



May 5, 2021

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation, *Emergency Connectivity Fund*, WC Docket No. 21-93

Dear Ms. Dortch:

On May 3-5, 2021, CTIA and representatives from its member companies conducted meetings via teleconference regarding the Emergency Connectivity Fund (ECF) in the above-referenced docket.¹ A list of specific meeting dates and attendees is included as Attachment A to this filing.

During the meetings, CTIA emphasized that the wireless industry is eager to support the Commission in its efforts to close the homework gap through the ECF, particularly for students and teachers that otherwise lack the connectivity that they need for remote learning during the pandemic. Wireless providers have made unparalleled efforts, particularly during the pandemic, to help schools meet their remote learning needs and commend Congress and the Commission for working quickly to establish the ECF to enable schools and libraries to address unmet needs.²

CTIA praised the Draft Order for generally setting the Commission on a path to successfully implement the ECF by granting schools and libraries the flexibility to choose mobile wireless services to

¹ See *Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic*, Public Notice, DA 21-317 (WCB rel. March 16, 2021) (Public Notice); *Establishing the Emergency Connectivity Fund to Close the Homework Gap*, (Draft) Report and Order, FCC-CIRC21-93-043021 (rel. April 30, 2021) (Draft Order). Unless otherwise noted, references herein to parties' "Comments" refer to their initial comments in WC Docket No. 21-93 filed on or about April 5, 2021.

² See, e.g., *K-12 Connections: How Schools and Wireless Providers Are Partnering to Get Students Online During COVID-19*, Chiefs for Change (Dec. 2020) (Chiefs for Change Report), <https://chiefsforchange.org/wp-content/uploads/2020/12/K-12-Connections-How-Schools-and-Wireless-Providers-Are-Partnering-to-Get-Students-Online-During-COVID-19.pdf>; see also, Tanya Basu, *Why the "Homework Gap" Is Key to America's Digital Divide*, MIT Tech. Rev. (Oct. 13, 2020), <https://www.technologyreview.com/2020/10/13/1010243/jessica-rosenworcel-homework-gap-key-to-americas-digital-divide/> (publishing an interview with then-Commissioner Rosenworcel who noted that "for students who don't have internet access at home, having the school loan out a wireless hotspot is the difference between keeping up in class and falling behind"), and see *Connecting America's Students*, CTIA, <http://connectingkids.ctia.org/>; see also *Connecting Kids Initiative*, CTIA (CTIA Connecting Kids Initiative), <https://www.ctia.org/connecting-kids-initiative>.



meet remote learning needs, while adopting policies that maximize the efficiency and effectiveness of ECF by:

- Granting schools and libraries the flexibility to choose mobile hotspots as a key connectivity tool for remote learning that support a diverse range of educational and broader functions;³
- Focusing targeted ECF support towards quickly reaching students learning primarily at home by harnessing commercially-available networks delivered via Wi-Fi hotspots with wireless broadband connectivity, while providing limited flexibility to schools and libraries in areas without commercially available services;⁴
- Eschewing calls for minimum service standards or a non-usage rule that would limit schools' and libraries' ability to harness the value of competitive commercial service offerings;⁵
- Maximizing the efficiency of ECF by focusing on one mobile connection/hotspot per student, teacher, or library patron, and one fixed connection per location;⁶
- Fulfilling Congress's expectation that the ECF will be used to reimburse schools for prior spending during the pandemic, while ensuring that the ECF remains available to support on-going inequities by prohibiting duplicative support from government or other external sources of funding and focusing on students, teachers, and patrons that still lack access;⁷ and
- Disbursing ECF support directly to schools and libraries to ensure that service providers can focus on providing service rather than administrative burdens.⁸

In two other respects, however, the Draft Order would limit schools' and libraries' flexibility to apply the ECF to support diverse needs—specifically, by (1) declining to allow eligible schools and libraries to select smartphones to meet their Wi-Fi hotspot or connected device needs, and (2) missing the opportunity to maximize incentives for broadband providers to offer schools and libraries the best possible prices for ECF-supported equipment and services by making clear that the E-rate lowest corresponding price (LCP) rule does not apply to the ECF Program.⁹ Suggested revisions to address the concerns about excluding smartphones from ECF support are included as Attachment B to this filing.

Eligibility of Smartphones. CTIA urged the Commission to reverse the Draft Order's limits on schools' and libraries' flexibility to choose smartphones—either as “eligible equipment” because they can

³ Draft Order at ¶ 34.

⁴ *Id.* at ¶¶ 35-39.

⁵ *Id.* at ¶ 40.

⁶ *Id.* at ¶ 54.

⁷ *Id.* at ¶¶ 75-78, 120.

⁸ *Id.* at ¶ 89.

⁹ See 47 C.F.R. §§ 54.500, 54.511(b).



serve as Wi-Fi hotspots, or as “connected devices”—as directly in conflict with Congressional intent and internally inconsistent.

Smartphones as Eligible Equipment (Wi-Fi Hotspots). CTIA explained that the Draft Order’s interpretation of the statutory term “Wi-Fi hotspot” to exclude hotspots incorporated into mobile phones, including smartphones, is directly contrary to the legislative history of the American Rescue Plan Act (ARPA). Specifically, the legislative history indicates that ECF 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 ... through Wi-Fi hotspots, either *incorporated into mobile phones* or provisioned on a standalone basis...”¹⁰ This clearly shows that Congress intended the ECF to support smartphones as mobile hotspots.¹¹ The Draft Order recognizes this language but calls it “unpersuasive,” and characterizes the Committee Report as having merely “mentioned” mobile phones.¹² This is inconsistent with the Draft Order’s reliance elsewhere on this *very same sentence* of the Committee Report to support its interpretations of the statute to disallow services and equipment purchased for use on school or library property,¹³ and to limit support to students, staff, and patrons that otherwise lack access.¹⁴

In addition to being internally inconsistent, this approach is contrary to established precedent. An agency’s authority to interpret statutory terms is bounded by Congressional intent, including as expressed in legislative history.¹⁵ In *Chevron* Step 1 analysis, the question of whether a statutory term is ambiguous, such that the agency has authority to interpret it *at all*, depends on factors including legislative history.¹⁶ In this case, because the legislative history speaks directly and unambiguously to the question of whether

¹⁰ Report of the Committee on the Budget of the House of Representatives, H.R. Rep. No. 117-7, at 306-307 (2021) (Committee Report) (emphasis added).

¹¹ See, e.g., *Garcia v. United States*, 469 U.S. 70, 76 (1984) (“[T]he authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill, which represent the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation” (internal quotations and citations omitted)).

¹² Draft Order at ¶ 32.

¹³ *Id.* at ¶ 50 & n.151.

¹⁴ *Id.* at ¶ 76 & n.218 (citing the same sentence of the Committee Report as expressing “Congress’s intent” regarding the appropriate uses of funding).

¹⁵ See, e.g., *Muwwakil v. Office of Personnel Management*, 18 F.3d 921, 925 (Fed. Cir. 1994) (“When an agency’s interpretation of a statute it entrusted to administer is contrary to the intent of Congress, as divined from the statute and its legislative history, we owe it no deference.”) (citing *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 845 (1984)).

¹⁶ See, e.g., *Cal. Metro Mobile Communs. Inc. v. FCC*, 365 F.3d 38, 44-45 (D.C. Cir. 2004) (“Under step one of *Chevron*, we use the customary statutory interpretation tools of text, structure, purpose, and legislative history to determine whether the Congress has spoken directly to the precise question at issue...” (internal quotations and citations omitted)). See also, e.g., *Am. Scholastic TV Programming Found. v. FCC*, 46 F.3d 1173, 1178-79 (D.C. Cir. 1995) (relying in part on legislative history to determine the meaning of provisions of the Cable Act).



“Wi-Fi hotspots” includes hotspots built into mobile phones, the Commission should defer to the legislative history to permit ECF support to be applied to smartphones as Wi-Fi hotspots.

The Draft Order’s substantive arguments for disallowing funding for hotspots built into smartphones also are inconsistent with other provisions of the item. First, the Draft Order dismisses the fact that “some schools were forced to purchase smartphones to act as Wi-Fi hotspots due to supply chain issues at the start of the pandemic.”¹⁷ This approach cannot be reconciled, however, with the Draft Order’s conclusion elsewhere that past purchases should be eligible for ECF support because denying such funds “would be unfair to those schools and libraries that have already paid for eligible equipment and services to meet the needs of their students, school staff, and library patrons.”¹⁸ The Draft Order then asserts that it would not be “reasonable to use limited Emergency Connectivity Fund Program support to reimburse schools and libraries for costly smartphones used as Wi-Fi hotspots when much less expensive hotspots can serve the same purpose.”¹⁹ This concern is addressed, however, by the imposition of the \$250 cap on reimbursements for hotspots.²⁰ Because the \$250 cap was set based on record evidence and advertised prices for stand-alone hotspots, it prevents the ECF from paying more for hotspots built into smartphones.²¹ The Draft Order also fails to acknowledge record evidence that schools have used smartphones as Wi-Fi hotspots to meet remote learning needs, and would like to use ECF funds for smartphones for this purpose going forward.²²

For all of these reasons, we urged the Commission to revise the Draft Order to make clear that mobile hotspots built into smartphones are “eligible equipment” for the ECF program.

Smartphones as Connected Devices. CTIA also urged the Commission to reconsider the Draft Order’s finding that smartphones are ineligible for support as “connected devices” for remote learning.²³ The Draft Order’s primary justification for excluding smartphones as “connected devices” is an assertion that “they lack the full functionality students, school staff, and library patrons need to perform necessary remote learning activities, homework, or research,” and thus are not “‘similar’ to laptop or tablet computers

¹⁷ Draft Order at ¶ 32, citing Ann Grabowski, Bena Chang Comments at 2 (filed on behalf of the City of San Jose) (City of San Jose Comments) (dozens of San Jose school districts purchased iPhone 7s as a hotspot device at the onset of the stay-at-home orders due to supply chain issues).

¹⁸ Draft Order at ¶ 75 (finding that the application process must balance the need to reimburse schools and libraries for prior purchases with the need to fund prospective needs).

¹⁹ Draft Order at ¶ 32.

²⁰ *Id.* at ¶ 68 & n.192.

²¹ *Id.* (citing comments and a consumer article reviewing the “best Wi-Fi hotspots”).

²² See, e.g., KIPP Comments at 1 (access to remote learning technology, including “mobile Wi-Fi devices and cellular phones to act as hotspots” has allowed KIPP students and teachers to keep learning during the pandemic); Bethlehem Area School District Comments, Att. at 1 (ECF should support mobile phones “since many smartphone data plans offer a mobile hotspot”). See also City of San Jose Comments at 2 (discussing schools’ purchase of iPhones to use as hotspots when standalone hotspots were unavailable).

²³ Draft Order at ¶ 31.



for the purposes intended by the statute here.”²⁴ This approach, however, limits educators’ choice among ECF-supported equipment to address the needs of students with diverse needs, including students with disabilities in a way that is inconsistent with the rest of the item. It ignores arguments made by CTIA and others that the question is not whether a device supports the full gamut of possible educational activities, but rather whether the school or library determines that a connected device meets its specific remote learning needs. On this point, the Draft Order is internally inconsistent and dismisses record evidence that a smartphone may be entirely appropriate for learning activities for younger learners²⁵ and students with disabilities.²⁶

In fact, the Draft Order favorably cites CTIA’s comments about the accessibility of mobile devices to support the Commission’s expectation that “connected devices” should be accessible to people with disabilities, while dismissing smartphones as not offering similar functions as laptops and tablets.²⁷ On other issues (e.g., with regard to eligible services), the Draft Order appropriately defers to schools and libraries to determine what services will meet their needs.²⁸ The Draft Order is also inconsistent when giving schools and libraries the choice about what devices meet their needs among laptops and tablets, but then denying them that choice when it comes to smartphones. As Samsung has demonstrated, mobile devices, including many smartphones, support the use cases the Commission is focused on—including remote learning activities such as videoconferencing, research, document editing and sharing, and other software necessary to ensure full participation in remote learning activities.²⁹ Moreover, the \$400 cap on reimbursement for connected devices further undermines the Draft Order’s rationale for excluding smartphones as connected devices, particularly as smartphones may be an efficient solution to address the Draft Order’s focus on the cost of devices that meet the needs of students with disabilities.³⁰

For these reasons, CTIA urged the Commission to reconsider the Draft Order’s conclusion that smartphones are ineligible for funding as “connected devices.”

Lowest Corresponding Price. In addition, CTIA urged the Commission to ensure that the Draft Order addresses requests to make clear that E-rate’s LCP rule does not apply to the ECF.³¹ The Draft Order

²⁴ *Id.* at ¶ 31.

²⁵ See, e.g., Qualcomm Comments at 15-16 (discussing Project K-Nect).

²⁶ See *Biennial Report to Congress as Required by the Twenty-First Century Communications and Video Accessibility Act of 2010*, 35 FCC Rcd 11227, 11233, 11238-39 ¶¶12, 24 (CGB 2020) (noting that native and third-party apps provide additional accessibility resources for wireless services and devices, including whole categories of apps for Learning and Literacy and that video calling and conferencing services on mobile wireless devices have accessibility features that reduce barriers to remote learning).

²⁷ See Draft Order at ¶ 29, 31.

²⁸ See *id.* at ¶ 40.

²⁹ See Samsung Comments at 2-5.

³⁰ See Draft Order at ¶ 67.

³¹ See, e.g., Verizon Comments at 13.



rightfully concludes that E-rate competitive bidding requirements will not apply in the ECF program,³² and we urged the Commission to further clarify that this means that the LCP is not relevant to ECF pricing.³³

* * *

The ECF has the potential to enable schools and libraries to address significant inequities in broadband access to remote learning for millions of students. Mobile wireless solutions already are playing a significant role in addressing the homework gap, and are positioned to play an even larger role with the efficient, effective deployment of the ECF to support mobile wireless broadband services and equipment. CTIA and its member companies are eager to support the Commission in its efforts to harness the ECF to close the homework gap and encouraged the Commission to establish rules consistent with these comments in order to maximize the likelihood of the program's success.

Please direct any questions regarding this filing to the undersigned,

Sincerely,

/s/ Matthew B. Gerst

Matthew B. Gerst

Vice President, Regulatory Affairs

CC: FCC attendees (see Attachment A)

³² Draft Order at ¶¶ 83-85.

³³ For example, the Commission could modify ¶ 83 of the Draft Order to include the following italicized language: "We allow eligible schools and libraries to seek reimbursement for the cost of eligible equipment and services purchased without having conducted a Commission-mandated competitive bidding process, *including application of the lowest-corresponding price rule*, for purposes of the Emergency Connectivity Fund."



ATTACHMENT A

<u>May 3, 2021</u>	
<u>Office of Acting Chairwoman Jessica Rosenworcel</u> Travis Litman, Acting Chief of Staff Ramesh Nagarajan, Acting Legal Advisor, Wireline	<u>Office of Commissioner Geoffrey Starks</u> William Davenport, Chief of Staff & Senior Legal Advisor Austin Bonner, Legal Advisor for Wireline & Public Safety
<u>CTIA and Member Company Representatives</u> Scott K. Bergmann, CTIA Matthew B. Gerst, CTIA Sarah K. Leggin, CTIA L. Charles Keller, Wilkinson Barker Knauer LLP, for CTIA Angela DeMahy, AT&T Dean Brenner, Qualcomm Robert Kubik, Ph.D., Samsung Indra Chalk, T-Mobile Grant Spellmeyer, UScellular Alan Buzacott, Verizon	<u>CTIA and Member Company Representatives</u> Scott K. Bergmann, CTIA Matthew B. Gerst, CTIA Sarah K. Leggin, CTIA L. Charles Keller, Wilkinson Barker Knauer LLP, for CTIA Angela DeMahy, AT&T Dean Brenner, Qualcomm Robert Kubik, Ph.D., Samsung Mark Rubin, Tracfone Indra Chalk, T-Mobile Grant Spellmeyer, UScellular Alan Buzacott, Verizon

<u>May 4, 2021</u>	<u>May 5, 2021</u>
<u>Office of Commissioner Nathan Simington</u> Carolyn Roddy, Chief of Staff & Senior Legal Advisor for Wireline Issues Erin Boone, Wireless Advisor	<u>Office of Commissioner Brendan Carr</u> Ben Arden, Chief of Staff
<u>CTIA and Member Company Representatives</u> Scott K. Bergmann, CTIA Matthew B. Gerst, CTIA Sarah K. Leggin, CTIA L. Charles Keller, Wilkinson Barker Knauer LLP, for CTIA	<u>CTIA and Member Company Representatives</u> Scott K. Bergmann, CTIA Matthew B. Gerst, CTIA Sarah K. Leggin, CTIA L. Charles Keller, Wilkinson Barker Knauer LLP, for CTIA Angela DeMahy, AT&T



Angela DeMahy, AT&T	Dean Brenner, Qualcomm
Dean Brenner, Qualcomm	Robert Kubik, Ph.D., Samsung
Robert Kubik, Ph.D., Samsung	Indra Chalk, T-Mobile
Indra Chalk, T-Mobile	Grant Spellmeyer, UScellular
Grant Spellmeyer, UScellular	Alan Buzacott, Verizon
Alan Buzacott, Verizon	



ATTACHMENT B

CTIA's Proposed Edits to ECF Draft Order, Rules, and Eligible Services List To Address Smartphone Eligibility

Note: The eligibility of smartphones as “eligible equipment” and “connected devices” are severable issues. The statutory, legislative history, and record considerations affecting the eligibility of smartphones under each definition are distinct. This document proposes edits to address the eligibility of smartphones under both definitions, but the Commission can consider each issue separately on its merits.

28. *Eligible Equipment.* Consistent with the definitions in section 7402, we adopt rules specifying that the following types of equipment are eligible for support from the Emergency Connectivity Fund Program: Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices. We agree with those commenters that point out that air-cards used to connect end-user devices to the Internet through cellular data services are wireless modems, and as such are eligible for support from the Emergency Connectivity Fund Program.⁶⁸ [Similarly, smartphones that include the capability to be used as Wi-Fi hotspots may be funded as Wi-Fi hotspots, consistent with the record and the legislative history,³⁴ subject to the limits on reasonable support amounts for Wi-Fi hotspots.³⁵](#) We find inapplicable to the Emergency Connectivity Fund Program the E-Rate Program’s requirement that applicants demonstrate that air cards (and wireless data plans) are more cost-effective than fixed wireless broadband services before seeking support for air cards (and wireless data plans).⁶⁹ The Commission adopted that requirement for the E-Rate Program because schools and libraries require very substantial bandwidth connections to meet their on-campus connectivity needs, which in turn would require them to seek E-Rate support for large numbers of air cards to meet those needs. By contrast, individual students, school staff, or library patrons do not need enterprise level bandwidth, and in some instances air cards may be one of the few options available to provide connectivity to them.

29. *Connected Devices.* ***

³⁴ See H.R. Rep. No. 117-7, at 306-307 (2021) (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 . . . through Wi-Fi hotspots, either incorporated into [a] mobile phone or provided on a standalone basis. . .”). See also, e.g., Ann Grabowski, Bena Chang Comments at 2 (filed on behalf of the City of San Jose) (City of San Jose Comments) (dozens of San Jose school districts purchased iPhone 7s as a hotspot device at the onset of the stay-at-home orders due to supply chain issues); KIPP Comments at 1 (access to remote learning technology, including “mobile Wi-Fi devices and cellular phones to act as hotspots” has allowed KIPP students and teachers to keep learning during the pandemic); Bethlehem Area School District Comments, Att. at 1 (ECF should support mobile phones “since many smartphone data plans offer a mobile hotspot”).

³⁵ See *infra* para. 68 (establishing a \$250 maximum reasonable cost for a Wi-Fi hotspot).



Paragraphs 31-32: Replace existing text with the following:

31. Also, based on the record before us, we allow schools and libraries to apply Emergency Connectivity Fund support for smartphones as “connected devices” when purchased to serve an educational purpose. Although some commenters assert that smartphones should not be funded because they may provide less functionality for some remote learning purposes,³⁶ there is also evidence in the record that they may be well-suited for certain remote learning applications.³⁷ As a result, we find that schools and libraries are in the best position to select the devices that meet specific remote learning needs.³⁸ We urge schools and libraries, however, to select the most effective connected devices to meet their remote learning needs.³⁹

Final Rules

§ 54.1700 Terms and definitions.

(c) *Connected Devices*. “Connected devices” are laptop computers or tablet computers [or similar devices](#) that are capable of connecting to advanced telecommunications and information services. Connected devices do not include desktop computers.

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³⁶ See, e.g., Alaska DEED Comments at 4; Infinity Communications & Consulting, Inc. Comments at 3-4 (Infinity Comments) (arguing that mobile phones do not allow adequate resources for educational purposes); Players Coalition Reply at 1 (arguing that these devices do not sufficiently allow meaningful participation); South Carolina Comments at 5 (generally agreeing that smartphones are not ideal for remote learning).

³⁷ See, e.g., Qualcomm comments at 15-16 (describing a smartphone-based program that substantially improved students’ math scores).

³⁸ This is consistent with our approach with regard to connected devices more generally. See *supra* para. 29 (“recognizing that schools and libraries have had to make challenging purchasing decisions to equip students, school staff, and library patrons with devices during the pandemic, we decline to establish minimum screen size or system requirements for the connected devices supported by the Emergency Connectivity Fund Program and instead rely on schools and libraries to make the appropriate choices about their needs.”). It is also consistent with our approach to eligible services. See *infra* para. 40 (declining to impose minimum service standards because “schools and libraries are in the best position to know what is available and sufficient for their remote learning needs”).

³⁹ In any event, support for smartphones as connected devices is subject to the \$400 limit for connected devices. See *infra* para. 66.



Eligible Services List of ECF Program

Eligible Equipment includes:

- Wi-Fi hotspots ([including hotspots built into mobile phones](#))
- Modems (e.g., air cards)
- Routers
- Devices that combine a modem and router
- Connected devices (laptop computers and tablet computers)

Notes: (1) Any components included by the manufacturer with eligible equipment, and necessary for the equipment to operate, for example cords and chargers, do not require cost allocation.

(2) Desktop computers are ineligible for support under this Program.

Deleted:
