input and urges the FCC to implement the Emergency Connectivity Fund in a manner consistent with the recommendations contained in these comments.

Respectfully submitted,

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