

**Before the
Federal Communications Commission
Washington, DC 20054**

In the Matter of:

**The Emergency Connectivity Fund for
Educational Connections and Devices to
Address the Homework Gap during the
Pandemic**

WC Docket No. 21-93

Reply Comments of the Massachusetts Board of Library Commissioners

The Massachusetts Board of Library Commissioners (MBLC) is pleased to provide the following recommendations for the consideration of the Commission as it develops the Emergency Connectivity Fund program. As the state library agency for Massachusetts, the Board of Library Commissioners promotes equitable access, advances innovation, and fosters resilience in libraries across the Commonwealth through funding, guidance, partnerships, and the coordination of statewide services. A primary goal is to “Advance Equitable Access to Resources” and, more specifically, to “promote excellent connectivity and technology infrastructure, training, and support frameworks to equitably meet the needs of library users in Massachusetts”¹.

The MBLC is eager to help Massachusetts’ libraries find and implement local solutions to address the lack of access to broadband and end-user devices exposed by the pandemic. Massachusetts consists of 351 municipalities with 369 independent public libraries. Though 331

¹ <https://mblc.state.ma.us/about-us/strategic-plan/>

of these libraries, with a total of 434 outlets, belong to one of eight consortia that provide connectivity to the library, it is often limited to staff usage and supplemented by a heterogeneous array of town internet services, free, low-speed cable connectivity, or separately procured broadband for public wi-fi in the library. A 2019 MBLC telecom study², with 58% of public libraries responding, showed that 75% of libraries were below the FCC benchmarks³ “that all libraries that serve fewer than 50,000 people have broadband speeds of at least 100 Mbps and all libraries that serve 50,000 people or more have broadband speeds of at least 1 Gbps.”

The MBLC has a decade-long relationship with the Massachusetts Broadband Institute⁴ (part of the Massachusetts Technology Collaborative), the Commonwealth’s designated entity for federal and state-funded middle- and last-mile projects⁵. We have more recently engaged with other state agencies, such as the Massachusetts Department of Elementary and Secondary Education (DESE), the Executive Office of Housing and Economic Development, and regional organizations actively working to increase digital literacy and equity across the Commonwealth.

In its April 5, 2021 comments⁶ on WC Docket 21-93, the American Library Association (ALA) calls out four priority areas for the FCC to consider as it proceeds with its rulemaking:

- 1) Give library and school applicants maximum flexibility to determine the most cost-effective and efficient solutions to provide internet connectivity to students and library patrons who are otherwise unconnected.
- 2) Give applicants maximum flexibility related to purchasing of eligible equipment and services and flexibility in determining what constitutes an eligible location.
- 3) Balance program goals—including protections against waste, fraud, and abuse, and expediency—with equitable distribution of funds and minimal administrative burdens on applicants.

² <https://mblc.state.ma.us/programs-and-support/e-rate/2019-telco-survey-results.php>

³ <https://www.fcc.gov/general/summary-e-rate-modernization-order>

⁴ <https://broadband.masstech.org/>

⁵ Including two Broadband Technology Opportunities Program (BTOP) middle-mile projects that brought affordable fiber to 140 public library outlets in unserved and underserved communities:

https://www2.ntia.doc.gov/files/grantees/MA_MassBroadband123.pdf (MassBroadband123) and

https://www2.ntia.doc.gov/files/grantees/MA_OpenCape_FINAL.pdf (OpenCape).

⁶ https://ecfsapi.fcc.gov/file/10405314108601/ALA_ECF_Comments_04052021.pdf

- 4) Find that the Children’s Internet Protection Act (CIPA) does not apply to the use of the Emergency Connectivity Fund.

We strongly support all four of these objectives, but believe that Massachusetts libraries will benefit most if the final program rules:

- 1) **Determine that CIPA does not apply** to the ECF
- 2) **Minimize the administrative burden** -- provide a simple application process that even small, one-person libraries can navigate
- 3) **Permit simple procurements** -- accept existing state and local procurement processes, with no additional procurement forms, steps or other requirements imposed by the new program

In addition, we advocate that rules:

- 4) **Allow for service provider discounts** -- provide an alternative mechanism to a direct reimbursement to the applicant
- 5) **Authorize funding for an extended application window, or reserve funds for a 2nd window** – provide means to ensure that some funding is available after retrospective reimbursements and the most nimble schools and libraries have been awarded funding commitments

The use of a technology protection measure, or filter, necessary for CIPA compliance has been a longstanding impediment to Massachusetts libraries’ full participation in the E-rate program. Very few Massachusetts public libraries are known to comply with CIPA. Participating public libraries that don’t comply only benefit from E-rate discounts on data transport services, rather than internet or Category 2 services. Therefore, the determination of whether CIPA applies to ECF may well decide whether our public libraries apply at all.

As a direct consequence of this history of low participation in E-rate, Massachusetts libraries may need additional time to prepare for applying for ECF discounts, especially if USAC’s E-rate Productivity Center (EPC) is used to administer the program.

Why CIPA Should Not Apply to the Emergency Connectivity Fund

The MBLC sees three reasons why CIPA compliance requirements should not become part of the new ECF program.

1. We agree with ALA's cogent argument that under E-Rate and LSTA, CIPA does not currently extend beyond the school campus or library. By extending CIPA to devices lent to the home or public spaces beyond the library, we believe that the FCC would be actually increasing the scope of CIPA in ways unanticipated by the original legislation.
2. The language in Section 7402(a) of the American Rescue Plan Act references *only* (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)). These subsections define an eligible school or library, and advanced services for the purposes of this program. However, Section 7402(a) makes no reference to sections of 254(h)(5) and 254(h)(6) which incorporate the Children's Internet Protection Act requirements.
3. While complying with CIPA, libraries must be able to disable filtering for any person 17 years of age and older for any lawful purpose⁷. This presents a significant, pragmatic difficulty for devices outside of the library. Public libraries continually balance the requirements for CIPA compliance with the profession's imperative supporting intellectual freedom, along with the known limitations of filtering tools as "blunt instruments"⁸. Extensive efforts have been made by the American Library Association to provide best practices⁹ to meet both organizational goals.

It is true that filtering technology can be procured and enabled by default as hotspots, tablets and computers are lent out to library patrons. However, the public library's ability to fulfill its mission and provide full access to material on the internet --in accordance with its internet safety policy-- would be essentially impossible to monitor. Libraries may be unable to respond in a timely fashion to requests that improperly blocked sites be allowed. Remote devices will impede libraries' work mitigating the real risk that adult

⁷ 47 U.S.C. § 254(h)(6)(D)

⁸ http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/advleg/pp/pub/policy/cipa_report.pdf

⁹ http://www.ala.org/advocacy/intfreedom/filtering/filtering_guidelines

patrons are afraid to ask that legitimate sites be unblocked due to a perceived social stigma.

Minimize the administrative burden

It is imperative that administrative barriers to ECF be minimized if Massachusetts libraries are to apply for discounts and make significant progress toward more digital equity, improving connectivity and access for all residents in underserved communities.

Massachusetts has many small, independent libraries without the support of a larger administrative entity, such as a county system. There are 68 libraries in communities under 2,000 while nearly half of Massachusetts libraries are in towns under 10,000. 20% of libraries have fewer than 2 FTE employees and 20% are open less than 20 hours per week.

The 2020 E-Rate Trends Report¹⁰ from Funds for Learning makes it clear that many schools and libraries find the E-Rate application process extremely difficult, even with all the many improvements that have been implemented by USAC over the last five years.

There will inevitably be confusion between the longstanding E-Rate and the new ECF programs. If Massachusetts libraries do apply for discounts through the Emergency Connectivity Fund, it will be a heavy lift. The Massachusetts Board of Library Commissioners stands ready to help through training and consulting services. However, inevitably, much of the burden, not only of applying, but following through with service and equipment procurements, records retention and reporting will be borne by small, understaffed libraries that may just be allowing the public into their buildings for the first time in 15 months. A number of Massachusetts libraires have seen budget cuts and staff layoffs due to the pandemic.

Therefore, we request that the FCC consider all administrative aspects of the new program through the lens of a one-person library that may be open 10-20 hours per week.

Simple procurements

Massachusetts has strong state procurement rules that effectively guard against waste, fraud, and abuse. Layering on additional procurement procedures, such as the form 470 filing and 28-day waiting period required by the E-rate program should not be part of the Emergency Connectivity

¹⁰ <https://fundsforlearning.app.box.com/v/2020ErateTrends>

fund application process. By not creating redundant procurement rules, the program mitigates the overall administrative burden described in the previous section.

Service provider discounts

The Massachusetts Department of Revenue has determined that E-rate discount reimbursements via the BEAR form are not municipally appropriated funds, and therefore, must return to the municipal general fund.

In practice, this means that a library may spend out of its appropriated budget tens of thousands of dollars on ECF eligible services, but the library may not be able to retain the ECF reimbursements. With a clear understanding both by the municipal finance committee and the library administration, this asymmetry in the flow of funds can be overcome as a matter of coordination. However, library budgets are already set for the fiscal year beginning July 1, 2021 or will be within the next few weeks. Many libraries may not be able to pay the pre-discount cost of an ECF eligible service, and then wait for a reimbursement. To reduce the administrative burden and lower barriers to participation, a SPI-like up-front discounted invoice option would be of tremendous benefit.

An extended or 2nd application window

In the initial set of comments for this NPRM arguments were made both for and against the establishment of a budget -- perhaps including a floor or cap-- for each individual school or library. Though the Massachusetts Board of Library Commissioners does not have a firm opinion on this question, we do believe that some mechanism should be put in place to ensure that libraries and schools have sufficient time and can take the appropriate measured steps to apply for the services that they really need without the concern that all funding will already have been committed. The neediest schools and libraries are the least likely to be quickest off the mark. Wealthier schools and libraries may well have the staffing and resources to apply first and for the largest deployment of services.

Massachusetts libraries will need to understand the new program rules, assess how to extend their services out into the community in ways that many have never contemplated before, and -- assuming that the E-rate management portal, EPC will be used—be introduced to EPC, and put their profiles in order. The vast majority of Massachusetts libraries are simply not ready to dive

in and navigate EPC. For example, an April 18, 2021 interrogation of the entity profiles¹¹ from the USAC open data platform shows only a handful of Massachusetts libraries with Form 498 approved status. Of a total 434 main library and branch records, 82 libraries (22%) had an FCC registration number, and 211 outlets (48%) had square footage values.

Conclusion

The Massachusetts Board of Library Commissioners thanks the Commission for the opportunity to provide these comments. By determining that CIPA compliance will not be part of this new program, especially for computers, hotspots and other connectivity that extends beyond the library building, the door is opened for Massachusetts libraries. Keeping the program as simple as possible and providing sufficient time for libraries to prepare, assess, and apply for what they actually need will lead to our libraries' widespread participation. If libraries are able to purchase eligible goods and services with discounts already applied, yet another significant barrier will be removed.

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¹¹ <https://opendata.usac.org/E-rate/E-rate-Supplemental-Entity-Information/7i5i-83qf>