

**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	)	

**REPORT AND ORDER**

**Adopted: May 10, 2021**

**Released: May 11, 2021**

By the Commission: Acting Chairwoman Rosenworcel and Commissioners Carr, Starks, and Simington  
issuing separate statements.

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## APPENDIX A – FINAL RULES

## APPENDIX B – ELIGIBLE SERVICES LIST FOR EMERGENCY CONNECTIVITY FUND PROGRAM

## I. INTRODUCTION

1. In this Report and Order, we establish the Emergency Connectivity Fund Program (Program) to provide funding for schools and libraries for the purchase, during the coronavirus (COVID-19) pandemic, of connected devices and broadband connections for use by students, school staff, and library patrons. Before the pandemic, millions of students who lacked home broadband connections and access to computers were caught in the “Homework Gap.” One study estimates that last spring, more than 15 million public school students did not have home access to either an Internet connection or a device adequate for distance learning, and approximately nine million of those students lived in households with neither an adequate connection nor an adequate device for distance learning.<sup>1</sup> The pandemic has only exacerbated the inequities between students who have a broadband connection and those who do not.<sup>2</sup> Today’s action addresses those inequities, helping to provide all students, school staff, and library patrons with the basic tools they need to engage in online learning and in so many other vital aspects of our increasingly digital lives.

2. Today, even as there are hopeful signs that the pandemic is receding in this country, many schools and libraries continue to rely on remote learning and virtual library services as they adapt to changing circumstances. Schools, with assistance from a wide array of federal, state, and local government resources, public interest groups, and Internet service providers, have worked to equip millions of students with tablet and laptop computers, Wi-Fi hotspots, and other forms of broadband connections. Yet millions of students have remained unconnected to the Internet.<sup>3</sup> At the same time, the closure of many libraries means that library patrons who were previously dependent on computer and Internet access at their local libraries lost their primary source of broadband access. Just as schools have attempted to help meet their students’ and staffs’ connectivity needs, libraries across the country also have attempted to assist patrons in meeting their connectivity needs during the pandemic.

3. To provide relief from the pandemic, on March 11, 2021, the American Rescue Plan Act of 2021 (the American Rescue Plan or Act) was signed into law.<sup>4</sup> This Report and Order implements

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<sup>1</sup> Common Sense Media et al., Closing the K–12 Digital Divide in the Age of Distance Learning, (2020), (Common Sense Media 2020 Report) [https://www.common Sense Media.org/sites/default/files/uploads/pdfs/common\\_sense\\_media\\_report\\_final\\_6\\_26\\_7.38am\\_web\\_updated.pdf](https://www.common Sense Media.org/sites/default/files/uploads/pdfs/common_sense_media_report_final_6_26_7.38am_web_updated.pdf).

<sup>2</sup> See, e.g., Moriah Balingit, ‘A National Crisis’: As coronavirus forces many schools online this fall, millions of disconnected students are being left behind, Washington Post (Aug. 15, 2020), [https://www.washingtonpost.com/education/a-national-crisis-as-coronavirus-forces-many-schools-online-this-fall-millions-of-disconnected-students-are-being-left-behind/2020/08/16/458b04e6-d7f8-11ea-9c3b-dfc394c03988\\_story.html](https://www.washingtonpost.com/education/a-national-crisis-as-coronavirus-forces-many-schools-online-this-fall-millions-of-disconnected-students-are-being-left-behind/2020/08/16/458b04e6-d7f8-11ea-9c3b-dfc394c03988_story.html) (explaining that disconnected students caught in the “homework gap” are now missing more than just homework, and are missing all of school).

<sup>3</sup> Common Sense Media et al., Looking Back Looking Forward: What it will take to Permanently Close the Digital Divide, (2021), (Common Sense Media 2021 Report) [https://www.common Sense Media.org/sites/default/files/uploads/pdfs/final\\_what\\_it\\_will\\_take\\_to\\_permanently\\_close\\_the\\_k-12\\_digital\\_divide\\_vfeb3.pdf](https://www.common Sense Media.org/sites/default/files/uploads/pdfs/final_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf) (estimating that as of December 2020, between 9 and 12 million K-12 students still lack an adequate Internet connection in their homes and between 4 and 6 million K-12 students lack access to an adequate device for distance learning).

<sup>4</sup> American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402 (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill). The Act also designates that \$1 million from the Emergency Connectivity Fund be available for use by the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund. *Id.* § 7402(c)(2)(B). Support provided under the regulations adopted today is provided through

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section 7402 of the Act, which established a \$7.171 billion Emergency Connectivity Fund in the Treasury of the United States.<sup>5</sup> Section 7402 directed the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library.<sup>6</sup>

4. Pursuant to section 7402 of the American Rescue Plan, we now establish the Emergency Connectivity Fund Program.<sup>7</sup> The support provided through this Program will first allow eligible schools and libraries to seek funding for upcoming purchases of eligible equipment, including Wi-Fi hotspots, modems, routers, and connected devices, as well as advanced telecommunications and information services, to meet the remote learning needs of students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning during the upcoming school year. If additional funding remains available after the provision of support to eligible schools and libraries for future purchases of eligible equipment and services, we will provide schools and libraries an opportunity to apply for reimbursement of the reasonable costs they have already incurred in purchasing eligible equipment and services to meet the unmet needs of their students, school staff, and library patrons who otherwise lacked access to equipment or Internet access services sufficient to engage in remote learning during the COVID-19 pandemic.

5. The Emergency Connectivity Fund Program is separate from the E-Rate Program, which has long provided funding for broadband services delivered to and within schools and libraries. In the interest of efficiency and simplicity, however, the goals and measures, rules, and processes we adopt today for the Emergency Connectivity Fund Program leverage our experience with the E-Rate Program.

## II. BACKGROUND

### A. Emergency Connectivity Fund Program

6. Pursuant to section 7402 of the American Rescue Plan, the Commission is required to promulgate rules no later than 60 days after the date of enactment that provide for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934, as amended (the Communications Act), to an eligible school or library, for the purchase during the COVID-19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by—

(1) in the case of a school, students and staff of the school at locations that include locations other than the school; and

(2) in the case of a library, patrons of the library at locations that include locations other than the library.<sup>8</sup>

7. For purposes of the Emergency Connectivity Fund, section 7402 of the American Rescue Plan defines the COVID-19 emergency period as beginning on the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to

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amounts made available from the Emergency Connectivity Fund and not from contributions under section 254(d) of the Communications Act of 1934. *Id.* § 7402(c)(4).

<sup>5</sup> *Id.* § 7402(c)(1)-(2).

<sup>6</sup> *See id.* § 7402(a)(1)-(2).

<sup>7</sup> *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, Public Notice, DA 21-317 (WCB Mar. 16, 2021) (*Public Notice*).

<sup>8</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2); *see also* 47 U.S.C. § 254(h)(1)(B), (h)(2).

section 319 of the Public Health Service Act,<sup>9</sup> and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.<sup>10</sup> In providing support through the Emergency Connectivity Fund, the American Rescue Plan directs the Commission to reimburse 100% of the costs associated with the purchase of eligible equipment and/or advanced telecommunications and information services, “except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library, is reasonable.”<sup>11</sup> Section 7402 of the American Rescue Plan defines eligible equipment to mean (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices.<sup>12</sup> It also provides that the term “advanced telecommunications and information services” means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.<sup>13</sup> Section 7402 of the American Rescue Plan further provides that the Commission is to adopt, and the Commission and the Universal Service Administrative Company (USAC), which is the permanent administrator of all of the Commission’s Universal Service Fund Programs, are to administer, the regulations adopted pursuant to section 7402.<sup>14</sup>

8. The *Public Notice* sought comment on the provision of support from the Emergency Connectivity Fund consistent with section 7402 of the American Rescue Plan.<sup>15</sup> A wide array of interested parties, including school districts; local, state, and Tribal governments; education and library organizations; public interest groups; E-Rate consultant groups; providers of telecommunications equipment and services; and trade associations filed more than 95 comments, 90 reply comments, and 70 *ex parte* filings in response to the *Public Notice*.

## **B. E-Rate Program**

9. The E-Rate Program was authorized by Congress as part of the Telecommunications Act of 1996, and created by the Commission in 1997 to, among other things, enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries.<sup>16</sup> The E-Rate Program allows eligible schools, libraries, and consortia (comprised of eligible schools and libraries) to request universal service support for what are called “category one” services (which provide connectivity *to* schools and libraries) and “category two” services (which provide

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<sup>9</sup> See H.R. 1319, tit. VII, § 7402(d)(5)(A). The Secretary of Health and Human Services determined that a public health emergency has been in existence since January 27, 2020 as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

<sup>10</sup> H.R. 1319, tit. VII, § 7402(d)(5)(B); *see also* 47 U.S.C. § 247d.

<sup>11</sup> H.R. 1319, tit. VII, § 7402(b).

<sup>12</sup> *Id.* § 7402(d)(6).

<sup>13</sup> *Id.* § 7402(d)(1).

<sup>14</sup> *Id.* § 7402(c)(2)(A)(ii).

<sup>15</sup> *Public Notice* at 1-2. Earlier this year, the Wireline Competition Bureau (Bureau) issued the *Remote Learning Public Notice* seeking comment on several petitions for emergency relief from parties asking the Commission to permit the use of E-Rate funding to support remote learning during the COVID-19 pandemic. *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, Public Notice, 36 FCC Rcd 1304 (WCB 2021) (*Remote Learning Public Notice*). The *Public Notice* makes reference to some of the comments and reply comments filed in response to the *Remote Learning Public Notice*, which have been incorporated in this docket, WC Docket No. 21-93. We do not, however, address the issues raised in the *Remote Learning Public Notice* in this Order.

<sup>16</sup> See 47 U.S.C. § 254(h)(2)(A).

connectivity *within* schools and libraries).<sup>17</sup> Category one services generally include data transmission and Internet access services, while category two services include internal connections (e.g., Wi-Fi), managed internal broadband services (e.g., managed Wi-Fi), and basic maintenance of internal connections.<sup>18</sup>

10. Eligible schools and libraries may receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need.<sup>19</sup> Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for E-Rate eligible services and equipment than applicants with lower levels of eligibility for such programs.<sup>20</sup> For example, the most disadvantaged schools, where at least 75% of students are eligible for free or reduced price school lunch, receive E-Rate support for 90% of the cost of their eligible category one purchases (that is referred to as a 90% discount). Libraries receive funding at the discount level of the school district in which they are located.<sup>21</sup> Schools and libraries located in rural areas also may receive an additional 5% to 10% discount compared to urban areas.<sup>22</sup>

11. To obtain E-Rate support, applicants must first conduct a competitive bidding process pursuant to the competitive bidding rules established by the Commission.<sup>23</sup> They are also required to comply with all state and local procurement requirements.<sup>24</sup> Applicants must also adhere to the E-Rate gift rule, which prohibits applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the E-Rate Program.<sup>25</sup> Similarly, service providers are prohibited from offering or providing any gift or other thing of value to those personnel of

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<sup>17</sup> 47 CFR §§ 54.501, 54.502.

<sup>18</sup> 47 CFR § 54.502(a)(1)-(2).

<sup>19</sup> 47 CFR § 54.505(a)-(c). For category one services, eligible schools and libraries may receive discounts ranging from 20% to 90%. For category two services, eligible schools and libraries may receive discounts ranging from 20% to 85%. *See* 47 CFR § 54.505(c).

<sup>20</sup> 47 CFR § 54.505(b).

<sup>21</sup> 47 CFR § 54.505(b)(2).

<sup>22</sup> 47 CFR § 54.505(b)(3).

<sup>23</sup> 47 CFR § 54.503.

<sup>24</sup> 47 CFR § 54.503(b).

<sup>25</sup> 47 CFR § 54.503(d) (“[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein.”); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18801, para. 88 (2010) (*Schools and Libraries Sixth Report and Order*). Consistent with the gift rules applicable to federal agencies, certain *de minimis* gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. 47 CFR § 54.503(d). For purposes of the E-Rate gift rule, the terms “school, library, or consortium” includes “all individuals who are on the governing board of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the [E-Rate Program], including individuals who prepare, communicate or work with E-rate applications, or other forms related to the E-rate program, or who prepare bids, communicate or work with E-rate service providers, E-rate consultants, or with USAC, as well as any staff of such entities responsible for monitoring compliance with the E-rate program.” 47 CFR § 54.503(d)(2)(i). Similarly, the term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.” 47 CFR § 54.503(d)(2)(ii).

eligible entities involved in the E-Rate Program.<sup>26</sup> Accordingly, under the E-Rate rules, applicants are not permitted to solicit or accept a gift or thing of value over \$20 from a service provider, and service providers are not permitted to offer or provide applicants a gift or thing of value over \$20.<sup>27</sup> In light of the COVID-19 pandemic, the Bureau provided a waiver of the E-Rate gift rule through June 30, 2021, the end of funding year 2020, to enable service providers to offer or provide, and E-Rate eligible schools and libraries to solicit or accept, broadband connections, devices, networking equipment, or other things of value that could help students, teachers, and patrons affected by school and library closures during the coronavirus pandemic.<sup>28</sup>

12. Subject to compliance with various E-Rate rules, applicants may seek and receive any amount of qualifying support for category one services. However, each applicant has a maximum amount of category two support it can receive over the course of five years.<sup>29</sup> Moreover, consistent with section 254 of the Communications Act, E-Rate rules require schools and libraries to use E-Rate-supported services “primarily for educational purposes.”<sup>30</sup> In the case of schools, the Commission has defined “educational purposes” as, “activities that are integral, immediate, and proximate to the education of students.”<sup>31</sup> In the case of libraries, it has defined “educational purposes” as activities that are “integral, immediate, and proximate to the provision of library services to library patrons.”<sup>32</sup> Recognizing that the technology needs of E-Rate Program participants are complex and unique to each participant, the Commission established a presumption that activities that occur in a school or library or on a school

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<sup>26</sup> 47 CFR § 54.503(d); *see also Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88 (noting that “the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive bidding process is taking place,” because “gift activities that undermine the competitive bidding process may occur outside the bidding period.”).

<sup>27</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. In addition to *de minimis* gifts, the Commission’s rules allow for charitable donations, including literacy programs, scholarships, and capital improvements, as long as such contributions are not directly or indirectly related to procurement activities or decisions. *Id.* at 18802, para. 90. The Commission’s rules also permit certain gifts that are motivated solely by a personal relationship. *Id.* at 18801, para. 88; *see also* 47 CFR § 54.503(d)(3)(i).

<sup>28</sup> *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 14544, 14546, para. 7 (WCB 2020) (*Second RHC and E-Rate Gift Rules Waiver Extension Order*) (extending the gift rule waiver through June 30, 2021 for the E-Rate and Rural Health Care Programs); *see also Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Order*) (initially waiving sections 54.622(h) and 54.503(d) of the Commission’s rules through September 30, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 9416 (WCB 2020) (*First RHC and E-Rate Gift Rules Extension Order*) (extending the waiver of each program’s gift rule until December 31, 2020) (collectively, *E-Rate Gift Rule Waiver Orders*).

<sup>29</sup> 47 CFR § 54.502(d).

<sup>30</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774, para. 22 (amending the rules to require that services be used *primarily* for educational purposes and explaining that “[t]o primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools’ resources”).

<sup>31</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*) (clarifying the meaning of educational purposes); 47 CFR § 54.500 (defining “educational purposes”).

<sup>32</sup> *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17; 47 CFR § 54.500.

campus or library property serve an educational purpose, and therefore, services used there are eligible for E-Rate funding.<sup>33</sup>

### III. DISCUSSION

13. In adopting rules to govern the Emergency Connectivity Fund Program, we recognize that Congress has directed us to act with haste, conducting a rulemaking within 60 days of the date of enactment of the American Rescue Plan.<sup>34</sup> At the same time, we are mindful of the latitude Congress has granted us to determine what costs are reasonable to reimburse, as well as the purpose of the Fund to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services during the pandemic.<sup>35</sup> Pursuant to that authority, and consistent with Congress' intent, in this Report and Order, we move quickly to open an application process that allows eligible schools and libraries to first seek funding for purchases during the coming school year of eligible equipment and advanced telecommunications and information services to meet the needs of students, school staff, and library patrons who would otherwise lack access to basic educational opportunities and library services. If the demand for these future purchases does not exceed available funds, we will open an additional application window to allow schools and libraries to seek funding for eligible equipment and broadband Internet access services that they purchased earlier in the pandemic to address the needs of students, school staff, and library patrons who would otherwise have lacked access to devices and services sufficient to meet their remote learning needs.

14. Based on our experience with the E-Rate Program, we also draw on the existing E-Rate rules and processes to provide clear rules and establish quick and easy to understand processes for requesting and receiving support from the Emergency Connectivity Fund Program, along with appropriate safeguards to protect the Program from waste, fraud, and abuse. In this way, we seek to maximize the efficiency and effectiveness of the Emergency Connectivity Fund Program and focus limited funding to target the needs of those students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning and virtual library services during the COVID-19 emergency period.

#### A. Performance Goals and Measures

15. The Emergency Connectivity Fund Program will provide funding for schools and libraries to meet the otherwise unmet connectivity needs of students, school staff, and library patrons during the COVID-19 pandemic. Based on the record in this proceeding and our obligations under the American Rescue Plan, we establish three goals for the Emergency Connectivity Fund Program: (1) connecting and facilitating remote learning for students, school staff, and library patrons who would otherwise lack adequate access to connected devices and broadband Internet access connectivity during the pandemic; (2) ensuring that USAC efficiently and effectively administers the Emergency Connectivity Fund Program; and (3) providing pricing transparency for eligible equipment and services to inform future policy and purchasing decisions. We also adopt associated performance measures and targets to determine whether the Emergency Connectivity Fund Program is successfully achieving these goals.<sup>36</sup> Setting clear goals for the Program, with performance measures and targets to determine success, will

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<sup>33</sup> *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

<sup>34</sup> See H.R. 1319, tit. VII, § 7402(a) (directing the Commission to promulgate rules for the Emergency Connectivity Fund not later than 60 days after the date of the enactment of the Act (i.e., by May 10, 2021)).

<sup>35</sup> *Id.* § 7402(b).

<sup>36</sup> Establishing these goals and metrics is also consistent with the Commission's responsibilities under the Government Performance and Results Act of 1993, Pub. L. No. 103-62, 107 Stat. 285 (1993), codified as amended most recently by the GPRA Modernization Act of 2010, Pub. L. No. 111-352, 124 Stat. 3866 (2011), at 5 U.S.C. § 306 and 31 U.S.C. §§ 1115-16.

help focus our efforts as we oversee use of the Emergency Connectivity Fund to connect and support students, school staff, and library patrons during the COVID-19 pandemic.

**1. Connecting Students, School Staff, and Library Patrons During the Pandemic**

16. We adopt as our first goal for the Emergency Connectivity Fund Program helping to meet the need for connected devices and broadband Internet access services to facilitate remote learning during the COVID-19 pandemic for students, school staff, and library patrons. The pandemic has caused students, school staff, and library patrons nationwide to shift from in-person instruction to remote learning.<sup>37</sup> For some students and school staff (and many library patrons), this shift was relatively seamless, and education was able to continue remotely with minimal disruption. For millions of others, however, those who lacked (many of whom continue to lack) necessary connected devices and broadband services, the transition to remote learning has been filled with barriers.<sup>38</sup> Many school districts have spent scarce resources purchasing devices and Internet connections for students and staff to help bridge the gap.<sup>39</sup> And, libraries have done the same for library patrons.<sup>40</sup> Despite these best efforts, many schools and libraries nationwide lack adequate funding to ensure that all students, school staff, and library patrons are connected and able to fully participate in remote learning opportunities.<sup>41</sup>

17. We will use two metrics to measure the success of the Emergency Connectivity Fund Program in addressing students', school staffs', and library patrons' otherwise unmet need for connected devices and broadband connectivity: (1) the number of connected devices funded with Emergency Connectivity Fund support that are provided to students, school staff, and library patrons who would otherwise lack access to a device sufficient to enable them to engage in remote learning; and (2) the number of broadband Internet access connections (including through use of Wi-Fi hotspots) funded with Emergency Connectivity Fund Program support that are provided to students, school staff, and library patrons who would otherwise lack access to Internet connectivity sufficient to engage in remote learning. To measure success in meeting this goal, we agree with commenters that recommend we collect information about the number of connected devices and broadband connections that are used to connect students, school staff, and library patrons through the Emergency Connectivity Fund Program and release this data publicly.<sup>42</sup> We direct USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

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<sup>37</sup> See EducationSuperHighway Comments at 1 ("During the pandemic, when student homes have become their classrooms, access to public education hinges on whether a student's home has broadband access.").

<sup>38</sup> See Los Angeles Unified School District Comments at 1 ("Students living in poverty or who, for various reasons, lack adequate access to adequate broadband internet connectivity in their homes, are limited in their ability to participate in public education").

<sup>39</sup> See State E-rate Coordinators' Alliance Comments at 2 (SECA Comments) ("During the last 13 months, schools have undertaken a near impossible task of determining which students and teachers did not have sufficient internet bandwidth at home and to try to make alternative arrangements for them, having to shoulder this entirely unanticipated and unbudgeted expense.").

<sup>40</sup> See, e.g., Urban Libraries Council Reply at 3-4 (discussing library efforts during the pandemic).

<sup>41</sup> See Education & Libraries Networks Coalition Comments at 5 (EdLiNC Comments) ("[A]s of December 2020, Common Sense Media estimates that between 9 and 12 million K-12 students still lack an adequate Internet connection in their homes and that between 4 and 6 million K-12 students lack access to an adequate e-learning device."). Information about the impact of the COVID-19 pandemic on broadband access for library patrons is more scarce.

<sup>42</sup> See, e.g., EducationSuperHighway Comments at 9-10; State Educational Technology Directors Association Comments at 4-5 (SETDA Comments) (recommending that the Commission focus on the number of unconnected students and educators before receipt of Emergency Connectivity Fund Program support and compare the numbers after receipt of funding).



18. We also appreciate the opportunity the Emergency Connectivity Fund Program presents to gather better, more accurate information about the number of students without connected devices and broadband services sufficient to engage in remote learning and the progress made towards closing that Homework Gap.<sup>43</sup> At the same time, we recognize that during the pandemic school districts have been trying to meet the needs of their students and staff and therefore, they have not collected uniform data sets about their students' connectivity requirements. As part of the application process, we will, therefore, collect schools' and school districts' best estimates about the number of students in their school or school district who did not have access to adequate connected devices, broadband connections, or both when the pandemic began; the number of students who do not currently have access to adequate connected devices, broadband Internet access connections, or both; and how they expect those numbers to change with receipt of requested Emergency Connectivity Fund Program support. Given the pressing demands on schools, we will not dictate specific data collection requirements, but instead will ask each school or school district to describe how and when they collected the information that they use for the estimates provided in their responses. We direct USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

## **2. Efficiently and Effectively Administer Funding**

19. We adopt as our second goal to ensure that the Commission and USAC efficiently and effectively commit funding and distribute support from the Emergency Connectivity Fund.<sup>44</sup> The \$7.17 billion Emergency Connectivity Fund must be quickly made available to meet the immediate connectivity needs of students, school staff, and library patrons nationwide. To make that happen, the Commission and USAC must make the application and reimbursement processes simple and efficient. We will measure success towards this goal in two main ways: (1) speed and ease of the application process and (2) speed and ease of the reimbursement process.

20. *Speed and Ease of Application Process.* In the first instance, the application process should be easy for applicants to navigate and to use in requesting funding for eligible equipment and services. We can measure success in terms of how quickly Emergency Connectivity Fund Program applications are reviewed, and funds are committed following the close of the filing window.<sup>45</sup> Consistent with the suggestions of some commenters, we set targets for how quickly USAC is able to review applications and release funding commitment decision letters after the filing window closes.<sup>46</sup> Some commenters have suggested that we adopt performance metrics that require USAC to complete its review of applications within 30 days of filing date, or within 30 days of receiving additional information from the applicant.<sup>47</sup> While it is important that USAC act expeditiously, we also want to give USAC

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<sup>43</sup> See, e.g., EducationSuperHighway Comments at 8; Common Sense Reply at 5.

<sup>44</sup> See Schools, Health, & Libraries Broadband Coalition Comments at 8-9 (SHLB Comments) (suggesting that the Commission adopt high-level administrative goals for the Commission and USAC); see also Funds For Learning Comments at 3 (FFL Comments) (stating that the Commission consider the speed of funding commitments and reimbursements as performance measures for the Emergency Connectivity Fund Program).

<sup>45</sup> We will also examine how quickly the Emergency Connectivity Fund Program application filing window is opened. See FFL Comments at 3 (stating that the Commission should focus on metrics such as the speed of funding commitments and reimbursements, and the utilization rate of committed funding, to monitor the efficacy of the Program).

<sup>46</sup> See, e.g., SHLB Comments at 8 (recommending that the Commission set high-level administrative goals, such as setting a benchmark for USAC to approve applications within a set period of time); Los Angeles Unified School District Comments at 4 (recommending that the Commission set application and review timelines to ensure we are timely serving students).

<sup>47</sup> See, e.g., SECA Comments at 18 (recommending that the Commission adopt a 30-day time period for processing and committing Emergency Connectivity Fund Program applications based on the date of receipt, or from the date that the applicant provided the requested information to USAC); Alaska Department of Education and Early

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sufficient time to do an appropriate review of each application. We therefore set as our targets having USAC issue funding decision commitment letters for 50% of the workable applications within 60 days of the close of the first application window and 70% of the workable applications within 100 days of the close of the first application filing window.<sup>48</sup> Based on our experience with USAC's issuance of funding commitment decision letters in the E-Rate Program, we find that these targets will further the goal of quickly having applications reviewed and funding committed, while allowing us to also track USAC's performance.

21. *Speed and Ease of Reimbursement Process.* Consistent with suggestions in the record, we will also measure the ease of the reimbursement process and USAC's speed in providing an invoice submission process for Program participants and in reviewing invoices that have been submitted.<sup>49</sup> We appreciate the suggestion of several commenters that we set a target for USAC of reviewing invoices within 30 days of submission,<sup>50</sup> but in light of the very short time frame under which we are adopting rules for this new Program, we do not yet have enough information to set specific invoice review targets. Instead, we direct the Bureau in consultation with the Office of the Managing Director to work closely with USAC on the creation of an invoicing system for the Emergency Connectivity Fund Program that allows Program participants to easily submit invoices and USAC to promptly review those invoices.<sup>51</sup>

### 3. Inform Future Purchasing and Policy Decisions Through Pricing Transparency for Eligible Equipment and Services

22. We adopt as our third goal informing future purchasing and policy decisions through pricing transparency for eligible equipment and services. Our experience administering and collecting data on the Emergency Connectivity Fund Program will provide valuable information for future purchasing decisions for schools and libraries.<sup>52</sup> We therefore agree with commenters that argue one

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Development, et al. Comments at 3-4 (Alaska DEED Comments) (recommending a 30-day timeframe for application review).

<sup>48</sup> We use the term "workable" to mean that a funding request is filed timely and is complete, with all necessary information, to enable a reviewer to make the appropriate funding decision, and the applicant, provider, and any consultants are not subject to investigation, audit, or other similar reason for delay in a funding decision. This is consistent with the way the term is currently used in the E-Rate Program. See *Modernizing the E-Rate Program*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8893, para. 59 (2014) (*2014 First E-Rate Order*).

<sup>49</sup> See, e.g., SECA Comments at 18; Alaska DEED Comments at 4.

<sup>50</sup> See, e.g., SECA Comments at 18 (recommending that USAC be required to process and approve invoices within 30 days of receipt); Alaska DEED Comments at 4 (recommending a 30-day review period for processing and approving invoices).

<sup>51</sup> Because the Emergency Connectivity Fund is established in the U.S. Treasury, ultimate approval for payment of invoices rests with the responsible certifying officer. 31 U.S.C. § 3528. Certifying officers are limited to federal employees and as such USAC may only review invoices and make payment recommendations. Treasury Financial Manual, Volume I, Part 4A, Chapter 3000, *Requirements for Scheduling Payments Disbursed by the Bureau of the Fiscal Service*.

<sup>52</sup> In 2014, the Commission instituted similar pricing transparency for the E-Rate Program. See *2014 First E-Rate Order*, 29 FCC Rcd at 8935-37, paras. 158-160. As EducationSuperHighway and other commenters explain, the Commission's decision in 2014 to make E-Rate data publicly available has helped drive down the prices paid by schools and libraries for broadband services. EducationSuperHighway Comments at 9-10; Connected Nation Reply at 2-3; FFL Reply at 10. Based on its analysis of that publicly available data, EducationSuperHighway estimates that, because of price transparency in the E-Rate Program and new technological improvements, the median cost of broadband for schools and school districts has decreased from \$11.73 per Mbps in 2015 to \$2.24 per Mbps in 2019. See EducationSuperHighway, "The State of Connectivity in America's Schools," 2019 State of the States Report (2019), <https://s3-us-west-1.amazonaws.com/esh-sots-pdfs/2019%20State%20of%20the%20States.pdf>.

crucial aspect of the Emergency Connectivity Fund Program is pricing transparency.<sup>53</sup> We thus require USAC to make the pricing data from the Emergency Connectivity Fund Program publicly available through its Open Data platform. The publication of this pricing data will allow applicants to review past prices paid by schools and libraries across the country for same and similar eligible equipment and services. Doing so will put them in a better bargaining position when making such purchases in the future. We direct USAC to make the Emergency Connectivity Fund Program application and pricing data publicly available within 160 days after the first Emergency Connectivity Fund Program application filing window closes.

23. To measure progress towards this goal, USAC, subject to oversight by the Bureau and the Office of Economics and Analytics, should conduct or commission at least one survey of participating schools and libraries to determine whether the data transparency measures built into the Emergency Connectivity Fund Program are enabling program participants to make more cost-effective purchasing decisions in the future. We will share the results of the survey with interested stakeholders and other policy makers, so that it can inform future policy decisions.

### **B. Eligible Schools and Libraries**

24. Consistent with Congressional direction in section 7402, we adopt rules providing that all of the schools, libraries, and consortia of schools and libraries that are eligible for support under the E-Rate Program are also eligible to request and receive support through the Emergency Connectivity Fund Program.<sup>54</sup> In so doing, we also adopt for purposes of the Emergency Connectivity Fund Program, the same definitions of “elementary school,” “secondary school,” “library,” and “library consortium” as are used in the E-Rate rules, with one minor modification explained below.<sup>55</sup> Those definitions are grounded in the definitions of “elementary school” and “secondary school” in section 254(h)(7) of the Communications Act, as well as the limitations on eligibility set forth in section 254(h)(4) of the Communications Act.<sup>56</sup> We also specify that, as with the E-Rate Program, pursuant to section 254(h)(4)

<sup>53</sup> See, e.g., Consortium for School Networking Comments at 3 (CoSN Comments); EducationSuperHighway Comments at 9-10 (advocating that the Commission require USAC to release the Emergency Connectivity Fund data on its Open Data platform to allow schools to maximize the cost-effectiveness of their connected device and broadband connection purchases); Connected Nation Reply at 2-3 (stating that pricing transparency is an important element to ensure accountability).

<sup>54</sup> Section 7402(d)(7) of the American Rescue Plan defines an “eligible school or library” as “an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library) eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act.” H.R. 1319, tit. VII, § 7402(d)(7). For simplicity, throughout this Order, we use the phrase “schools and libraries” to refer to “schools, libraries and consortia of schools and libraries.”

<sup>55</sup> 47 CFR §§ 54.500-54.501. Under E-Rate Program rules, an elementary school is defined as “a non-profit institutional day or residential school that provides elementary education, as determined under state law.” A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12. A library includes “(1) a public library; (2) a public elementary school or secondary school library; (3) an academic library; (4) a research library;” and “(5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.” Additionally, a library may also refer to a library consortium, which is defined as “any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries.” 47 CFR § 54.500.

<sup>56</sup> 47 U.S.C. § 254(h)(4), (h)(7)(A) (defining “elementary and secondary schools” as the terms are used in section 9101 of the Elementary and Secondary Education Act of 1965 (ESEA)). When home schooled students who lack access to eligible equipment or services are considered to be enrolled in public or non-profit private schools that provide elementary or secondary education, under the law of the applicable State, those schools can seek support

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of the Communications Act, the following entities are not eligible to receive support from the Emergency Connectivity Fund: (1) for-profit schools and libraries; (2) schools and libraries with endowments in excess of \$50,000,000; (3) libraries whose budgets are not completely separate from any schools; and (4) library or library consortium that are not eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).<sup>57</sup>

25. The LSTA was recently amended to make clear that Tribal libraries are eligible for support from a state library administrative agency under LSTA.<sup>58</sup> Consistent with the those amendments, and guidance from the Institute of Museum and Library Services, we clarify that Tribal libraries, which are by statute eligible for support from state library administrative agencies under the LSTA, are eligible for support from the Emergency Connectivity Fund.<sup>59</sup> The current E-Rate eligibility rules were adopted long before the LSTA was amended and include a citation to an outdated version of that LSTA. Because this proceeding is focused on the implementation of the Emergency Connectivity Fund, we do not amend the E-Rate rules at this time to reflect the change to the LSTA.<sup>60</sup>

26. We decline to extend eligibility for support from the Emergency Connectivity Fund Program to other entities that are not eligible for E-Rate support. We are sympathetic to suggestions from commenters that we expand the list of entities eligible to receive funding from the Emergency Connectivity Fund to include a wide variety of public and private institutions that have done excellent work helping students and members of the public gain access to broadband Internet access services and end-user devices during the pandemic.<sup>61</sup> However, the Act specifies the entities eligible for Emergency

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from the Emergency Connectivity Fund Program for funding to provide such students with eligible equipment or services. *See* 20 U.S.C. §§ 7801 (19), (45) (codifying the definitions of “elementary school” and “secondary school” in the ESEA).

<sup>57</sup> 47 U.S.C. § 254(h)(4).

<sup>58</sup> Museum and Library Services Act of 2018, Pub. L. No. 115-410, 132 Stat. 5416 (2018) (amending the definition of library in 22 U.S.C. § 9122 to include Tribal libraries).

<sup>59</sup> *See* 47 CFR § 54.1700(h) (as codified in Appendix A); Letter from Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1 (filed May 6, 2021); *see also, e.g.*, American Library Association Comments at 3-4 (ALA Comments); Karen Condon Comments at 1 (filed on behalf of the Confederated Tribes of the Colville Reservation) (Colville Confederated Tribes Comments); Letter from Marijke Visser, American Library Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 3 (filed May 6, 2021) (ALA May 6 *Ex Parte*).

<sup>60</sup> *See, e.g.*, ALA Comments at 3 (stating the Commission must revise the E-Rate rules to reflect the 2018 amended language in the LSTA). We recognize the Navajo Nation Telecommunications Regulatory Commission’s frustration with the current E-Rate rules regarding libraries as well as the statutory definition of elementary and secondary schools. With respect to the latter, we do not have authority to take an approach that statutory direction does not allow. *See* Navajo Nation Telecommunications Regulatory Commission Comments at 2 (NNTRC Comments).

<sup>61</sup> *See, e.g.*, Marie Bachman Comments at 3 (filed on behalf of Bethlehem Area School District) (Bethlehem Area School District Comments) (requesting that local housing authorities and local community centers be eligible); California Emerging Technology Fund Comments at 8-9 (CETF Comments) (seeking eligibility for entities with programs aimed at advancing digital inclusion); Grand Rapids Public Museum (suggesting museums be eligible); The City of Los Angeles et al. Comments at 2 (Local Governments Comments) (recommending that local governments and other entities that have stood up connectivity programs should be eligible); Norfolk State University Comments at 1 (suggesting that higher education institutions with need could be made eligible); Mayor James F. Kenney Comments at 2 (filed on behalf of the City of Philadelphia) (City of Philadelphia Comments) (encouraging a broader eligibility that includes other government or non-profit entities whose primary purpose is to provide educational opportunities to the general public); State of South Carolina Comments at 2-3 (South Carolina Comments) (recommending that when a school district or library system decides not to participate in the Emergency Connectivity Fund Program that independent afterschool programs be eligible and also that service providers be eligible to apply directly on behalf of eligible students, patrons, and staff with a Letter of Agency from the school

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Connectivity Fund Program support and does not authorize the Commission to expand the definition of eligible entities.<sup>62</sup> Thus, even when such institutions are acting in coordination with schools or libraries, there is no authority to permit such institutions to receive Emergency Connectivity Fund Program support. Moreover, straying from the focus of the statute would divert much-needed funding from schools and libraries in dire need of assistance.

27. We clarify that eligible schools and libraries do not need to be current E-Rate participants,<sup>63</sup> but eligible entities, particularly those that have not applied for E-Rate support, should be prepared to demonstrate eligibility as a school or library under Program rules eligible for support from the Emergency Connectivity Fund Program during USAC's application review.

### C. Eligible Equipment and Services

28. We look to section 7402 of the American Rescue Plan to determine what equipment and services are eligible for support from the Emergency Connectivity Fund Program. The American Rescue Plan requires that the Emergency Connectivity Fund be used for the purchase of eligible equipment and/or “advanced telecommunications and information services, or both.”<sup>64</sup> Section 7402(d)(6) of the American Rescue Plan defines eligible equipment as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices.<sup>65</sup> Wi-Fi hotspot is defined as “a device that is capable of—(A) receiving advanced telecommunications and information services; and (B) sharing such services with another connected device through the use of Wi-Fi.”<sup>66</sup> “Connected devices” are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services.<sup>67</sup> Section 7402(d)(1) defines “advanced telecommunications and information services” to mean advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.<sup>68</sup>

29. *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.<sup>69</sup> We find inapplicable to the

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district); City of Seattle et al. Reply at 5 (seeking expanded eligibility for local governments, public housing authorities, and community-based organizations).

<sup>62</sup> See H.R. 1319, tit. VII, § 7402(d)(7).

<sup>63</sup> See NNRTC Comments at 4 (seeking clarity that eligibility is not based on whether a school or library is currently receiving E-Rate support).

<sup>64</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2), (d)(1); see also 47 U.S.C. § 254(h)(2)(A) (“The Commission shall establish competitively neutral rules—(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”).

<sup>65</sup> H.R. 1319, tit. VII, § 7402(d)(6).

<sup>66</sup> H.R. 1319, tit. VII, § 7402(d)(11). Section 7402 of the American Rescue Plan defines “Wi-Fi” as “a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).” *Id.* at § 7402(d)(10).

<sup>67</sup> *Id.* § 7402(d)(3).

<sup>68</sup> *Id.* § 7402(d)(1); 47 U.S.C. § 254(h)(2)(A).

<sup>69</sup> See, e.g., Verizon Comments at 4; see also UMass University Information Technology Services, *What is an Air Card?* (Jan. 29, 2021), <https://it.umassp.edu/s/article/What-is-an-Aircard> (“An air card is a type of wireless modem that is used to connect to the internet through the use of cellular data.”).

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).<sup>70</sup> 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.

30. *Connected Devices.* Based on our review of the record, we define connected devices as laptop computers and tablet computers that are capable of connecting to advanced telecommunications and information services. We expect connected devices to be Wi-Fi enabled and able to support video conferencing platforms and other software necessary to ensure full participation in remote learning.<sup>71</sup> However, 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.<sup>72</sup> At the same time, however, we expect connected devices to be accessible to and usable by individuals with disabilities.<sup>73</sup> If people with disabilities require connected devices to connect

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<sup>70</sup> See, e.g., CTIA – The Wireless Association Comments at 9 (CTIA Comments) (noting the differences in on-campus and off-campus cost-effectiveness and urging the Commission not to import the cost-effectiveness demonstration requirement); see also *Modernizing the E-Rate Program for Schools and Libraries*, Order, 35 FCC Rcd 13793, 13795 n.17 (WCB 2020) (*FY2021 Eligible Services List*) (“Wireless data plans and air cards for mobile devices are only eligible when applicants have demonstrated that they are the most cost-effective option compared to a fixed wireless broadband connection.”) (citing *Modernizing the E-Rate Program for Schools and Libraries*, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15600, para. 156 (2014) (*2014 Second E-Rate Order*)).

<sup>71</sup> See, e.g., CETF Comments at 13 (supporting requirements that devices be Wi-Fi enabled with video and camera functions for remote learning); Local Governments Comments at 20 (stating that devices must be Wi-Fi enabled and have video and camera functionality); South Carolina Comments at 4 (recommending devices have an integrated web camera, be Wi-Fi enabled, and have a minimum of 4GB RAM processing for remote learning); Telecommunications for the Deaf and Hard of Hearing, Inc. et al. Comments at 4 (TDI et al. Comments) (recommending that connected devices have “video, camera functions, Bluetooth, and hearing aid compatibility features” as well as apps to connect with relay services).

<sup>72</sup> See Common Sense Comments at 7 (recommending the Commission allow schools to determine which device type is best for their curriculum needs); CETF Comments at 13 (recommending a device screen size minimum such as nine inches); Council of the Great City Schools Comments at 5-6 (CGCS Comments) (disagreeing that funding should be conditioned on particular standards when schools acted during an emergency to get devices to students); E-Rate Management Professionals Association Comments at 6 (E-mpa Comments) (recommending a 7-inch required screen size); Virginia Department of Education Comments at 2 (VDOE) (strongly supporting flexibility in determining the system requirements of students' and staff's devices).

<sup>73</sup> See 47 U.S.C. §§ 255, 617 (requiring equipment that provides telecommunications and advanced communications services to be accessible); see also CTIA Comments at 13 (while “mobile wireless devices generally are accessible to people with disabilities, . . . the Commission should encourage eligible schools and libraries to harness the existing accessibility features of mobile wireless services and equipment to efficiently and effectively utilize ECF to support students and educators with disabilities remote learning needs.”); TDI et al. Comments at 3 (encouraging that connected devices that use video conferencing be accessible, usable, and interconnected with relay services so that individuals who are deaf, hard of hearing, deafblind, or deaf with mobility issues can utilize the platforms); Apple Reply at 5 (echoing numerous commenters that “connected devices should be accessible to and usable by individuals with disabilities”).

to the Internet, we expect that schools and libraries will request such devices to accommodate disabilities if needed.<sup>74</sup>

31. By defining connected devices as “laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services,” Congress provided us the discretion to include connected devices beyond laptop and tablet computers as long as they are “similar.”<sup>75</sup> Based on the record before us, we exclude desktop computers from our definition of “connected devices.”<sup>76</sup> Although we recognize the functionality and value of desktop computers,<sup>77</sup> we find that desktop computers are not similar to laptop computers and tablets because they lack the portability of laptop and tablet computers, which can be a drawback for many students, school staff, and library patrons seeking to engage in remote learning. We also find it significant that instead of identifying desktop computers or any other stationary devices as eligible connected devices Congress identified a set of portable devices as eligible “connected devices” and gave us discretion to determine whether other devices are similar to those portable devices.

32. Also, based on the record before us, we exclude mobile phones, including smartphones, from our definition of “connected device” because they lack the same functionality students, school staff, and library patrons need to perform necessary remote learning activities, homework, or research, and thus we do not consider them to be “similar” to laptop or tablet computers for the purposes intended by the statute here.<sup>78</sup> Numerous commenters, including state education departments, education groups and public interest groups agree with excluding mobile phones from the definition of connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities.<sup>79</sup> In establishing the Emergency Connectivity Fund, Congress

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<sup>74</sup> See, e.g., Educational Service Unit #9 Comments at 2 (ESU #9 Comments); Players Coalition Comments at 1 (stating that “technology devices and services for students with disabilities, should be included as allowable costs”). The funded entities may also have the obligation under Federal, state, and local laws to make their programs and services accessible to individuals with disabilities. See, e.g., VDOE Comments at 3 (noting that schools and libraries have obligations pursuant to the Americans with Disabilities Act and Individuals with Disabilities Education Act to ensure connected devices are accessible and emphasizing the importance of flexibility to determine how to support accommodation requests).

<sup>75</sup> H.R. 1319, tit. VII, § 7402(d)(3).

<sup>76</sup> See, e.g., Claudia Bill de la Pena Comments at 2 (filed on behalf of the City of Thousand Oaks) (City of Thousand Oaks Comments) (stating that desktops are bulky and require additional accessories); Qualcomm Incorporated Comments at 16 n.25 (Qualcomm Comments) (noting that desktops support zero mobility for students).

<sup>77</sup> See, e.g., Alaska DEED Comments at 3 (noting desktops should be available for students or patrons with disabilities); Colville Confederated Tribes Comments at 2 (arguing teachers may need desktops to multitask work and meet the needs of students); SETDA Comments at 4 (suggesting local flexibility and inclusion of desktop computers to serve students with special needs or due to supply chain shortages); South Carolina Comments at 4 (noting that desktops have the same functionality and may be a cost-effective option, particularly when there is a surge in demand delaying deliveries).

<sup>78</sup> See, e.g., CETF Comments at 12-13 (generally agreeing smartphones should be excluded because “most lack the full functionality of a personal computer, tablet, or laptop for remote learning activities”).

<sup>79</sup> Public Notice at 5-6. See, e.g., Alaska DEED Comments at 4; EdLiNC Comments at 8 (agreeing mobile phones should be ineligible for support); EducationSuperHighway Comments at 6-7 (supporting the exclusion of smartphones); Infinity Communications & Consulting, Inc. Comments at 3-4 (Infinity Comments) (arguing that mobile phones do not allow adequate resources for educational purposes); NCTA – The Internet & Television Association Comments at 4 (NCTA Comments) (excluding mobile phones is supported by the text of the American Rescue Plan and consistent with the Emergency Broadband Benefit Program); Players Coalition Reply at 1 (explaining that these devices do not sufficiently allow meaningful participation); South Carolina Comments at 5 (generally agreeing that smartphones are not ideal for remote learning); WTA – Advocates for Rural Broadband Comments at 2 (WTA Comments).

intended to provide funding for devices that support remote learning. The record demonstrates that while a smartphone may be capable of connecting a student to his or her teacher or supplementing learning,<sup>80</sup> it can limit the student's ability to develop a class presentation or draft a research paper.<sup>81</sup> At least one smartphone vendor shows that some of its smartphones are capable of being made more functional by being connected to larger display screens for video conferencing and to peripherals, like a keyboard and mouse.<sup>82</sup> The fact that some smartphones can be made more functional for educational purposes by adding these extra peripherals does not persuade us that smartphones are similar end-user devices meeting the remote learning needs of students, school staff, or library patrons. We also find it significant that we did not receive a single comment or other filing from a school or library claiming that they purchased smartphones to use instead of laptops or tablets for their students, school staff or library patrons or have found smartphones to be good substitutes for tablets or laptop computers.

33. We also find unpersuasive the arguments of some commenters that smartphones should be eligible for Emergency Connectivity Fund Program support as eligible devices because they meet the definition of a Wi-Fi hotspot,<sup>83</sup> because some schools were forced to purchase smartphones to act as Wi-Fi hotspots due to supply chain issues at the start of the pandemic,<sup>84</sup> or because the ability of smartphones to act as Wi-Fi hotspots was mentioned in the legislative history.<sup>85</sup> Section 7402(b) of the American Rescue Plan tasks us with determining whether the costs of requests for equipment are reasonable, and even with a cap on the reasonable support amount for Wi-Fi hotspots,<sup>86</sup> we do not find it 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.<sup>87</sup> This is particularly true because smartphones have myriad other functions, such as cellular voice

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<sup>80</sup> See, e.g., Next Century Cities Comments at 6-7 (explaining that mobile devices are not direct substitutes for laptops or tablets, but play a supplementary role in distance learning, such as when a laptop or tablet is shared in larger low-income families); Qualcomm Incorporated Comments at 15 (providing an example of a pilot project from 2012 showing benefits using a smartphone-based program for students, including communicating with classmates and teachers outside of school and improving math scores for students without Internet access at home); Letter from John W. Kuzin, Vice President and Regulatory Counsel, Qualcomm, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 6, 2021) (noting these 2012 pilot results showed positive educational outcomes associated with mobile phones).

<sup>81</sup> See, e.g., CETF Comments at 12-13 (stating that “[o]ne cannot write a term paper or perform research on a small smart phone screen”).

<sup>82</sup> See, e.g., Samsung Electronics America, Inc. Comments at 3-4 (Samsung Comments). See also Letter from Matthew B. Gerst, Vice President, CTIA, to Marlene Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 5, 2021) (CTIA May 5 *Ex Parte*).

<sup>83</sup> See, e.g., Bethlehem Area School District Comments at 3; Qualcomm Comments at 14-15 (arguing smartphones are eligible equipment because they contain a router, a modem, and a Wi-Fi hotspot).

<sup>84</sup> See Ann Grabowski, Bena Chang Comments at 2 (filed on behalf of the City of San Jose) (City of San Jose Comments) (understanding mobile phones may not meet the connected device qualifications but stating that 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).

<sup>85</sup> See, e.g., T-Mobile Comments at 9-10 (noting that the House Budget Committee's report on the American Rescue Plan stated the 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, among other things.*”).

<sup>86</sup> See *infra* Section F, para. 71; see also CTIA May 5 *Ex Parte* at 4 (suggesting that applying a \$250 cap on Wi-Fi hotspots supports allowing reimbursement for smartphones).

<sup>87</sup> H.R. 1319, tit. VII, § 7402(b).



service,<sup>88</sup> and we would have to choose between inappropriately expending resources on functions that are not core educational services that section 7402(a) of the American Rescue Plan was designed to fund, or allowing applicants to cost allocate eligible and ineligible portions of smartphones used as Wi-Fi hotspots. However, importing cost allocation requirements into the Emergency Connectivity Fund Program is inconsistent with our goals of administrative simplicity and fast funding decisions. It would create complexity for the applicants and for the USAC reviewers and would inevitably slow down the Emergency Connectivity Fund application processing. As such, we agree with commenters that urge us not to require cost allocation decisions in the Emergency Connectivity Fund Program and decline to include smartphones in the list of eligible connected devices or Wi-Fi hotspots for the Program.<sup>89</sup>

34. *Advanced Telecommunications and Information Services.* Although section 7402(d)(1) of the American Rescue Plan defines “advanced telecommunications and information services” by reference to section 254(h) of the Communications Act, the Communications Act does not offer a definition of that term. Instead, in the context of determining what services should receive E-Rate support, the Commission has recognized that section 254 grants “the Commission broad and flexible authority to set the list of [E-Rate supported] services” and “to design the specific mechanisms of support.”<sup>90</sup> As the Commission has recognized, “[t]his authority reflects Congress’s recognition that technology needs are constantly “evolving” in light of “advances in telecommunications and information technologies and services.”<sup>91</sup> As the Commission has done in the E-Rate context, we find that because the amount of available funding is finite, “we must make thoughtful decisions about what services are not just permissible to support, but are the most essential to support.”<sup>92</sup>

35. The *Public Notice* sought comment on treating a subset of the services currently eligible for category one E-Rate support as eligible “advanced telecommunications and information services” for the purposes of the Emergency Connectivity Fund Program.<sup>93</sup> Based on the statutory text enumerating the equipment eligible for the Emergency Connectivity Fund (i.e., Wi-Fi hotspots, modems, routers, devices that combine a modem and a router, and connected devices), as well as the statutory language allowing Emergency Connectivity Fund support for the “purchase” of advanced telecommunications and information services,<sup>94</sup> we understand the legislation to be focused on quickly reaching students learning at home primarily through commercially available Internet access services delivered via Wi-Fi hotspots with wireless broadband connectivity or via leased modems with fixed broadband connectivity, generally delivered from a local Internet service provider.<sup>95</sup> We therefore find, that, unless there is no Internet access service available to purchase in an area, to qualify for funding as advanced telecommunications or information services, schools and libraries will only be reimbursed for purchasing a commercially

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<sup>88</sup> See, e.g., Verizon Comments at 5-6 (requesting that services like voice capability, texting, private network or network management, and security services should be supported as ancillary to the smartphone’s use as a Wi-Fi hotspot).

<sup>89</sup> See, e.g., South Carolina Comments at 4.

<sup>90</sup> See 2014 First E-Rate Order, 29 FCC Rcd at 8895, para. 67.

<sup>91</sup> See *id.*

<sup>92</sup> See *id.* at 8896, para. 71.

<sup>93</sup> *Public Notice* at 7-8.

<sup>94</sup> H.R. 1319, tit. VII, § 7402(a). See, e.g., NTCA – The Rural Broadband Association Comments at 8 (NTCA Comments) (discussing the American Rescue Plan’s reference to purchases of advanced telecommunications and information services as limiting the provision of a broadband network by a school or library); T-Mobile Comments at 8 (arguing that section 7402 does not support the use of funds on network construction costs).

<sup>95</sup> We include commercial offerings available only to schools or libraries, or their students, school staff, and library patrons, like the Comcast Internet Essentials program, in this term.

available service providing a fixed or mobile broadband Internet access connection for off-campus use by students, school staff, or library patrons.<sup>96</sup>

36. *Dark Fiber and New Networks.* With the one exception for areas where no service is available for purchase, we exclude from eligibility funding for dark fiber<sup>97</sup> and the construction of new networks, including the construction of self-provisioned networks.<sup>98</sup> In so doing, we agree with commenters that argue that, as a general rule, using Emergency Connectivity Fund Program support to construct new networks or self-provisioned networks is inconsistent with Congress' intent to fund "the purchase" of broadband services to meet students, school staff and library patrons' immediate needs, rather than the construction of networks.<sup>99</sup> As such, we disagree with those commenters that argue that Congress intended that the Emergency Connectivity Fund be used to support everything eligible under the E-Rate Program's category one services because it referenced "advanced telecommunications and information services" under section 254(h) of the Communications Act.<sup>100</sup> The E-Rate Program does not provide funding for all types of advanced telecommunications and information services.<sup>101</sup> Instead, over time, the Commission has evaluated whether and under what conditions providing funding for various types of advanced telecommunications and information services would be both cost-effective and further the policy goals of the program.<sup>102</sup> For example, when the Commission chose to make school and library self-provisioned networks eligible in 2014, it did so subject to strict competitive bid requirements and cost-effectiveness safeguards to ensure that E-Rate funds are only spent on a self-provisioned network when it is demonstrated to be the most cost-effective option.<sup>103</sup>

<sup>96</sup> See, e.g., NTCA Comments at 3. For clarity, if a commercially available service requires equipment at the customer premises to connect to the router or modem, including a satellite dish or fixed wireless receiver, it is eligible.

<sup>97</sup> Dark-fiber leases and other dark-fiber service agreements are commercial arrangements in which a broadband customer purchases use of a portion of a provider-owned and maintained fiber network separately from the service of lighting (i.e., transmitting information over) that fiber. See *2014 Second E-Rate Order*, 29 FCC Rcd at 15550, para. 31.

<sup>98</sup> See, e.g., AT&T Comments at 4 (recommending the exclusion of support for dark fiber or other facilities or devices that can be used to construct or provision new networks, which are inherently longer-term projects); USTelecom – The Broadband Association Comments at 6-7 (USTelecom Comments) (arguing that creating new networks is contrary to the goal of getting service to those in need as soon as possible).

<sup>99</sup> See, e.g., AT&T Comments at 4; CTIA Comments at 16 (arguing that new network facilities would not meet the definition of eligible equipment and that existing network facilities can more efficiently and effectively address the remote learning needs during the pandemic); Central Texas Telephone Cooperative, Inc. et al. Comments at 3 (Texas Carriers Comments) (supporting the exclusion of new networks and leveraging existing fiber connections to the extent possible); USTelecom Comments at 6-7 (arguing that excluding support from network construction such as dark fiber and self-provisioning is required by the Act).

<sup>100</sup> See, e.g., ENA Services, LLC Comments at 6-11 (ENA Comments) (arguing that the language of the American Rescue Plan mandates eligibility for all services and equipment currently eligible for E-Rate funding, including new construction, self-provisioned networks, and dark fiber); Motorola Solutions, Inc. Comments at 1-7 (Motorola Comments) (suggesting that the reference to section 254 was to incorporate E-Rate decisions on defining equipment and services); Letter from Frank Korinek, Director of Government Affairs, Motorola, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 5, 2021) (same).

<sup>101</sup> See, e.g., *2014 First E-Rate Order*, 29 FCC Rcd at 8931 (eliminating support for email, webhosting, and voicemail); see also *COVID-19 Telehealth Program; Promoting Telehealth for Low-Income Consumers*, WC Docket Nos. 20-89, 18-213, Report and Order and Order on Reconsideration, FCC 21-39, Appx. B. (Mar. 30, 2021) (providing support for information services including remote monitoring platforms and services, among other things).

<sup>102</sup> See, e.g., *2014 First E-Rate Order*, 29 FCC Rcd at 8894-8934, paras. 63-154.

<sup>103</sup> *2014 Second E-Rate Order*, 29 FCC Rcd at 15555, para. 44.

37. Here, where we are primarily relying on local, state, and Tribal procurement requirements and striving to provide a simple application review process, where it is possible to purchase broadband Internet access services, we think that is the most prudent path for meeting the goals of the Emergency Connectivity Fund Program of quickly getting connectivity to students, school staff, and library patrons.<sup>104</sup> Moreover, in our experience with the E-Rate Program and as supported by the record,<sup>105</sup> planning and executing self-provisioned networks is complex and time-consuming. Although there are narrow instances where constructing a new network is speedy and reasonable, and therefore we provide one limited exception, we are not persuaded that on the whole, network construction is consistent with or appropriate given the goals of the Emergency Connectivity Fund Program to quickly fund schools and libraries during the pandemic or consistent with the statute and section 254(h)(2)(A)'s direction that the Commission create rules to enhance economically reasonable access to support advanced telecommunications and information services.<sup>106</sup> This is a short-term program, designed to give students, school staff, and library patrons access to devices and connectivity that is needed now for remote learning during the COVID-19 emergency period. Therefore, we believe Congress intended us to provide funding for a narrower set of commercially available Internet access services, and doing so provides a path to offering fast and simple application and reimbursement processes for desperately needed equipment and services.

38. We recognize that some schools and libraries have taken extraordinary steps to connect their students and patrons since the start of the pandemic and applaud their commitment to connect their

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<sup>104</sup> While stakeholders argue that such network expansion or construction could be a more cost-effective way (particularly over a longer period of time) to spend limited Emergency Connectivity Fund Program support to connect students, school staff, and library patrons, they largely do not provide clear and detailed evidence of such cost savings. *See, e.g.*, Public Interest Organizations Comments at 27-28 (PIOs Comments); PIOs Reply at 14-16 (arguing that self-provisioned networks are not inherently more expensive); SHLB Comments at 16-22; Letter from Keith Kreuger, Chief Executive Officer, Consortium for School Networking, and Julia Fallon, Executive Director, State Educational Technology Directors Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 6, 2021) (COSN/SETDA *Ex Parte*) (urging the Commission to defer to local decisionmakers to allow for network construction when it is the most cost-effective approach). Instead, commenters suggest detailed USAC project reviews, prospective cost-effectiveness rules similar to those used in the E-Rate Program, or the imposition of a per-student cap on total network project costs. *See, e.g.*, ADTRAN, Inc. Comments at 10 (ADTRAN Comments) (suggesting adopting "the same rigorous safeguards" the Commission uses for self-provisioned E-Rate networks); EducationSuperHighway Comments at 11 (stating the Commission should use the same approach it uses to evaluate special construction programs in the E-Rate Program, specifically requiring a showing that the project deliver 25 Mbps/3 Mbps at an equal or lesser total cost over a five-year period to a commercial ISP solution); PIOs Comments at 4 (stating the Commission would be justified in putting a per-student cap on the amount of funding reimbursed for self-provisioned connections); Letter from Michael Calabrese, Director, Wireless Future Project, New America's Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2, 5 (filed May 6, 2021) (suggesting a reimbursement limit of \$500 per student served per school year); Letter from John Windhausen, Executive Director, Schools, Health & Libraries Broadband Coalition, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2-3, 5 (filed May 6, 2021) (SHLB May 6 *Ex Parte*) (recommending schools and libraries be permitted to construct networks where it is the most cost-effective option and subject to a maximum funding amount of \$250 plus \$25 per month). *But see* Cradlepoint Reply at 7 (providing a cost comparison for a private network purchased mostly with CARES Act funding with a total five-year cost of \$335,000 compared to an estimated \$480,000 using a traditional provider solution).

<sup>105</sup> *See, e.g.*, NTCA Comments at 8-9 (noting the time to deploy networks for available connections as contrary to the Congressional goal of rapidly connecting students during an emergency); T-Mobile Comments at 8 (stating that authorizing "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").

<sup>106</sup> 47 U.S.C. § 254(h)(2)(A).

students, school staff, and library patrons.<sup>107</sup> But, by excluding support for potentially costly construction or self-provisioning projects, we are able to satisfy the Congressional goals and swiftly act to provide much-needed support to more schools and libraries throughout the country. We thus find that providing support for such network construction in areas with commercially available options would be inconsistent with the emergency purposes of the Emergency Connectivity Fund and better addressed through other Commission Universal Service Fund Programs or broadband efforts that have established competitive bidding and cost-effectiveness safeguards.<sup>108</sup> Adding all such program safeguards for areas with commercially available connectivity would be administratively burdensome and contrary to the goal to quickly provide access to equipment and connectivity to students, school staff, and library patrons during the pandemic.<sup>109</sup>

39. Some stakeholders agree that excluding dark fiber and other network construction makes sense due to the nature of the emergency,<sup>110</sup> but many seek flexibility and inclusion of additional equipment that may be used, to extend a school or library's existing E-Rate-supported broadband service to students' homes (largely, wirelessly) or provision a separate network.<sup>111</sup> We disagree that the language in section 7402 of the American Rescue Plan should be read to allow funding for additional, unenumerated equipment for network expansion<sup>112</sup> and to use Emergency Connectivity Fund support for antennas,<sup>113</sup> cell towers,<sup>114</sup> Citizens Band Radio Service (CBRS), television white space (TVWS) base stations,<sup>115</sup> or drone-powered Internet,<sup>116</sup> and other such wireless network equipment, except in the case

<sup>107</sup> See, e.g., CoSN Comments at 4-7 (outlining examples of innovation from school districts to connect those that were unconnected); PIOs Comments at 16-23 (providing examples of school districts and library systems connecting students and library patrons with private LTE networks connecting over CBRS spectrum, TV White Space spectrum, and other methods).

<sup>108</sup> See generally USTelecom Comments at 7 (raising concerns that broadband deployment could prove to be duplicative of networks supported by the Connect America Fund and the Rural Digital Opportunity Fund).

<sup>109</sup> See, e.g., ACA Connects – America's Communications Association Comments at 8 (ACA Connects Comments) (noting the administrative burdens of dark fiber procurements, as well as the deployment time).

<sup>110</sup> See, e.g., SETDA Comments at 3-4 (agreeing dark fiber should be excluded); SECA Comments at 3 (reluctantly concluding that the Emergency Connectivity Fund cannot pay for substantial infrastructure investment).

<sup>111</sup> See, e.g., Association of California School Administrators, California School Boards Association Reply at 3 (ACSA-CSBA Reply); ADTRAN Comments at 9-10; ALA Comments at 5; Alaska DEED Comments at 4; Cambium Networks, Ltd. Reply at 3-4; CGCS Comments at 4; CoSN Comments at 3-4; EducationSuperHighway Comments at 11; ENA Comments at 6-11; ESU #9's Comments at 2; Geoverse, LLC Reply at 5; Michael Graham Comments at 1 (filed on behalf of Hempfield School District); Infinity Comments at 4-5; Joint Venture Silicon Valley et al. Comments at 1-3; Learning Technology Center of Illinois Reply at 2; Michigan Economic Development Corporation Reply at 4; Motorola Comments at 2-7; Network Maine and ConnectMaine Authority Reply at 2-3; PIOs Comments at 24-25; City of San Jose Comments at 3-4; SETDA Comments at 3-4; SECA Comments at 3; SHLB Comments at 3-5; South Carolina Comments at 6-7; Starry, Inc. Comments at 4; VectorUSA Comments at 2.

<sup>112</sup> See, e.g., PIOs Reply at 17-21 (arguing that the statutory language supports eligibility for diverse uses and pointing to language in the House Budget Committee's report talking about "different technological solutions"); SHLB Comments at 10-11 (suggesting that limiting funding to the eligible equipment listed in the Act conflicts with section 254, references to hotspot deployment, which might involve construction, as well as the purpose of the legislation).

<sup>113</sup> See, e.g., Alaska DEED Comments at 4.

<sup>114</sup> See, e.g., PIOs Comments at 20.

<sup>115</sup> See, e.g., PIOs Comments at 19. We clarify that a CBRS base station or CBRS device (CBSD) is not a router eligible for support through the Emergency Connectivity Fund. See Joint Venture Silicon Valley et al. Comments at 2. However, under the limited exception provided below where there is no commercially available option,

(continued....)

outlined below. To the extent schools and libraries expanded their networks or built new networks to serve their students or library patrons over the last year,<sup>117</sup> such equipment is ineligible for reimbursement through the Emergency Connectivity Fund Program, except for the portions of the network that fit into the enumerated list of eligible equipment (i.e., Wi-Fi hotspots, modems, routers, or devices that combine a modem and router). Relatedly, we are focusing today on implementation of section 7402 of the American Rescue Plan, and therefore, this Order does not address requests for action on a petition to allow schools and libraries to use their E-Rate-supported networks without cost-allocating out the off-campus use during the pandemic.<sup>118</sup>

40. *Limited exception for network construction and/or datacasting where there is no commercially available Internet access service option.* Despite this understanding of Congress' intent to speed funding to schools and libraries through commercially available broadband Internet access service offerings, we provide a limited exception to this finding. The record reflects the fact that in some instances there is simply no commercially available Internet access service for purchase available to reach students, school staff, and library patrons in their homes.<sup>119</sup> In only those limited instances,<sup>120</sup> network construction (including construction of wireless networks) is the only way to quickly bring Internet connectivity to these students, school staff, and library patrons, and we believe that the "purchase" of equipment necessary to make advanced telecommunications and information services functional is consistent with Congress' intent to provide emergency connectivity to students, school staff, and library patrons that do not have any other Internet access options. The record also demonstrates that where commercially available Internet access services are not available datacasting can help meet students' remote learning needs by providing them with access to educational content outside of school.<sup>121</sup> Therefore, where there are no such commercially available broadband Internet access services available, we will allow schools and libraries to seek Emergency Connectivity Fund Program support to construct or self-provision networks to connect students, school staff, and library patrons during the COVID-19 emergency period who would otherwise not be connected to the Internet, and we will not require schools

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applicants may seek support from the Emergency Connectivity Fund Program for the equipment needed to provide private LTE service using CBRS spectrum, TVWS spectrum, and other methods to provide Internet access.

<sup>116</sup> See, e.g., CoSN Comments at 7.

<sup>117</sup> See, e.g., CoSN Comments at 4-7 (providing examples of different school districts using CBRS and LTE Broadband to stand up private LTE networks, wireless mesh networks, point-to-point microwave systems, and even drone-powered internet).

<sup>118</sup> See, e.g., SECA Comments at 15-16; see also Petition for Expedited Declaratory Ruling and Waivers filed by the Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 13-184 (filed Jan. 26, 2021), <https://www.fcc.gov/ecfs/filing/101260036427898> (SHLB Petition).

<sup>119</sup> See, e.g., ACA Connects Comments at 6; Alaska Communications Comments at 2 (excluding construction of new networks will only prevent connectivity from reaching otherwise inaccessible students and library patrons in rural Alaska); Altice USA, Inc. Comments at 6 (Altice Comments); NTCA Comments at 9 (noting that "where a school/school district faces a 'total unavailability' scenario – one in which no provider has or will step up – the Commission's E-rate rules should not stand in the way of doing what is needed to connect a truly unserved school or student"); PIOs Comments at 4, 12 (stating that cable services and wireless broadband services are not available to everyone).

<sup>120</sup> See, e.g., Verizon Reply at 5 (stating that schools receiving support for self-provisioning would consume a disproportionate share of available funds, leaving too little for other schools). This narrow exception reduces the risk of costly self-provisioning using a disproportionate amount of the available funds, as suggested by Verizon, by focusing on areas with no available services.

<sup>121</sup> See, e.g., ARK Multicasting, Inc. Comments at 2-5 (ARK Comments) (describing educational uses of datacasting in South Carolina, Indiana and Pennsylvania); America's Public Television Stations Reply at 3-4; Letter from John McCoskey, COO, SpectraRep, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1 (filed Apr. 28, 2021).

and libraries to engage in competitive bidding. Under those same circumstances we will also allow schools and libraries to seek support for the customer premises equipment needed to receive access to educational content through datacasting.<sup>122</sup> Some schools are already using datacasting and others may have already constructed wireless networks where there were no commercially available options and cannot go back and conduct competitive bidding. We also considered requiring competitive bidding for applicants in areas with no commercially available options,<sup>123</sup> but the timing does not work in light of the COVID-19 emergency and upcoming school year.

41. To reduce the risk of using emergency funding on time-consuming infrastructure construction projects better suited for funding from other programs, applicants seeking support for network construction, including self-provisioned networks, and those seeking support for customer premises equipment used to receive datacasting services, must therefore demonstrate that there were no commercially available Internet access service options sufficient to support remote learning from one or a combination of providers.<sup>124</sup> For networks already constructed or equipment already purchased during the pandemic, applicants must show that services were provided to students, school staff, or library patrons during the funding period supported by the second filing window. For future construction, they must show that construction is completed and services provided within one year of a funding commitment decision.<sup>125</sup> Applicants seeking support for network construction or customer premises equipment used to receive datacasting services must define the geographic area that was or will be served and assess the estimated number of students and school staff, or library patrons to be served.<sup>126</sup> Schools and libraries

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<sup>122</sup> See 47 CFR §§ 73.624(c), 73.682(f); *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9930 (2017). See, e.g., ARK Comments at 2 (describing the network interface device needed to receive distance learning files over a multicasting broadcast feed); Letter from John Simpson, Capitol Resources, LLC (Consultant to ARK Multicasting, Inc) to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1 (filed May 6, 2021) (seeking Emergency Connectivity Fund support for “datacasting end user devices and antennas”).

<sup>123</sup> See, e.g., Verizon Reply at 8 (suggesting competitive bidding in the event self-provisioning is permitted).

<sup>124</sup> See, e.g., NTCA Comments at 5 (noting that certain competitive bidding requests can box out service providers that are not able to serve every location for which bids have been sought).

<sup>125</sup> See, e.g., South Carolina Comments at 6-7 (recommending only funding construction projects that can be installed in the funding year for which funds are requested); AT&T Comments at 4 (arguing that construction of inherently longer-term projects are not appropriate for the emergency goals of the program); Texas Carriers Comments at 3 (cautioning against overbuilding existing networks); T-Mobile Comments at 8 (stating that using limited Emergency Connectivity Fund support for costly, time-consuming infrastructure projects completed years after the COVID-19 pandemic has abated would not serve the statutory purpose); NTCA Comments at 8 (arguing against allowing for self-provisioned networks, when the quickest path would be the use of either already-built networks or hotspots where such networks are lacking). We are not convinced additional construction time is consistent with the emergency nature of these funds. See Letter from Fred Brakeman, Chief Executive Officer, Infinity Communications & Consulting Inc., WC Docket Nos. 21-93, 13-184, at 2 (filed May 5, 2021) (seeking one to two years for installation of new wireless networks in underserved areas).

<sup>126</sup> See, e.g., Letter from Patrick R. Halley, Senior Vice President, Policy & Advocacy and General Counsel, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 5, 2021) (USTelecom *Ex Parte*) (seeking clarity on how an applicant demonstrates eligibility for the limited exception); COSN/SETDA *Ex Parte* at 2 (seeking clarification that standard does not apply to the entire geographic footprint); Letter from Gina Spade, Counsel for ENA Services, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1-2 (filed May 5, 2021) (urging the Commission to allow new construction when 10 percent of students or library patrons are unserved); Letter from Frank Korinek, Director of Government Affairs, Motorola, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 5, 2021) (questioning whether every student, school staff, or library patron must lack access). We agree that applicants do not have to demonstrate that there are no students or library patrons with access to commercially available services, and we decline to set an arbitrary percentage of students or library patrons that have no commercially available services available to them in order to make this demonstration.

must be able to provide clear evidence<sup>127</sup> demonstrating how they determined that an existing fixed or mobile broadband network sufficient to support remote learning was or is not available and that for prospective network construction, that they sought service from existing providers serving the area prior to constructing a new network, and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library patrons.<sup>128</sup> Additionally, when the Emergency Connectivity Fund Program support is sought for future construction, or for customer premises equipment used to receive datacasting services, applicants will be required to certify that they sought service from existing service providers in the relevant area and that such providers were unable or unwilling to provide broadband Internet access services sufficient to meet the remote learning needs of their students, school staff or library patrons.<sup>129</sup>

42. *Minimum Service Standards.* While the benefits to students, school staff, and library patrons of receiving high speed broadband services that include no data caps and low latency are well documented in the record,<sup>130</sup> because of the current emergency and the lack of ubiquitous high speed broadband nationwide, we decline to apply minimum service standards to covered services for the Emergency Connectivity Fund Program. As commenters recognize, to do otherwise would penalize schools, libraries, students, school staff, and library patrons in places where slower speed, data capped,

<sup>127</sup> See, e.g., Letter from Jennifer K. McKee, NCTA – The Internet & Television Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 6, 2021) (providing examples of data applicants could use to demonstrate that there are no commercially available services available); Letter from Michael Romano, Senior Vice President – Industry Affairs and Business Development, NTCA-The Rural Broadband Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 6, 2021) (suggesting further examples).

<sup>128</sup> See, e.g., USTelecom *Ex Parte* at 2 (suggesting applicants have clear evidence of their determination that they meet the requirements of the exception); CoSN/SETDA *Ex Parte* at 2 (urging clarification that the exception accounts for instances where the signal is too weak to support remote learning); Letter from Michael Calabrese, Director, Wireless Future Project, New America’s Open Technology Institute, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2, 4 (filed May 6, 2021) (seeking clarification that commercially available services be sufficient to enable remote learning); Letter from Thomas Cohen, Counsel to ACA Connects – America’s Communications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1-2, n.3 (filed May 5, 2021) (seeking clarification of how applicants demonstrate compliance).

<sup>129</sup> We make the affirmative showing of requests applicable only to prospective requests for service because applicants that already constructed such networks may be able to demonstrate there was no commercially available service available, but not specifically document requests to service providers. See, e.g., SHLB May 6 *Ex Parte* at 1, 3-4 (noting that “very few service providers will ‘refuse’ to provide service, but those services then do not provide sufficient coverage” and providing an example of a rural school district in Oregon that purchased hotspots, but could not use any of them because of poor reception).

<sup>130</sup> See, e.g., ALA Comments at 6 (recommending 50 Mbps download and 10 Mbps upload as a target, rather than a limit, to address the needs of patrons and students with multiple household members and interactive video sessions); ADTRAN Comments at 4 (suggesting a mandated 25 Mbps/3 Mbps, 1024 GB data usage monthly, and a limit on high latency service (over 100 ms) to support interactive real-time applications); CETF Comments at 12 (supporting minimum service standards for bandwidth and data usage and concluding that 25 Mbps/3 Mbps is inadequate for remote learning); Common Sense Comments at 7-8 (stating that 25 Mbps/3 Mbps may constrain the ability of students to participate in synchronous learning, but cautioning against prescriptive requirements); CoSN Comments at 9 (recommending that 25 Mbps/12 Mbps be established as a per-student guideline based on their study of remote learning needs, but not as a requirement that could burden the most difficult to connect areas); Local Governments Comments at 12-19 (providing an explanation of the various bandwidth needs for a family and highlighting the need for at least 7 Mbps of upload speed for video conferencing applications); TDI et al. Comments at 5 (recommending at least 50 Mbps download and upload to accommodate the necessary use of telecommunications relay services for individuals who are deaf, hard of hearing, deafblind, and deaf with mobility disabilities; and highlighting that additional bandwidth is necessary to access e-learning with the disability accommodations of captioners, interpreters, and other services).

and/or high latency services are currently the only affordable options.<sup>131</sup> We also recognize that schools and libraries made purchases over the last year based on availability during the emergency, but without specific knowledge of whether such purchases might be eligible or ineligible for future support, such as from the Emergency Connectivity Fund.<sup>132</sup> Moreover, as commenters argue, schools and libraries are in the best position to know what is available and sufficient for their remote learning needs.<sup>133</sup> We expect that schools and libraries will make the best decisions to meet the remote learning needs of their students, school staff, or library patrons. We therefore find that to qualify for funding as advanced telecommunications or information services purchased by schools and libraries for off-campus use by students, school staff, or library patrons, a service must include a fixed or mobile broadband connection that permits students, school staff, or library patrons to use those connections for remote learning or library services. The approach we take today maximizes available choices during this emergency and thus speeds Emergency Connectivity Fund Program support to eligible schools and libraries making good faith efforts to facilitate remote learning throughout the pandemic.

43. *Installation, Taxes, and Fees.* We agree with commenters that the Emergency Connectivity Fund Program should also cover reasonable costs of the enumerated equipment, connected devices, and services, including installation, activation, and initial configuration costs, taxes, and fees.<sup>134</sup> Such action is consistent with the E-Rate Program<sup>135</sup> and most logically aligns with Congress' desire to cover the reimbursement of eligible equipment and services needed for remote learning without requiring a complicated cost allocation of items on participant invoices.<sup>136</sup>

44. *Other Requests for Eligible Services and Equipment.* Commenters suggest many other types of equipment, services, or software be eligible for Emergency Connectivity Fund Program support including cybersecurity tools, learning management systems, private network services, online learning services that support online learning platforms, video conferencing equipment, and standalone

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<sup>131</sup> See, e.g., Alaska DEED Comments at 3 (stating that minimum service standards will act as a barrier to eligibility altogether); Kenneth H. Stone Comments at 2 (filed on behalf of Buffalo & Erie County Public Library) (Buffalo & Erie County Public Library Comments) (noting that 25 Mbps/3 Mbps is not achievable for hotspots in some areas); GCI Communication Corp. Comments at 5-8 (noting that a standard cuts off those in need, like the many students in Alaska that do not have 25 Mbps/3 Mbps available to them).

<sup>132</sup> See, e.g., CGCS Comments at 5-6 (seeking flexibility for services because districts made good faith and extraordinary efforts to support remote learning).

<sup>133</sup> See, e.g., Competitive Carriers Association Comments at 4 (CCA Comments) (recommending that schools and libraries determine their own needs); Verizon Comments at 6 (stating that schools are capable of evaluating available remote learning services).

<sup>134</sup> See, e.g., Alaska DEED Comments at 4; ALA Comments at 5; AT&T Comments at 5; Bethlehem Area School District Comments at 3; ClientFirst Comments at 2; Hughes Network Systems, LLC Comments at 5 (Hughes Comments); Infinity Comments at 5; Los Angeles Unified School District Comments, Attach. at 1; Milwaukee Public Library Comments at 3; City of San Jose Comments at 3; Letter from Alan Buzacott, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 3 (filed May 6, 2021) (Verizon *Ex Parte*) (seeking support for activation and initial configuration). But see T-Mobile Reply at 14 (disagreeing that installation should be eligible).

<sup>135</sup> 47 CFR § 54.502(a) ("The services ... will be supported in addition to all reasonable charges that are incurred by taking of such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered...").

<sup>136</sup> See, e.g., AT&T Comments at 5 (including installation, taxes, and fees saves time and effort of determining ineligible costs); Hughes Comments at 5 (stating that excluding these fees would burden the most cash-strapped schools and libraries); NCTA Comments at 5 (arguing that requiring payment of installation costs, taxes, and fees would undermine the Congressional objective).



microphones.<sup>137</sup> We do not dispute that schools and libraries need many of the identified products and services, but we believe they are outside the scope of what Congress directed us to support through the Emergency Connectivity Fund. We also deny Verizon's request to permit the use of Emergency Connectivity Fund Program support to fund Children's Internet Protection Act (CIPA) implementation costs.<sup>138</sup> The Commission previously determined that E-Rate recipients are statutorily prohibited from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for CIPA compliance.<sup>139</sup> We find that the use of Emergency Connectivity Fund Program support for implementing CIPA compliance is similarly statutorily barred.

45. While we find it imperative to focus the Emergency Connectivity Fund Program on the equipment and services specified by Congress, we also seek to avoid the challenging cost allocation application requirements needed in the E-Rate Program and therefore clarify that any components purchased with the eligible equipment and necessary for the equipment to operate, such as cords and chargers, do not require cost allocation.<sup>140</sup> These minimal costs do not warrant the expense or time of cost allocation in an emergency program designed to help students, school staff, and library patrons now. We find this will simplify applications and invoicing, which ultimately will speed funding to schools and

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<sup>137</sup> See, e.g., ADT Comments at 2-3 (seeking support for cybersecurity tools, including VPN licenses, firewall software, and 24/7 network monitoring); Letter from Julie A. Veach, Counsel for GCI Communication Corp. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 5, 2021) (seeking support for services connecting students to a school network but not necessarily the Internet); Letter from Randy Clarke, Vice President, Federal Regulatory Affairs, Lumen, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 5, 2021) (arguing that the Emergency Connectivity Fund should provide support for services that schools purchase to establish robust, resilient, and secure internet-based educational platforms, including "back office"); AT&T Comments at 3-4 (recommending support for ancillary services to secure and manage services in compliance with CIPA); Bethlehem Area School District Comments at 3 (seeking support for chargers, which break with frequency and are expensive); CGCS Comments at 4 (recommending support for learning management systems, as well as voice services for teachers); City of Seattle et al. Reply at 10-12 (seeking support for device upgrades, equipment repair, and ongoing technical support, as well as personnel costs and community outreach); Cox Reply at 4-5 (seeking support for advanced network security solutions); E-mpa Comments at 7-9 (seeking support for 1) device management tools to alleviate personnel burden; 2) video conferencing equipment and related software subscriptions like Zoom Meeting, microphones, cameras, and camera bots; and 3) maintenance); FFL Comments at 5 (seeking support for cybersecurity for connectivity and hardware, software, headsets, Unified Communications (UCaaS systems) for connected devices); NEC Corporation Comments at 2 (recommending support for UCaaS solutions to help educators); City of San Jose Comments at 2 (also seeking support for replacement power cables and charging cords, as well as the wall outlet adapter, in addition to device management systems and filtering services); SHLB Comments at 9 (suggesting cybersecurity services be eligible for support due to the increased risk of cyber-attacks or harmful interference from remote learning); T-Mobile Reply at 22-23 (suggesting that software, like content filtering, be eligible as needed to support safe and secure transmission of advanced telecommunications and information services); Unisys Reply at 6 (seeking support for cybersecurity software solutions). We also note that commercially available services often include cybersecurity protections. See, e.g., Jeff Baumgartner, *Comcast Doubles Download Speeds for 'Internet Essentials'*, Broadband World News (Feb. 2, 2021), [http://www.broadbandworldnews.com/author.asp?section\\_id=733&doc\\_id=767087](http://www.broadbandworldnews.com/author.asp?section_id=733&doc_id=767087) ("Comcast has also added its cybersecurity product to Internet Essentials for no added cost.").

<sup>138</sup> See Verizon Comments at 6 (suggesting that if CIPA applies, then Emergency Connectivity Fund support should be used for CIPA compliance related costs).

<sup>139</sup> *Federal-State Joint Board on Universal Service; Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8204, paras. 54-55 (2001) (*2001 CIPA Order*) ("The statutory language is clear—no sources of funds other than those available under the Elementary and Secondary Act of 1965 or the Library Services and Technology Act are authorized for the purchase of acquisition of technology protection measures under CIPA.").

<sup>140</sup> See, e.g., South Carolina Comments at 4 (requesting clarity that equipment, cables, and accessories boxed with an eligible product be eligible for support without cost allocation or a separate funding request).

libraries during this emergency. Consistent with the E-Rate Program, a manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component, but unbundled warranties are ineligible.<sup>141</sup> To further assist applicants with determining eligible equipment and services for the Emergency Connectivity Fund Program, an eligible services list is included as an Appendix to this Report and Order.

46. Because the issue was raised in the record, we also clarify that, consistent with the E-Rate Program,<sup>142</sup> schools and libraries may contract with any service provider or vendor willing to comply with the Emergency Connectivity Fund Program rules, not just eligible telecommunications carriers.<sup>143</sup> We also decline the suggestion of at least one commenter that we exclude providers of broadband services that are not participating in the Emergency Broadband Benefit Program from providing eligible services in the Emergency Connectivity Fund Program.<sup>144</sup> While hundreds of broadband providers are participating in the Emergency Broadband Benefit Program, some are not, and we do not want to penalize schools or libraries for reasons beyond their control.

47. *National Security Supply Chain Restrictions.* Finally, we remind Emergency Connectivity Fund Program participants that, in accord with section 54.10 of the Commission's rules, participants are prohibited from using federal subsidies to purchase, rent, lease, or otherwise obtain any covered communications equipment or service from a company identified as posing a national security threat to the integrity of communications networks or the communications supply chain.<sup>145</sup> We find that this prohibition covers Emergency Connectivity Fund Program support, consistent with the determination that the prohibition applies to the Universal Service Fund Programs as providing funds for capital expenditures necessary for the provision of advanced communications services.<sup>146</sup> A list of covered equipment and services was posted on the Commission's website on March 12, 2021 and will be updated to reflect any future determinations.<sup>147</sup>

#### **D. Service Locations and Per-Location/Per-User Limitations**

48. The American Rescue Plan requires us to adopt regulations providing for the provision of support from the Emergency Connectivity Fund to an eligible school or library for the purchase of eligible equipment and/or services for use by students, school staff, and library patrons at locations that include

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<sup>141</sup> *FY2021 Eligible Services List*, 35 FCC Rcd at 13801, 13803.

<sup>142</sup> 47 U.S.C. § 254(h)(2)(A); *see also, e.g., Federal State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9084-86, paras. 589-92 (1997) (*Universal Service First Report and Order*) ("Section 254(h)(2), in conjunction with Section 4(i), authorizes the Commission to establish discounts and funding mechanisms for advanced services provided by non-telecommunications carriers, in addition to the funding mechanisms for telecommunications carriers created pursuant to sections 254(c)(3) and 254(h)(1)(B). . . . [S]ection 254(h)(2)(A) does not limit support to telecommunications carriers.").

<sup>143</sup> *See* Local Governments Comments at 9 (suggesting that Emergency Broadband Benefit Program providers be eligible to offer services eligible for the Emergency Connectivity Fund).

<sup>144</sup> *See* Local Governments Comments at 10 (stating the Commission should consider barring service providers that do not participate in the Emergency Broadband Benefit Program).

<sup>145</sup> *See* 47 CFR § 54.10; *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, 35 FCC Rcd 14284, 14287, para. 4 (2020).

<sup>146</sup> *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 35 FCC Rcd 7821, 7826-27, para. 20 (2020).

<sup>147</sup> *See* Federal Communications Commission, *List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, <https://www.fcc.gov/supplychain/coveredlist>.

locations other than the school or library.<sup>148</sup> While the Act does not impose any explicit restrictions on the number of connections or connected devices supported by the Fund, it requires that reimbursements for eligible equipment “not exceed an amount that the Commission determines . . . is reasonable.”<sup>149</sup> Moreover, Emergency Connectivity Fund Program support is provided under section 254(h)(2) of the Communications Act, which requires us to consider what is technically feasible and economically reasonable when providing support for access to advanced telecommunications and information services for eligible schools and libraries.<sup>150</sup> Mindful of the importance of maximizing the use of limited funds, the *Public Notice* sought comment on whether we should limit the locations where eligible equipment and services may be used or impose per-location or per-user limitations on eligible equipment and services. The *Public Notice* also sought comment on our authority to impose such limitations, if any.<sup>151</sup>

49. *Eligible Locations.* Recognizing that students, school staff, and library patrons are engaged in remote learning activities from a wide variety of off-campus locations that include, but are not limited to, their homes, we decline to define or limit the specific off-campus locations where eligible equipment and services supported by the Emergency Connectivity Fund Program may be used during the COVID-19 emergency period. We agree with commenters that argue that limiting the off-campus locations where eligible equipment and services can be used would be inconsistent with the broad language in the Act.<sup>152</sup> We also agree with those commenters that argue that schools and libraries are well positioned to determine where best to connect their students, school staff, and library patrons.<sup>153</sup>

50. We expect that in most instances, the primary off-campus locations where students, school staff, and library patrons have been using eligible equipment and services is and—for the duration of the emergency period—will be their homes.<sup>154</sup> At the same time, the record is clear that there are some

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<sup>148</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2).

<sup>149</sup> H.R. 1319, tit. VII, § 7402(b).

<sup>150</sup> 47 U.S.C. § 254(h)(2).

<sup>151</sup> *Public Notice* at 8-9.

<sup>152</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2); *see, e.g.*, SHLB Comments at 5 (asserting that the Act allows funding to be used in an “open-ended manner to locations ‘that include locations other than’ the school or library”); United States Cellular Corporation Comments at 2 (U.S. Cellular Comments) (claiming that connecting students and library patrons at home, or in any other location, is a central objective of the law); FFL Comments at 6 (stating that using location-based eligibility standards “will significantly impede both the intent and efficacy of the ECF”).

<sup>153</sup> *See* Next Century Cities Comments at 8 (arguing that allowing schools and libraries to choose where eligible equipment and services may be used “will allow for innovative and creative solutions across communities nationwide”); SHLB Comments at 11 (explaining that dictating or limiting the locations where eligible equipment and services may be used would be counter-productive and overly intrusive given the vast disparities that exist from community to community); Common Sense Comments at 8-9 (urging the Commission to provide schools and libraries with as much flexibility as possible to decide the service locations that best meet their needs based on local considerations); NNTRC Comments at 6 (supporting the adoption of rules that provide the greatest flexibility possible as to locations); ALA Comments at 6 (stating that local libraries are in the best position to judge what locations should be served by remote access to best meet the needs of library patrons that lack connectivity and/or devices); San Diego Public Library Reply at 1-2 (urging the Commission to provide maximum flexibility to schools and libraries to determine eligible service locations).

<sup>154</sup> *See* EducationSuperHighway Comments at 2 (recognizing that student homes have become the classroom during the pandemic and asserting that “access to public education hinges on whether a student’s home has broadband access”); Wireless Internet Service Providers Association Comments at 6-7 (WISPA Comments) (observing that remote learning during the pandemic is “conducted as an extension of the physical classroom, bringing learning that would otherwise occur in the school building directly into the home” and supporting the use of funds for the limited purpose of educating students at their residences); Andy Boell Comments at 1 (stating that the COVID-19 pandemic has redefined where learning occurs from occurring primarily at the school or library to the residences of students and library patrons).

students, school staff, and library patrons who cannot receive broadband service at home, or for other reasons need access at locations other than their homes. For example, emphasizing the rural nature of much of the Navajo Nation and the important role government “anchor institutions” play in Tribal life, the Navajo Nation Telecommunications Regulatory Commission stresses the need to permit the placement of eligible equipment, like Wi-Fi hotspots, wherever students are engaged in educational activities.<sup>155</sup> Other commenters explain that restricting where students, school staff, and library patrons may use eligible equipment and services could leave the most disadvantaged populations, like the unhoused, unconnected, and urge the Commission not to impose restrictions on service locations that would exclude these populations.<sup>156</sup> We agree.

51. We therefore will permit eligible schools and libraries to seek and receive support for the purchase of eligible equipment and services for use by students, school staff, and library patrons at locations that include, but are not limited to, the homes of students, school staff, and library patrons; community centers; churches; and any other off-campus locations where they are engaged in remote learning activities.<sup>157</sup> In so doing, we seek to provide flexibility to eligible schools and libraries to determine the service locations that best fit their needs without hampering their ability to undertake creative solutions for connecting students, school staff, and library patrons or disadvantaging certain vulnerable populations during this unprecedented time.

52. Notwithstanding this broad interpretation of the Act, and pursuant to our authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, we prohibit schools and libraries from seeking and receiving reimbursement for eligible equipment and services purchased for use solely at the school or library.<sup>158</sup> Some commenters suggest that the Act may permit funding for eligible equipment and services intended solely for on-campus use, pointing to the language in section 7402(a) that eligible equipment and services be used at “locations that *include* locations other than the school” and “locations that *include* locations other than the library.”<sup>159</sup> We disagree with this reading of the statutory

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<sup>155</sup> NNTRC Comments at 6-7; *see also* VDOE Comments at 4 (suggesting that the use of Wi-Fi hotspots be permitted at locations like apartment buildings, multi-unit housing, water towers, public parks, grocery store parking lots, and other community buildings).

<sup>156</sup> *See* Local Governments Comments at 27 (urging the Commission be flexible to ensure that Emergency Connectivity Fund funding is available to residents in temporary housing and who are not housed); CETF Comments at 16 (raising concerns about restricting service locations because of the potential to exclude unhoused persons who lack a location to which to deliver Emergency Connectivity Fund services); CoSN Comments at 7 (explaining that promoting equitable student broadband access will depend on an applicant’s ability to reach all students, including those that do not have permanent homes, move frequently, or rely on emergency locations for shelter and care); Cox Reply at 2 (acknowledging that while the majority of students will be engaged in remote learning from their homes, “some students – particularly those in our most disadvantaged communities – lack permanent homes or live in environments that are not conducive to remote learning” and stressing the need to find alternative learning locations (like Boys and Girls Clubs) eligible service locations).

<sup>157</sup> The examples we provide are meant to be an illustrative list of the kinds of locations from which we expect the vast majority of remote learning activities to occur during the emergency period, but they are by no means meant to be an exhaustive list.

<sup>158</sup> H.R. 1319, tit. VII, § 7402(a) (requiring the Commission to promulgate rules for the provision of Emergency Connectivity Fund support under sections 254(h)(1)(B) and (h)(2) of the Communications Act), 7402(b) (directing the Commission to reimburse 100% of the costs associated with eligible equipment not to exceed an amount the Commission determines is reasonable); 47 U.S.C. § 254(h)(2)(A) (requiring the Commission to establish rules that are technically feasible and economically reasonable to enhance access to advanced telecommunications and information services).

<sup>159</sup> *See, e.g.*, ADTRAN Comments at 6-7 (arguing that the Act provides the Commission authority to “draw on this funding source for enhancing schools’ and libraries’ broadband connectivity and internal connections” and emphasizing the language in section 7402(a), which states that use of eligible equipment and services may be at locations that *include* locations other than the school or library); *see also* H.R. 1319, tit. VII, § 7402(a)(1)-(2)

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text. The primary purpose of the Emergency Connectivity Fund is to support off-campus connectivity for students, school staff, and library patrons that are unable to benefit from existing connectivity at their schools or libraries because of the pandemic, an interpretation supported by the legislative history.<sup>160</sup> We construe the statute in light of that primary purpose, while not precluding the likely reality of the need for some use of the eligible equipment, and perhaps incidental use of mobile services at school and library “locations” as well, as long as the eligible equipment and services were purchased to provide off-campus access. We also do not believe that providing Emergency Connectivity Fund support for equipment or services to be used solely on campus is reasonable or sound policy in light of the significant need for off-campus connectivity brought on by the pandemic and considering that the E-Rate Program already provides funding to meet students’, school staff, and library patrons’ on-campus connectivity needs. To permit limited funding from the Emergency Connectivity Fund Program to be used to support eligible equipment and services solely for on-campus uses would effectively allow schools and libraries to replace connections already funded through the E-Rate Program with funding from the Emergency Connectivity Fund and to use the Fund to purchase every device used on campus. We do not believe Congress intended such a result.

53. In particular, we recognize the benefit of being able to use connected devices – laptops and tablets – funded through this Program at schools and libraries as schools and libraries begin to reopen, and we are sensitive to the need to provide some flexibility during this uncertain time. If those connected devices were purchased for the purpose of providing students, school staff, and library patrons with devices for off-campus use consistent with the rules we adopt today, we will not prohibit such on-campus use. Fixed wireless and wireline connections purchased with funding from the Emergency Connectivity Fund may not, however, be similarly used on-campus given that these connections are already eligible for funding under the E-Rate Program.<sup>161</sup> While we prohibit the use of funding to purchase eligible equipment and services used solely on campus, we remain mindful of the importance of robust school and library networks, particularly in rural areas, for the provision of educational and library services across the nation. We are committed to continuing to provide support for these networks through the E-Rate Program, and encourage schools and libraries participating in this new Program to continue to seek support for their on-campus connectivity needs through the E-Rate Program.<sup>162</sup>

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(emphasis added). *But see* CTIA Reply at 8-9 (urging the Commission to decline proposals to redirect funding to on-campus connectivity, which is already supported by the E-Rate Program, in light of the clear statutory intent to provide connectivity and devices at locations other than the school or library to support remote learning).

<sup>160</sup> See Committee on the Budget House of Representatives, Report of the Committee on the Budget House of Representatives to Accompany H.R. 1319, at 306-307 (Feb. 24, 2021), <https://www.congress.gov/117/crpt/hrpt7/CRPT-117hrpt7.pdf> (“[a]dditional federal 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”) (emphasis added).

<sup>161</sup> See *supra* Section II.B., para. 9 (explaining that the E-Rate Program provides support for connectivity *to* and *within* schools and libraries). While we prohibit the on-campus use of eligible equipment and services during the emergency period as described above, we provide discretion to schools and libraries to use eligible equipment *after* the emergency period as they see fit, provided that the equipment be used for educational purposes as defined by the rules we adopt today. See *infra* Section III.L.6, paras. 135-37 (providing for the treatment of eligible equipment and services after the COVID-19 emergency period).

<sup>162</sup> Indeed, because the pandemic has increased on-campus broadband needs for some schools, last year we opened a second, funding year 2020 E-Rate application window to give schools the opportunity to seek E-Rate support to purchase additional bandwidth to address needs resulting from the increasing shift to 1:1 student-to-device ratios in classrooms, live streaming of classroom instruction to students at home, and expanding use of cloud-based educational tools and platforms—all of which can significantly increase on-campus bandwidth requirements. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 10347 (WCB 2020).

54. *Per-Location/Per-User Limitations.* To maximize the use of limited funds, we impose certain per-location and per-user limitations on applicants seeking support for eligible equipment and services under this Program. Specifically, we will not permit an eligible school or library to apply for support for more than one fixed broadband Internet access connection per location. Nor will we provide support for eligible schools and libraries to purchase more than one connected device and more than one Wi-Fi hotspot per student, school staff member, or library patron during the COVID-19 emergency period.<sup>163</sup>

55. Recognizing that Wi-Fi hotspots can be easily moved and used in different locations, while fixed broadband connections are delivered to a specific location, and pursuant to our authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, we first limit support for those costs associated with fixed broadband services to one connection per location, but otherwise refrain from imposing a similar per-location limitation on Wi-Fi hotspots.<sup>164</sup> We agree with those commenters that suggest that while a per-location limitation on fixed broadband services is reasonable, a similar limitation on Wi-Fi hotspots would be impractical since many of the Wi-Fi hotspots distributed by schools and libraries are insufficient for multiple users and many homes with multiple students, school staff, or library patrons could benefit from more than one Wi-Fi hotspot.<sup>165</sup> For purposes of the per-location limitation we impose on fixed broadband services, we will consider each unit in a multi-tenant environment (e.g., apartment buildings) a separate location.

56. Next, with the exception of fixed broadband connections, for which there is a one-per-location limit, we prohibit schools and libraries from providing more than one supported connection and more than one connected device to a student, school staff member, or library patron and clarify that this limitation shall apply for the duration of the COVID-19 emergency period.<sup>166</sup> That is, during the defined emergency period, we will permit eligible schools and libraries to request and receive support for no more than one connection and no more than one connected device for each student, school staff member, or library patron they serve.

57. While commenters generally support this approach,<sup>167</sup> some argue that there may be instances where more than one connected device or connection per user may be appropriate.<sup>168</sup> These

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<sup>163</sup> *Public Notice* at 8.

<sup>164</sup> See H.R. 1319, tit. VII, § 7402(a) (requiring the Commission to promulgate rules for the provision of Emergency Connectivity Fund support under sections 254(h)(1)(B) and (h)(2) of the Communications Act), 7402(b) (directing the Commission to reimburse 100% of the costs associated with eligible equipment not to exceed an amount the Commission determines is reasonable); 47 U.S.C. § 254(h)(2)(A) (requiring the Commission to establish rules that are technically feasible and economically reasonable to enhance access to advanced telecommunications and information services).

<sup>165</sup> See, e.g., South Carolina Comments at 8 (recommending that the Commission limit one connection per location for fixed broadband services except for multi-family housing and not impose any per-location limitation on Wi-Fi hotspots); CETF Comments at 17 (agreeing with a limit of one supported connection per location); ClientFirst Comments at 2 (urging the Commission not to limit the number of Wi-Fi hotspots at any given location); Alaska DEED Comments at 5 (finding that one connection per location for fixed broadband services is appropriate provided that other equipment be allowed per location); Verizon Comments at 10 (stating that it is reasonable for the Commission to impose a one-per-household limit for fixed broadband services and a one-per-student limit for mobile broadband services, including mobile Wi-Fi hotspots, but noting that those limits should apply independently). *But see* NTCA Comments at 6 (arguing that the Act does not permit support for hotspots delivered to a household where a connection already exists).

<sup>166</sup> *Public Notice* at 8.

<sup>167</sup> See T-Mobile Comments at 18 (agreeing that the Commission should limit reimbursement to one connected device and one supported connection per student, staff member, or library patron); SETDA Comments at 4 (explaining that one supported device per student is good, but that one supported device per household may be

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commenters do not, however, provide any specific examples where more than one connected device or connection is necessary; and, the one example offered in the record by the American Library Association, we find inapposite.<sup>169</sup> Specifically, the American Library Association explains that in some cases a parent may request two connected devices from a library—one for use of the parent and the other for use of the child.<sup>170</sup> Because the library in this instance is providing each device for use of one, individual user, we consider such use consistent with the per-user limitation we impose on schools and libraries. As such, we are not persuaded by those commenters that suggest that more than one connection or connected device per user is necessary, particularly in light of our obligation to limit reimbursements to amounts we find reasonable.

58. Nor are we persuaded that limited funding should be used to allow schools and libraries to purchase additional connected devices or other equipment beyond the per-user limitation we set to account for equipment damage and breakage. The *Public Notice* sought comment on “what allowances or controls may be necessary to allow schools and libraries to remediate such issues and how the Commission can prevent warehousing of unnecessary equipment and connected devices?”<sup>171</sup> While we agree with commenters that it is a sensible practice for schools and libraries to purchase some percentage of extra devices in preparation for inevitable equipment breakage, we find that limiting support for connected devices and Wi-Fi hotspots provided to students, school staff, and library patrons to no more than one of each such type of equipment per person is reasonable.<sup>172</sup> Were the Emergency Connectivity Fund unlimited, we would likely provide support for additional equipment. To do so under the present circumstances would, however, be inconsistent with the goal to provide students, school staff, and library patrons with as many needed devices and broadband services as possible in the near term and prevent unnecessary warehousing.

59. In adopting a per-user limitation on these connections and connected devices, we seek to equitably distribute and maximize the use of limited funds and the number of students, school staff, and library patrons served by this Program. To further ensure requests for support for connected devices are reasonable, in the case of a library, we direct USAC to make inquiries if a library or library system seeks reimbursement for more devices than seems reasonable based on the size of the library or library system.

60. To ensure compliance with the per-location and per-user limitations we impose on schools and libraries, and to aid in preventing waste, fraud, and abuse, we also require schools and

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inadequate); CTIA Comments at 12-13 (agreeing that the Commission should limit supported connections and devices to one per student, school staff member, or library patron).

<sup>168</sup> KIPP DC Public Schools Comments at 3 (urging the Commission not to prohibit schools from providing more than one supported connection and more than one connected device to each student); Milwaukee Public Library Comments at 3 (asking the Commission not to limit the number of connections or Wi-Fi hotspots as doing so “may disproportionally impact households with multiple users or greater data consumption”); *see also* ClientFirst Comments at 2-3 (explaining that exceptions may be necessary such as in the case of Science, Technology, Engineering, the Arts and Mathematics (STEAM) students with unique technology needs that may need a “high-end computer” for a STEAM class in addition to “their regular 1-to-1 laptop,” but agreeing that the Fund should only pay for one device).

<sup>169</sup> *See, e.g.*, ALA Comments at 7 (explaining that in some instances, a parent may checkout two devices—one for themselves and one for their child learning from home— and arguing that the Commission should leave it up to the library to decide how many connected devices to provide based on their device lending and acceptable use policies).

<sup>170</sup> ALA Comments at 7.

<sup>171</sup> *See Public Notice* at 9.

<sup>172</sup> *See, e.g.*, CoSN Comments at 15 (asking for districts to be permitted to request support based on local policies that often purchase 5% to 10% spare devices to ensure learning continues when devices fail); EdLiNC Comments at 9 (supporting allowing schools and libraries to purchase additional devices for replacement purposes, in the range of 5% to 10%).



libraries to document the student(s), school staff member(s), and library patron(s) served at each location.<sup>173</sup> Because we expect that many schools and libraries are, in the normal course of business, already documenting this information, we anticipate that imposing this requirement for purposes of participating in the Emergency Connectivity Fund Program will not be an additional burden on most applicants.<sup>174</sup> Moreover, in requiring schools and libraries to collect and document this information as detailed below,<sup>175</sup> we acknowledge some comments expressing concerns about protecting the privacy of students and library patrons, as well as the confidentiality of library records, and asserting that imposing such a requirement on schools and libraries could discourage them from participating in the Program.<sup>176</sup> We are mindful of the need to safeguard the privacy of students, school staff, and library patrons, and we commit to ensuring that, if the Commission or USAC staff needs to access this information, for example, for audit purposes, they will request and safeguard the information in accordance with the applicable privacy laws and guidance. With this approach, we seek to balance the need to protect limited funds from waste, fraud, and abuse and the privacy of students, school staff, and library patrons.

61. *Wi-Fi Hotspots on School Buses and Bookmobiles.* Consistent with our decision above regarding eligible locations, we allow schools and libraries to use Emergency Connectivity Fund Program support to purchase Wi-Fi hotspots for school buses and bookmobiles to provide off-campus broadband services to students, school staff, and library patrons who currently lack sufficient broadband access.<sup>177</sup> We find ample support in the record for our action and agree with those commenters that assert that deploying Wi-Fi hotspots on schools buses or bookmobiles is a cost-effective means by which to provide much-needed connectivity to those students, school staff, and library patrons in areas with limited options.<sup>178</sup> In addition, we are aware that a number of schools and libraries have already undertaken initiatives to equip school buses and bookmobiles with Wi-Fi hotspots during the COVID-19 emergency period and have found such initiatives to be particularly effective.<sup>179</sup> As such, during the second

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<sup>173</sup> See *infra* Section III.L.1, paras. 116-18.

<sup>174</sup> See, e.g., M-DCPS Comments at 5 (noting the district will continue to apply the E-Rate rules for retaining and presenting records and maintaining asset and service inventories); SECA Comments at 16 (“[A]pplicants should be required to maintain records of their purchases and other documentation consistent with the traditional E-rate program.... Asset inventories already must be maintained for equipment purchased with E-rate funds”); Alaska DEED Comments at 5-6 (explaining that asset inventories should be retained with the location, make, model, serial number, but without the individual person’s name and address because of privacy concerns).

<sup>175</sup> See *infra* Section III.L.1, paras. 116-18.

<sup>176</sup> See, e.g., Center for Democracy & Technology Comments at 9-12 (CDT Comments) (arguing that only aggregated student data should be used for funding decisions and audits as student personally identifiable information is legally protected and expressing concerns that individual-level student data may be unreliable); ALA Comments at 2-3, 7 (opposing the adoption of any metric that requires libraries to collect patron use and explaining that various state privacy laws protect against such disclosures); NNTRC Comments at 8 (expressing concern that some parents may not feel comfortable with having their students participate in a program where personal information is being collected); SHLB Comments at 5 (stating that requiring schools and libraries to record which individuals use any Emergency Connectivity Fund supported services or equipment and make that information available to the Commission or USAC violates student and patron privacy laws).

<sup>177</sup> *Public Notice* at 9.

<sup>178</sup> See, e.g., CETF Comments at 17 (agreeing that the Commission should allow Wi-Fi hotspots on school buses and bookmobiles); Los Angeles Unified School District Comments, Attach. at 2; Western Governors’ Association Comments at 7 (supporting bus Wi-Fi and other creative efforts to address the Homework Gap); ALA Comments at 6 (agreeing that Wi-Fi hotspots on bookmobiles and library kiosks should be allowed).

<sup>179</sup> See, e.g., SHLB Comments at 17, 22 (citing examples of libraries in New York and Virginia using bookmobiles as a way to extend broadband access); CoSN Comments at 6 (noting a Texas school district that deployed Wi-Fi enabled school buses to broadcast Wi-Fi capabilities to households in the surrounding area).



application window, schools and libraries will be able to seek support for these purchases if made during the relevant time period.

### E. Eligible Uses

62. Consistent with the goal of funding the connections and devices needed for remote learning embodied in section 7402(a) of the American Rescue Plan and section 254(h)(1)(B) of the Communications Act, and with the E-Rate program, we require that equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes. Although the text of section 7402 of the American Rescue Plan is silent on permitted uses of equipment and services eligible for Emergency Connectivity Fund support, that section of the Act is entitled “Funding for E-Rate Support for Emergency *Educational* Connections and Devices.”<sup>180</sup> Moreover, it provides that the Commission promulgate rules for the provision of funding consistent with sections 254(h)(1)(B) and (2) of the Communications Act, and section 254(h)(1)(B) of the Communications Act requires telecommunications carriers to provide services to schools and libraries for “educational purposes.”<sup>181</sup> As a result, our E-Rate rules require schools and libraries to use E-Rate-supported services “primarily for educational purposes.”<sup>182</sup> Educational purposes, in turn, are defined as “activities that are integral, immediate, and proximate to the education of students” in the case of schools and activities that are “integral, immediate, and proximate to the provision of library services to library patrons” in the case of libraries.<sup>183</sup> We take that same approach here.

63. For purposes of the Emergency Connectivity Fund Program, we therefore define “educational purposes” as activities that are integral, immediate, and proximate to the education of students in the case of a school, and activities that are integral, immediate, and proximate to the provision of library services to library patrons in the case of a library. And, we require schools and libraries to use eligible equipment and services supported by this Program primarily for educational purposes, but still limit use to students, school staff, and library patrons as intended by Congress. Because we require eligible equipment and services be used primarily for educational purposes, as defined in section 54.500 of our rules, in the case of schools, we emphasize that the provision of eligible equipment and services for school staff is limited to school staff that will be providing (or provided) educational services during the relevant time periods and would otherwise lack access to connected devices or broadband connections sufficient to facilitate remote learning during the pandemic.<sup>184</sup>

64. We recognize that some commenters would prefer that schools and libraries be able to use eligible equipment and services for any purpose they see fit.<sup>185</sup> At least one commenter suggests that we adopt a presumption that all off-campus use of eligible equipment and services is an “educational

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<sup>180</sup> H.R. 1319, tit. VII, § 7402 (emphasis added).

<sup>181</sup> *Id.* § 7402(a); 47 U.S.C. § 254(h)(1)(B).

<sup>182</sup> *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18774, para. 22 (amending the rules to require that services be used *primarily* for educational purposes and explaining that “[t]o primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools’ resources”).

<sup>183</sup> 47 CFR § 54.500 (defining “educational purposes”).

<sup>184</sup> See *infra* Section III.G, para. 78 (limiting funding to meet the needs of students, school staff, and library patrons that lacked or still lack connected devices or services sufficient to engage in and access remote learning and virtual library services during the pandemic).

<sup>185</sup> See, e.g., CoSN Comments at 7 (recommending that the Commission not require eligible equipment and services be used only for educational purposes and instead defer to school district practices); Local Governments Comments at 28 (proposing that schools and libraries be able to use equipment and services for any purpose that the school or library deems appropriate).

use.”<sup>186</sup> Others argue that we should allow eligible equipment and services to be used for broader purposes without imposing any constraints or giving priority to educational uses, including for professional development and to support household connectivity that provides access to a variety of Internet resources, not just educational or library resources or limited to the intended users specified in the Act.<sup>187</sup> In requesting such expansive uses for eligible equipment and services, commenters ignore the fact that the Congressional reason for establishing the Emergency Connectivity Fund was to fund emergency educational connections and devices, as reflected in the title of section 7402 of the American Rescue Plan, for use by students, school staff, and library patrons.<sup>188</sup> What is more, such arguments, when taken to an extreme, are also an invitation to waste, fraud, and abuse.

65. At the same time, we are sensitive to the critical need students, school staff, and library patrons have for broadband connections and devices for any number of important and productive uses during the COVID-19 pandemic, as well as the need to provide schools and libraries with as much flexibility as possible to meet the unique remote learning needs of students, school staff, and library patrons. We also recognize that even the most ardent student will not be using his or her connected device and broadband connection to attend classes and do schoolwork all day every day, and that library patrons use the broadband services at libraries for an enormous variety of purposes. We therefore find that it is only reasonable that schools and libraries be given the flexibility to allow the use of eligible equipment and services for other purposes when they are not needed for educational purposes in the first instance. We conclude that requiring that eligible equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes strikes the right balance. It will ensure that such equipment and services are first and foremost used to facilitate remote learning, as intended by Congress, while also allowing them to be used for other purposes for the benefit of students, school staff, and library patrons.

66. To ensure that connected devices supported by this Program are used primarily for educational purposes and by students, school staff, and library patrons, we require schools and libraries to restrict access to eligible connected devices to only those students, school staff, and library patrons with appropriate credentials. The Miami-Dade County Public Schools, in response to the question in the *Public Notice*, confirms in its comments that it already requires appropriate credentials, and we expect other schools and libraries are doing the same.<sup>189</sup> We thus find that imposing such a restriction will not impose an additional burden on most applicants and is an important safeguard to ensure that connected devices supported by this Program are used for their intended purpose and by intended users. In addition requiring schools and libraries to restrict access to the connected devices they provide for use by students, school staff, and library patrons helps protect the privacy of those users by limiting access to any information they have stored on such devices.

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<sup>186</sup> See SHLB Comments at 12-13 (arguing that the Commission need not adopt specific rules governing the use of equipment and suggesting that the Commission presume that any equipment or service purchased with funding from the Emergency Connectivity Fund is for “educational purposes”).

<sup>187</sup> See, e.g., Alaska Communications Comments at 3; City of San Jose Comments at 4; see also H.R. 1319, tit. VII, § 7402(a)(1)-(2) (specifying that eligible equipment and services be for use by students, school staff, and library patrons).

<sup>188</sup> At least one commenter urges the Commission to clarify that “patron of the library” under Section 7402(a)(2) of the Act includes library staff. See T-Mobile Comments at 7. While library staff are not explicitly included in the statute, we recognize that most library staff are, of course, also library patrons, and we therefore will consider such staff to be library patrons for purposes of the Emergency Connectivity Fund Program. See H.R. 1319, tit. VII, § 7402(a)(2).

<sup>189</sup> See, e.g., M-DCPS Comments at 3 (explaining that Miami-Dade County Public Schools currently require user credentials for students, staff, and school-based tutors, as well as for parents, to access the network, as well credentialing for Wi-Fi users).

67. Recognizing that it may not always be technically possible to similarly restrict access for other eligible equipment and eligible services supported by this Program, we encourage, but do not require, schools and libraries to take the same approach for the use of other eligible equipment and services. We find that restricting access in this way is a best practice and will help ensure that eligible services are provided to students, school staff, and library patrons, as provided for by the Act.

#### **F. Reasonable Support Amount**

68. We next establish a range of costs that are presumed reasonable for eligible connected devices and Wi-Fi hotspots and direct USAC to limit funding commitments for each type of equipment or device to the maximum amount deemed reasonable. We also establish an application review process for considering the reasonableness of other types of eligible equipment and services. In the E-Rate Program, competitive bidding and the requirement to use price as the primary factor help ensure cost-effective purchasing. As discussed in greater detail below, because we are providing support for purchases made during the pandemic without requiring a competitive bidding process, those protections do not exist here. Moreover, schools and libraries purchased these equipment and services, often on short notice and during a time when demand was high for tablets, laptops, and Wi-Fi hotspots, and supply chains were disrupted leading some schools and libraries to pay premium prices for needed equipment.<sup>190</sup> At the same time, we are mindful that the Emergency Connectivity Fund, while substantial, is insufficient to meet the entire need of the nation's schools and libraries for eligible devices and services.<sup>191</sup> Congress therefore directed us to reimburse 100% of the costs associated with eligible equipment and services, "except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for reimbursement, is reasonable."<sup>192</sup> Read in conjunction with section 254(h)(2)(A) of the Communications Act's direction that services be "technically feasible and economically reasonable," we adopt reasonable support amounts for connected devices and Wi-Fi hotspots and a framework to determine unreasonable costs for other eligible equipment and services supported under this Program.<sup>193</sup>

69. For connected devices and Wi-Fi hotspots, the two types of eligible equipment for which we expect to see the most requests for support through the Emergency Connectivity Fund Program, we adopt per-device caps based on a reasonable support amount, up to which an applicant may receive support. Adopting these reasonable maximum support amounts will provide the simplest review process for applications requesting these two types of equipment, although applicants will be reimbursed based on the actual costs of the equipment. First, after consideration of the record, we find that \$400 is a reasonable, maximum support amount for connected devices.<sup>194</sup> In response to the *Remote Learning Public Notice*, commenters discussed costs of between \$160 and \$650, and just under \$300 for iPads.<sup>195</sup>

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<sup>190</sup> See, e.g., ESU #9 Comments at 3 (noting that high demand at the pandemic start meant high prices).

<sup>191</sup> See, e.g., EducationSuperHighway Comments at 4-5; Common Sense Comments at 4 (both citing the Common Sense Media 2021 Report estimating \$6 to \$11 billion in initial need and \$4 to \$8 billion in annual costs thereafter).

<sup>192</sup> H.R. 1319, tit. VII, § 7402(b).

<sup>193</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>194</sup> See, e.g., Alaska DEED Comments at 4 (suggesting a \$300 per device is appropriate); EdLiNC Comments at 8 (recommending a \$750 limit per connected device); E-mpa Remote Learning Comments, WC Docket No. 21-31, at 8 (rec. Feb. 16, 2021) (assuming a benchmark figure of \$250 for an average Chromebook); SECA Comments at 8-9 (recommending a price ceiling of \$300 per device as reasonable based on a survey of state E-Rate coordinators with knowledge of state and local procurement for tablet and laptops).

<sup>195</sup> See, e.g., City of Chicago et al. Remote Learning Comments, WC Docket No. 21-31, at 7 (providing costs for devices sponsored by Chicago Public Schools of \$301 for Chromebooks and \$288 for iPads); E-mpa Remote Learning Comments, WC Docket No. 21-31, at 8 (rec. Feb. 16, 2021) (suggesting an average Chromebook costs \$250, with a range from \$160 to \$650 at a local retailer); Kellogg & Sovereign Consulting, LLC Remote Learning

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Here, stakeholders support a reimbursement limit between \$300 and \$750 per device to ensure that the Emergency Connectivity Fund is not used entirely to support a limited number of expensive connected devices<sup>196</sup> and to allow the Program to support the much-needed connectivity for students, school staff, and library patrons.<sup>197</sup> One commenter suggests that \$500 is more than sufficient to cover the most commonly used connected devices,<sup>198</sup> while another representing states across the country determined that \$300 per device reflects a reasonable allowance based on knowledge of procurements over the last year.<sup>199</sup> However, after consideration of the record, \$400 is a reasonable amount to reimburse for the vast majority of the devices suggested in the record, consistent with limits other programs have used.<sup>200</sup> We also elect a maximum support amount of \$400 in order to ensure funding is available equitably, does not unintentionally provide more support to schools and libraries that had greater access to funds, and increases the likelihood of available funds for those schools and libraries with continuing unmet needs. To be clear, applicants that spend more than \$400 per connected device may seek support of \$400 for each such device.<sup>201</sup>

70. We recognize that in some instances \$400 may not be a reasonable maximum cost for a connected device that meets the needs of some people with disabilities.<sup>202</sup> Applicants may request a waiver of the reasonable support amount for connected devices, if the reasonable cost to purchase devices for students, school staff, or patrons with disabilities is higher than \$400 and the public interest warrants deviation from the general rule. We emphasize that applicants seeking a waiver for this purpose should demonstrate that the additional cost associated with connected devices for those with disabilities is necessary to meet the needs of students, school staff, and library patrons with disabilities that would otherwise not be met with the purchase of a connected device at the \$400 reasonable support amount we set for the Program.

71. For Wi-Fi hotspots, we adopt \$250 as a maximum reasonable cost for a Wi-Fi hotspot provided by a school or library to a student, school staff member, or library patron, based on advertised costs for Wi-Fi hotspots.<sup>203</sup> Again, applicants that spend more than \$250 per Wi-Fi hotspot may seek

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Comments, WC Docket Nos. 13-184, 21-31, at 6-7 (rec. Feb. 16, 2021) (Kellogg & Sovereign Remote Learning Comments) (reporting costs of between \$175 and \$500 per device from a survey of twelve school districts).

<sup>196</sup> See, e.g., EducationSuperHighway Comments at 6 (arguing that if 8.2 million students still need a device, reimbursing 100% of a MacBook or other \$1,000+ device would see requests for devices exceeding the available funding without counting past purchases); USTelecom Comments at 7 n.17 (noting the risk that the entire Emergency Connectivity Fund could be used up solely reimbursing for devices).

<sup>197</sup> See, e.g., Verizon Comments at 9-10.

<sup>198</sup> See EducationSuperHighway Comments at 6-7 (recommending a cap of \$500 per student as more than sufficient to cover the most commonly used educational devices of iPads and Chromebooks).

<sup>199</sup> See SECA Comments at 8-9 (recommending a price ceiling of \$300 per device, where actual reported costs ranged between \$100 and \$500 per device).

<sup>200</sup> See ESU #9 Comments at 4-5 (stating that a state fund used a \$400 maximum on connected devices in Nebraska).

<sup>201</sup> Applicants may also use other federal funds to pay for the portion of the device cost that may exceed \$400. See Letter from Jon Bernstein, EdLiNC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 4, 2021) (seeking clarification that applicants can purchase more expensive connected devices using other funds to pay the amounts above \$400).

<sup>202</sup> See generally TDI et al. Comments at 2 (explaining that connected devices “should support video conferencing platforms and other software necessary to ensure students who are deaf, hard of hearing, DeafBlind, or deaf with mobility issues can fully participate in the remote learning experience”); Players Coalition Comments at 1 (stating that “technology devices and services for students with disabilities, should be included as allowable costs”).

<sup>203</sup> See, e.g., Andrew Moore, Dave Landy, Rob Anderson and Dwight Jones Remote Learning Comments, WC Docket No. 21-31, at 2 (rec. Feb. 16, 2021) (filed on behalf of Boulder Valley School District and Denver Public

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\$250 in support for such devices. This maximum allowable cost is for the equipment itself, and we expect applicants to separately seek support for the cost of the service provided using the hotspot device.

72. For the other types of eligible equipment—namely, modems, routers, and devices that combine modems and routers—we do not at this time have a sufficient record to determine a reasonable maximum support amount, nor do we expect to receive requests totaling a substantial amount of the Fund. We therefore direct USAC to carefully review the requests and identify applications that are out of line with the funding requests of other applicants. We delegate authority to the Bureau to provide guidance to USAC for assessing the reasonability of those applications based on the universe of requests for reimbursement for similar equipment and on applicants' justifications for their requests. We recognize that costs may be higher because of supply chain issues at the start of the pandemic,<sup>204</sup> or geographic differences,<sup>205</sup> and we expect applicants to be prepared to explain their selections and costs, as needed, to be eligible for 100% reimbursement.

73. Consistent with this approach for eligible equipment and the requirements under section 254(h)(2)(A) that the Commission provide access to services to the extent technically feasible and economically reasonable,<sup>206</sup> we also direct USAC to review applications for commercially available advanced telecommunications and information services and identify the applications with outlying costs. We delegate authority to the Bureau to provide guidance to USAC on how to determine the reasonableness of such costs. Based on the record before us, we expect that most of the applications for support for broadband Internet access services will be for services purchased under bulk purchase agreements, and we expect services to generally be in the range suggested by commenters between \$10 and \$25 per month.<sup>207</sup>

74. At the same time, we recognize that not all schools and libraries will be able to benefit from such bulk purchasing arrangements and pricing for broadband services varies widely across our nation based on the availability of competitive options, rurality, and other factors.<sup>208</sup> In assessing the reasonableness of costs for broadband Internet access services, particularly in rural locations, USAC and the Bureau should make use of the reasonable comparability benchmarks established for the High Cost Universal Service Support Program.<sup>209</sup> The Bureau and the Office of Economics and Analytics publishes an updated reasonable comparability benchmark annually, including Alaska-specific benchmarks.<sup>210</sup>

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Schools) (BVSD & DPS Comments); Kellogg & Sovereign Consulting, LLC Remote Learning Comments at 5-6; Rob Pegoraro, *Wirecutter: The Best Wi-Fi Hotspot*, N.Y. Times, (Aug. 20, 2020), <https://www.nytimes.com/wirecutter/reviews/best-mobile-wi-fi-hotspot/> (highlighting Wi-Fi hotspots costing \$200 and \$250 without a contract).

<sup>204</sup> See, e.g., ESU #9 Comments at 3 (noting that high demand at the pandemic start meant high prices).

<sup>205</sup> See generally Alaska DEED Comments at 7 (seeking accommodation for geography and topography in applying reasonable costs).

<sup>206</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>207</sup> See, e.g., EducationSuperHighway Comments at 5 (estimating an average cost of \$20 per month to provide 25/3 Mbps wired or LTE connection); Verizon Comments at 9 n.32 (reporting that schools are purchasing a broadband service with a cost of \$10 to \$25 per month for students).

<sup>208</sup> See, e.g., *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, 2021 WL 7972753, at \*2, 30-31, paras. 4, 70-72 (Feb. 26, 2021) (*Emergency Broadband Benefit Order*) (adopting a reimbursement level of up to \$75 per month on Tribal lands, compared to \$50 in other areas).

<sup>209</sup> Recipients of high-cost and/or Connect America Fund support that are subject to broadband performance obligations are required to offer broadband service at rates that are at or below the relevant reasonable comparability benchmark. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC 17663, 17695, para. 86 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). Carriers subject to the Alaska Plan are required to meet Alaska-

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75. We are mindful of the many valid concerns expressed in the record that there may be insufficient funding available for the Emergency Connectivity Fund Program to fully support the emergency connectivity and device needs of all eligible schools and libraries across the nation.<sup>211</sup> In recognition of the concerns that reimbursement could be slow or uncertain, we aim throughout this Report and Order to implement Program rules and processes that help applicants easily apply for funding and receive support as quickly as possible.<sup>212</sup>

76. We have carefully considered, but do not adopt here, the recommendation made by many commenters that instead of imposing reasonable maximum support amounts by type of eligible equipment and service, we set funding amounts for schools based on the number of students in a school, and for libraries based on their square footage, with some adjustments for higher poverty or more rural applicants.<sup>213</sup> This is the basic model used for determining the amount of funding provided to schools and libraries that apply for E-Rate support for internal connections (category two services).<sup>214</sup>

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specific benchmarks and to certify that they are meeting the relevant reasonable comparability benchmark for their broadband service offering. *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10149, para. 28 (2016); 47 CFR § 54.313(a)(12). The Commission has directed the Bureau to develop an Alaska-specific reasonable comparability benchmark. *See id.*; *Connect America Fund*, WC Docket No. 1090, Order, 31 FCC Rcd 12086, 12092, para. 21 (2016). Carriers subject to the Alaska Plan are required to meet Alaska-specific benchmarks and to certify that they are meeting the relevant reasonable comparability benchmark for their broadband service offering. *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (WCB 2014). Under the approach adopted by the Bureau in 2014, the reasonable comparability broadband benchmark varies, depending upon the supported service's download and upload bandwidths and usage allowance. *Id.*

<sup>210</sup> *See, e.g., Wireline Competition Bureau and Office of Economics and Analytics Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 13667 (WCB OEA 2020).

<sup>211</sup> *See, e.g.,* ALA Comments at 9 (noting the significant possibility that there will not be enough funding to meet demand); CoSN Comments at 14 (urging the Commission to adopt a per-student cap model, weighted by poverty and rurality because demand for support may exceed \$7.1 billion in funding and a cap-based model is efficient, equitable, and a lower-burden application process); EducationSuperHighway Comments at 6 (stating that with 8.2 million students still needing a connected device, reimbursements for just that one type of service could exceed available funds).

<sup>212</sup> *See, e.g.,* ALA Comments at 9 (discussing the importance of certainty for libraries in deciding whether to apply for available funding); CGCS Comments at 2 (recommending avoiding a drawn-out reimbursement process similar to the E-Rate Program's priority two system); FFL Comments at 10 (arguing that establishing a range of costs could add complexity and increase the application review time).

<sup>213</sup> *See, e.g.,* ALA Reply at 2-4 (recommending a budget approach using service area population for libraries); Benton Institute for Broadband & Society Comments at 6-7 (Benton Comments) (urging consideration of methods to ensure equitable geographic distribution of funds, such as a budget); CGCS Comments at 2-3 (recommending a poverty-focused budget process); E-mpa Comments at 5 (supporting a budget methodology to control costs and predict total demand); E-Rate Central Comments at 2-3 (recommending interpreting the statute as allowing the total amount received by any individual school or library be reasonable and therefore supporting budgets as a means to allocate funding in a fair and equitable manner); FFL Comments at 8-10 (stating that the Commission should adopt a reasonable budget amount for reimbursement for applicants taking into account both rurality and poverty levels); National School Boards Association Reply at 5-6 (recommending budget caps); SECA Comments at 5-8 (recommending applicant budgets that respect the mandate that 100% of reasonable costs be eligible for reimbursement); SETDA Comments at 2-3 (recommending a per-student budget cap as equitable, efficient, and predictable); SHLB Comments at 5-6 (arguing that budgets address concerns about waste, fraud, and abuse while expediting the award of funding); Verizon Reply at 2 (suggesting adoption of per-school budgets).

<sup>214</sup> 47 CFR § 54.502(b)-(d).

77. We agree with commenters that budgets have been a successful approach to funding category two services.<sup>215</sup> The commenters supporting a similar budget approach for apportioning the Emergency Connectivity Fund, however, fail to acknowledge that those category two budgets were adopted after a lengthy rulemaking and analysis of the costs of deploying internal connections within schools and libraries.<sup>216</sup> While these category two budgets do not precisely meet the costs of each applicant, they were established with a goal of meeting every school and library's need for category two services over the course of a five-year budget cycle using available data on the costs and network needs and made permanent after careful examination of the budget amounts.<sup>217</sup> Here, we lack sufficient data or estimates to make such determinations and instead find commenters' suggested budget levels<sup>218</sup> to largely be focused on dividing the appropriated funds with slight differences to account for income or rurality.<sup>219</sup> Had Congress wished to provide a set amount of funding to each school and library in the country, it could have easily done so.<sup>220</sup> Instead, the American Rescue Plan clearly states that the Commission shall reimburse 100% of the costs associated with the eligible equipment and services, subject to a determination of what constitutes reasonable equipment costs, and suggestions that the Commission implement applicant budgets is simply inconsistent with this direction.

### **G. Application Process**

78. We adopt an application process that first provides funding to schools and libraries for purchases during the coming school year of eligible equipment and services for use by students, school staff, and library patrons who would otherwise lack access to eligible equipment or services sufficient to engage in remote learning and virtual library services. As discussed further below, during this first application window, applicants will be able to submit requests for funding for purchases made between July 1, 2021 and June 30, 2022, which aligns with the coming school year and the E-Rate funding year, with which schools and libraries are very familiar. Then, if there are remaining funds after this initial application window, we will open a second application window for schools and libraries to seek funding for eligible equipment and services they previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID-19 pandemic. During this second application window,

<sup>215</sup> See, e.g., E-Rate Central Comments at 3 (discussing the category two budget mechanism "with a slight twist"); FFL Comments at 7-8 (stating that the category two budget approach was an improvement on the priority two system, which funded applications based on discount rate).

<sup>216</sup> See *2014 First E-Rate Order*, 29 FCC Rcd at 8898-8922, Section IV.B.; *2014 Second E-Rate Order*, 29 FCC Rcd at 15571-78, Section III.A. (adopting the category two budget approach for a five-year test period to fund internal connections within schools and libraries).

<sup>217</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11224-25, paras. 15-17 (2019) (making the category two budgets permanent after the five-year test period consistent with the findings of a Bureau report and record in the rulemaking proceeding).

<sup>218</sup> See Alaska DEED Comments at 7 (suggesting a budget based on an applicant discount rate to incorporate rurality and poverty); E-Rate Central Comments at 3-4 (using the category two budget multipliers and funding floor as an example of dividing the appropriated funds); FFL Learning Comments at Exhibit A (providing a calculation for budgets based on student enrollment, E-Rate discount level, and a \$157 budget multiplier, or a \$4.50 multiplier for libraries using square footage to allocate \$6.8 million in funding, with the rest of funding allocated to special projects that do not fit within the budgets); SECA Comments at 5 (recommending budget multipliers of \$100 and \$150 per student, depending on rural designation, and \$2.00 and \$3.00 for library square foot, depending on rural designation).

<sup>219</sup> See EdLiNC Comments at 4 (discussing how the budget approach may or may not meet the needs of a school or library); Los Angeles Unified School District Comments, Attach. at 2 (stating that "[a]ny caps serve only to limit providing critical services to those most in need").

<sup>220</sup> See generally CGCS Comments at 3 (discussing Congress' authorization of other COVID-19 relief funding calculated used the ESEA Title I funding formula).

applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services.

79. In adopting this approach, we are particularly cognizant of the substantial remaining unmet need for connected devices and broadband Internet access services among students, school staff, and library patrons. We also recognize that a significant amount of other federal funding has been made available to schools to assist with digital learning (although schools have had the option to use that funding to meet a plethora of other pressing needs as well) through both the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year, as well as other provisions of the American Rescue Plan Act.<sup>221</sup> The approach we take in prioritizing existing unmet need, followed by a funding window providing support for previous purchases during the pandemic, is consistent with the suggestion made by those commenters who support prioritizing future purchases, as well as those who support allowing applicants to request support for both past and future purchases.<sup>222</sup> Some other commenters support allowing requests only for purchases made after the date of this Order,<sup>223</sup> others support prioritizing prior purchases,<sup>224</sup> and still others support opening a single application window providing support for past and future purposes.<sup>225</sup> We recognize that there is some merit to these other approaches. In particular, we see

<sup>221</sup> See, e.g., Press Release, FCC, FCC and U.S. Department of Education Promote Remote Education So Students Can Continue Learning (Apr. 27, 2020), <https://www.fcc.gov/document/fcc-and-us-department-education-promote-remote-education> (explaining that the CARES Act's Elementary and Secondary School Emergency Relief (ESSR) Fund provides more than \$13 billion in grants that elementary and secondary schools can use for purposes that include, but are not limited to, remote learning, and the Governor's Emergency Education Relief (GEER) Fund makes approximately \$3 billion in emergency block grants available to governors to decide how best to meet the needs of students); Press Release, FCC, FCC Partners with Institute of Museum and Library Services to Address Digital Divide during COVID-19 (May 21, 2020), <https://www.fcc.gov/document/fcc-impls-partner-support-libraries-and-address-digital-divide>.

<sup>222</sup> See, e.g., NCTA Comments at 3 (suggesting support be prioritized to households that currently lack broadband services in order to close the homework gap); USTelecom Comments at 10 (recommending that the first window allow requests for purchases between January 27, 2020 and June 30, 2022 with priority given to the future purchases because prioritizing retroactive funding favors school systems that already had the budget to pay for eligible equipment and services from the start of the emergency); Milwaukee Public Library Comments at 4 (asserting that "[e]very dollar spent on reimbursement for previous purchases is money not being invested on providing coverage for those who still don't have it"); Qualcomm Comments at 16-17 (arguing that the American Rescue Plan does not require retroactive reimbursements and therefore the Commission should limit funding to supporting future purchases of eligible equipment and services in order to close the Homework Gap and provide devices or connectivity to students that are unconnected); Buffalo & Erie County Public Library Comments at 4 (suggesting that it would be more cost-effective to cover funding for purchases made or to be made between January 27, 2020 and June 30, 2022); CoSN Comments at 15 (recommending reimbursement for both past and future purchases); FFL Comments at 11 (supporting both retroactive reimbursements and support for new expenditures).

<sup>223</sup> See, e.g., EducationSuperHighway Comments at 5-6 (recommending limiting the use of support to purchases made after the opening of the filing window – except for broadband services previously paid for by the school district, and only supporting using funds for students that applicants certify are lacking devices or connectivity).

<sup>224</sup> See, e.g., M-DCPS Comments at 4 (urging prior purchases be the "top priority" over new purchases); Joint Venture Silicon Valley et al. Comments at 5 (arguing that previously purchased equipment and services should be prioritized so as not to penalize schools that acted quickly); Robert Krepps, Big Spring School District Comments at 1 (recommending the prioritization of funding for prior purchases); Fort Vancouver Regional Libraries Reply at 2 (suggesting reimbursement for expenses already incurred).

<sup>225</sup> See, e.g., Letter from Debra Kriete, SECA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 3 (filed Apr. 23, 2021) (SECA April 23 *Ex Parte*); Letter from John Windhausen, Jr., Executive Director, Schools, Health and Library Broadband Coalition, et al., to the Honorable Jessica Rosenworcel, Acting Chairwoman, the

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the appeal of using the Emergency Connectivity Fund Program to first reimburse 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 by prioritizing past purchases.<sup>226</sup> On balance, however, we find that doing so would not be the best use of public funds because it would create a risk that we would have insufficient funding available to provide support for connected devices and broadband Internet access services for students, school staff, and library patrons who otherwise will not have access to devices and connectivity sufficient to meet their remote learning needs during the coming school year. Adopting a single funding window for past and future purchases creates the same risk, and imposes substantial administrative burdens on schools and libraries and on USAC.

80. As discussed above, section 7402(a) requires that we promulgate rules for the provision of support under sections 254(h)(1)(B) and (h)(2) of the Communications Act.<sup>227</sup> Section 254(h)(2) of the Communications Act, in turn, requires us to consider what is technically feasible and economically reasonable when providing support for advanced telecommunications and information services.<sup>228</sup> Given this statutory direction, as well as the limited funding available under the Emergency Connectivity Fund Program, we therefore find it reasonable to prioritize support to connect those students, school staff, and library patrons that would otherwise lack sufficient connectivity to benefit from remote learning this coming school year. In so doing, we are also mindful of the purpose of the Fund and Congress' intent to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services due to the pandemic.<sup>229</sup>

81. To ensure that funding is focused on unmet need, we will require schools to certify, as part of their funding application, that they are only seeking support for eligible equipment provided to students and school staff who would otherwise lack access to connected devices sufficient to engage in remote learning. We will also require schools to certify, as part of their funding application, that they are only seeking support for eligible services provided to students and school staff who would otherwise lack broadband services sufficient to engage in remote learning. This should not be an onerous burden, as the record shows that many school districts have conducted needs assessments to determine the connectivity needs of their students and staff.<sup>230</sup> We think that schools are in the best position to determine whether

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Honorable Brendan Carr, Commissioner, the Honorable Geoffrey Starks, Commissioner, and the Honorable Nathan Simington, Commissioner, FCC, WC Docket No. 21-93, at 1-2 (filed May 5, 2021) (Remote Learning Coalition *Ex Parte*); ALA May 6 *Ex Parte*.

<sup>226</sup> See *supra* n.226.

<sup>227</sup> H.R. 1319, tit. VII, § 7402(a); 47 U.S.C. § 254(h)(1)(B), (h)(2).

<sup>228</sup> 47 U.S.C. § 254(h)(2).

<sup>229</sup> See Committee on the Budget House of Representatives, Report of the Committee on the Budget House of Representatives to Accompany H.R. 1319, at 306-307 (Feb. 24, 2021), <https://www.congress.gov/117/crpt/hrpt7/CRPT-117hrpt7.pdf> (focusing on students "distance learning" needs and acknowledging that while federal funding and discounted broadband services from private sector providers helped address the need for distance learning when the pandemic began, "up to 12 million K-12 students *still* remain under-connected going into 2021" and "[a]dditional federal 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") (emphasis added). We recognize that many school districts operate 1:1 device initiatives and may provide devices to all students regardless of need. In light of the admittedly substantial, but still limited, funding available through the Emergency Connectivity Fund, we do not think it is appropriate to support the purchase of devices or services for students that already have access to an adequate device.

<sup>230</sup> See, e.g., ESU # 9 Comments at 5 (describing Nebraska's efforts to conduct consistent needs assessments); National League of Cities Reply at 2 (asserting that many communities have experience conducting needs assessments); see also EducationSuperHighway Comments at 8-9 (recommending that schools certify that Emergency Connectivity Fund support is being used for students that currently lack home broadband connection or

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their students and staff have devices and broadband services sufficient to meet their remote learning needs, and we recognize that they are making such decisions in the midst of a pandemic. We, therefore, will not impose any specific metrics or process requirements on those determinations, but we expect schools to take reasonable measures to determine need, avoid duplicating support provided by other programs such as the Emergency Broadband Benefit Program, and document need to the extent they do not already do so.<sup>231</sup>

82. We recognize that libraries do not usually inquire about the needs of their patrons before providing services.<sup>232</sup> They do, however, typically have acceptable use policies governing patron use of library computers and Wi-Fi hotspots.<sup>233</sup> To ensure that libraries are providing eligible equipment and services to patrons with unmet needs, we therefore require that on a going forward basis before providing a library patron with eligible equipment or services, for which the library is seeking Emergency Connectivity Fund support, the library must provide the patron a copy of an eligible use policy, which explains that the equipment or service is intended for library patrons who do not otherwise have access to equipment or services sufficient to meet the patron's educational needs. On a going forward basis, we also require that the library patron sign and return a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.

83. *Initial Emergency Connectivity Fund Program Application Filing Window.* To speed the availability of funds to schools and libraries during the public health emergency, we direct USAC to open an initial 45-day Emergency Connectivity Fund Program filing window as soon as practicable. During this initial Emergency Connectivity Fund Program filing window, eligible schools and libraries may apply for funding for the purchase of eligible equipment and services made between July 1, 2021 and June 30, 2022 and provided during that time period to students, school staff and library patrons who still lack access to adequate connected devices, other eligible equipment or eligible services. We include within this first window, only eligible equipment ordered by and received, as well as only services delivered by June 30, 2022.<sup>234</sup>

84. We find that a 45-day application window will provide sufficient time for schools and libraries to apply for reimbursement. We considered the suggestion of some commenters that a 30-day application filing window would be sufficient,<sup>235</sup> but we are mindful that this is a new program, the application window will be open during the summer, and school staff have much to do to get schools

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an educational device, as well as estimate the number of students still lacking home broadband or an educational device).

<sup>231</sup> We do not agree with the suggestion of some commenters that there should be a presumption of unmet need when a school pays for a device or broadband connection for a low-income student. *See, e.g., Remote Learning Coalition Ex Parte* at 5. As we recognized above, schools, libraries and other groups have made great strides in meeting the needs of students for connected devices and broadband connections during the pandemic, so such a presumption would be overinclusive.

<sup>232</sup> *See* ALA Reply at 3 (stating that libraries generally have not collected detailed information about patrons who lack connectivity or a device during the pandemic).

<sup>233</sup> *See, e.g.,* Dallas Public Library, *Library Services: Computers and Internet Use Policy*, <https://dallaslibrary2.org/services/computerPolicy.php> (last visited May 10, 2021); Traverse Area District Library, *WiFi Hotspot Lending Policy*, <https://www.tadl.org/policies/section-3-circulation/3-7-wifi-hotspot-lending-policy/> (last visited May 10, 2021).

<sup>234</sup> *See* SECA April 23 *Ex Parte* at 3 (seeking eligibility for ordered devices due to delays in the market).

<sup>235</sup> *See, e.g.,* M-DCPS Comments at 4 (stating that a 30-day window is enough time).

ready for the upcoming school year. We also considered suggestions that the filing window be longer,<sup>236</sup> but this is an “emergency” program. Closing the window after 45 days will allow USAC to quickly size demand, review applications, and release funding commitment decision letters – ensuring that funding from the Emergency Connectivity Fund will begin to flow to eligible applicants within a short period of time.

85. *Additional Application Filing Windows.* If demand does not exceed available funds for the first application period and the Commission does not open a second prospective window, we delegate authority to the Bureau to direct USAC to open additional application filing windows until the funds are exhausted or the emergency period ends, whichever is earlier. We recognize that there will be a point at which the administrative costs to applicants and USAC of opening an application process for a relatively small amount of remaining funds is not cost-effective and delegate authority to the Bureau, after consultation with the Office of the Managing Director and USAC, to determine when that point has been reached.

86. In setting a start date for purchases that are reimbursable through the Emergency Connectivity Fund Program in the second application filing window, we agree with commenters that urge the Commission to use March 1, 2020 as the starting date for the Emergency Connectivity Fund Program.<sup>237</sup> Although January 27, 2020 is the date the Secretary of Health and Human Services retroactively determined that a public health emergency existed as a result of COVID-19 pursuant to section 319 of the Public Health Service Act,<sup>238</sup> and section 7402 states that our regulations should provide for the provision of support for purchases “during a COVID-19 emergency period,” we view that language as giving us discretion to determine the appropriate funding period for purchases made during the COVID-19 emergency period. While some commenters suggest using July 1, 2020 as a start date for eligibility for Emergency Connectivity Fund support for administrative ease,<sup>239</sup> we agree with those commenters that argue that it will be fairer to applicants that acted quickly, once they became aware of the looming pandemic, to use March 1, 2020 as the starting date based on when schools began sending students home because of the pandemic.<sup>240</sup> As the Remote Learning Coalition points out, every state in the nation began closing schools in March 2020.<sup>241</sup> Given the statutory goal of meeting the need of students, school staff, and library patrons for connectivity during the pandemic, allowing reimbursement for purchases made beginning on the first day of the month when schools began to close because of the pandemic helps ensure that we provide support that is tied to needs arising from the pandemic.

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<sup>236</sup> See, e.g., SECA April 23 *Ex Parte* at 2-3 (requesting a 90-day window to provide applicants adequate time to apply); South Carolina Comments at 9 (recommending a rolling application period until funds are fully committed).

<sup>237</sup> See, e.g., Letter from Debra Kriete, Chair, State E-Rate Coordinators’ Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 6, 2021) (SECA May 6 *Ex Parte*) (supporting starting at March 1, 2020 to include all pandemic related eligible purchases); Letter from Michael Casserly, Executive Director, Council of the Great City Schools, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 3 (filed May 5, 2021) (seeking reimbursement for purchases made since the start of the pandemic, at least since approximately the beginning of the nationwide school closures in late March 2020 and the National Emergency Declaration on March 13, 2020).

<sup>238</sup> See H.R. 1319, tit. VII, § 7402(d)(5)(A); 47 U.S.C. § 247d.

<sup>239</sup> See, e.g., CoSN Comments at 15 (recommending reimbursement since July 1, 2020 to align with school district fiscal years); EdLiNC Comments at 9 (disagreeing with reimbursing for purchases as far back as January 27, 2020 and suggesting providing reimbursements beginning on July 1, 2020).

<sup>240</sup> See, e.g., Letter from Junaid Qaisir, E-Rate Compliance Officer, New York City Department of Education, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 5, 2021) (stating districts made purchases before July 1, 2020 when schools began closing).

<sup>241</sup> Remote Learning Coalition *Ex Parte* at 1.

87. *Competitive Bidding Requirements.* 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 for purposes of the Emergency Connectivity Fund.<sup>242</sup> Based on the record before us, we conclude that it is appropriate in light of the emergency, rather than adopting an Emergency Connectivity Fund competitive bidding process, to require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable local, state, and Tribal procurement requirements with respect to *both* previous purchases and future purchases and contracts.<sup>243</sup> This requires schools and libraries that are not subject to public procurement rules to follow their own procurement process and rules, such as those that may be included in a written charter.

88. For purchases that have already been made and contracts that have already been executed, it is impractical to attempt to impose Commission-specific competitive bidding or other contract restrictions on such purchases,<sup>244</sup> and we are also persuaded that compliance with local, state, and Tribal procurement requirements offer significant protections against waste, fraud and abuse.<sup>245</sup> Schools and libraries have been asked to take incredible steps at great cost this year in order to facilitate remote learning and keep their communities connected, and they did so without the knowledge of whether such expenses would be reimbursed. While such expenses will still be reviewed to ensure the costs were reasonable, we are convinced that we can rely on the local, state, and Tribal procurement requirements as a check on unreasonable spending. For purchases made after the date of this Report and Order, some stakeholders recommend a streamlined competitive bidding approaches, ranging from just minor modifications to the E-Rate competitive bidding rules to a shortened 14-day competitive bidding window.<sup>246</sup> Given the emergency nature of this funding, as well as the ability of the Commission to review and reject the requests for unreasonable costs, we are convinced that compliance with local, state, and Tribal procurement regulations will sufficiently safeguard the Program for future purchases and decline to adopt a streamlined competitive bidding process for the Emergency Connectivity Fund Program.

89. We also clarify that schools and libraries may seek support from the Emergency Connectivity Fund Program for the purchase of eligible services and equipment using existing bulk purchase programs or sponsored service agreements, so long as doing so is consistent with the relevant

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<sup>242</sup> See *Public Notice* at 10.

<sup>243</sup> See, e.g., SECA Comments at 9-10 (stating that state and local requirements offer sufficient protections and that additional federal competitive bidding requirements will not likely control costs, particularly when many of these particular equipment and services are standard offerings with prices in a well-known range of reasonableness); Verizon Comments at 12-13 (stating that additional competitive bidding requirements “are ill-suited to the emergency needs of students who lack connectivity during the pandemic”).

<sup>244</sup> See, e.g., FFL Comments at 11 (seeking clarity that a signed contract is not required prior to filing an application for Emergency Connectivity Fund support).

<sup>245</sup> See, e.g., EdLiNC Comments at 10 (recommending the use of state and local procurement rules only for the Emergency Connectivity Fund as sufficient); E-mpa Comments at 4 (recommending certification to state and local rules due to the exigent nature of the crisis); SECA Comments at 9-10; SHLB Comments at 13 (agreeing that state and local procurement rules in place ensure reasonable rates).

<sup>246</sup> See, e.g., AT&T Comments at 6 (recommending a competitive bidding requirement mirroring that in the E-Rate Program and including filing a simplified FCC Form 470 with the applicants’ high-level procurement goals); AT&T Reply at 7-8 (arguing that a streamlined competitive bidding process will ensure the integrity of the funding and will not delay disbursement); FFL Comments at 11 (recommending that applicants file an FCC Form 470 seeking bids for services, but removing the requirement that applicants wait 28 days to enter a legally binding agreement); T-Mobile Comments at 15 (suggesting a 14-day window for a streamlined competitive bidding process); WISPA Comments at 7-9 (recommending reducing the waiting time to 14-days, but keeping a competitive bidding process to make support available fairly and quickly with all providers having the opportunity to participate).

local, state and Tribal procurement regulations.<sup>247</sup> Unlike the traditional E-Rate Program, which funds broadband connectivity to a single school or district of schools and therefore generally only funds service from the single most cost-effective service provider, the Emergency Connectivity Fund Program is aimed at connecting numerous students, school staff, and library patrons at their homes or other locations, and therefore a school district or library system appropriately may have agreements with multiple service providers to offer connectivity.<sup>248</sup> At the same time, we decline to adopt the suggestion made by at least one commenter that we require school districts to select multiple existing providers,<sup>249</sup> or set requirements for solicitation,<sup>250</sup> finding that flexibility is appropriate under the circumstances. We also remind applicants that only eligible schools and libraries may seek reimbursement for such costs, and therefore a non-profit organization or other entity that arranged for such bulk purchases is not eligible for reimbursement through the Emergency Connectivity Fund Program.<sup>251</sup>

90. *Leveraging E-Rate Processes and Forms.* As commenters strongly support, we direct USAC to leverage the existing E-Rate application, i.e., FCC Form 471 (Description of Services Ordered and Certification Form) and other E-Rate processes to the extent feasible for the Emergency Connectivity Fund Program.<sup>252</sup> Schools and libraries are already familiar with these processes and will be able to apply more easily than if an entirely new system is developed using different forms and processes. We also expect that leveraging E-Rate processes and forms will likely reduce administrative costs and delays in the Emergency Connectivity Fund Program and ensure that Emergency Connectivity Fund Program support is quickly released to schools and libraries.

91. *Prioritization.* In the event that demand exceeds available funds during any Emergency Connectivity Fund Program application filing window, we will prioritize requests based on applicants' E-Rate Program discount rate for category one services, adjusted to provide a five percent bump up for rural schools and libraries.<sup>253</sup> Those schools and libraries entitled to a higher discount will receive funding ahead of those entitled to a lower discount rate. In the event there is insufficient funding to meet the need

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<sup>247</sup> See, e.g., Benton Comments at 7 (supporting sponsored service agreements where the procurement lead acts as a single-payer and handles payment of the bills); EducationSuperHighway Comments at 7 (discussing the K-12 Bridge to Broadband initiative, which includes over 80 ISPs covering nearly 90% of K-12 households); Local Governments Comments at 7-9 (providing examples of bulk purchase arrangements); NCTA Comments at 4 (supporting use of bulk purchase programs as an effective and efficient way to provide connectivity to large numbers of students).

<sup>248</sup> Local Governments Comments at 7 (discussing the Chicago Connected program's sponsored service arrangements with Comcast, RCN, and T-Mobile).

<sup>249</sup> See, e.g., ACA Connects Comments at 9 (suggesting the Commission mandate that schools and libraries enter into agreements with all interested existing providers offering eligible equipment and services).

<sup>250</sup> See, e.g., Letter from Thomas Cohen, Counsel to ACA Connects – America's Communications Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 4 (filed May 5, 2021) (seeking additional competitive bidding requirements regarding solicitation of interest and contracting).

<sup>251</sup> See, e.g., National Association of Telecommunications Officers and Advisors Reply at 2-5 (seeking support for bulk purchasing programs, even when procured by local governments).

<sup>252</sup> See, e.g., FFL Comments at 1-3 (stating that leveraging the existing E-Rate Program will increase the Emergency Connectivity Fund likelihood of success, reduce burdens on applicants, and reduce operating expenses); Milwaukee Public Library Comments at 4 (agreeing that familiarity with the forms will be easier for applicants, but also recommending a simpler form); Qualcomm Comments at 20 (relying "on the existing E-Rate program to the greatest extent possible [will] ensure the quickest rollout of support").

<sup>253</sup> See *Public Notice* at 12; see, e.g., Benton Comments at 5 (supporting the application of the E-Rate Program discount methodology to prioritize funding requests, if demand exceeds available funding); CCA Comments at 9 (agreeing that the E-Rate Program discount methodology is a sensible prioritization approach); M-DCPS Comments at 4 (recommending use of the E-Rate prioritization method, rather than creating a new method).

at a particular discount rate, we will prioritize within the discount rate based on the percentage of free and reduced lunch eligible students, consistent with the rules for the E-Rate Program.<sup>254</sup> Commenters suggest using assorted variations on the E-Rate discount matrix or a set-aside to reflect need in rural or Tribal areas, or special education programs and services.<sup>255</sup> Adjusting the discount matrix to increase the likelihood of rural schools and libraries receiving funding in the event that demand exceeds available funds, will provide a more equitable geographic distribution of available funds,<sup>256</sup> particularly in light of the higher cost of residential broadband services in many rural areas and the extraordinary circumstances of the pandemic.<sup>257</sup> We decline suggestions that we provide a prorated amount of funding to all applicants that apply for support, finding instead that prioritizing by the discount rates provides a better method to prioritize the needs of high poverty and rural schools and libraries.<sup>258</sup> We find that the approach we adopt today balances the goal of targeting funding to the students, school staff, and library patrons with the greatest need with the goal of maximizing administrative efficiency by adjusting existing E-Rate Program standards rather than creating whole new processes just for the Emergency Connectivity Fund Program.<sup>259</sup>

## H. Invoicing and Reimbursement Process

92. As discussed above, one of the goals we adopt for the Program is to efficiently and effectively administer funding, which will be measured in part by the speed and ease of the reimbursement process.<sup>260</sup> Consistent with that goal, we establish a streamlined invoicing process for applicants and service providers to submit requests for reimbursement, leveraging existing E-Rate forms to reduce administrative burdens where possible, while providing effective safeguards against waste, fraud, and abuse.

93. *Submission of Reimbursement Requests.* As part of this streamlined process, we allow applicants and service providers to submit requests for reimbursement. We agree with those commenters that explain allowing both applicant and service provider invoicing options is the most efficient and direct way to get much needed funding to eligible schools and libraries.<sup>261</sup> We see no reason not to send the

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<sup>254</sup> See 47 CFR § 54.507.

<sup>255</sup> See, e.g., Colville Confederated Tribes Comments at 3 (recommending a percentage of the Emergency Connectivity Fund be set aside for Tribal use); NNTRC Comments at 5-6 (supporting prioritization based on the discount level and also recommending that at least seven percent of the Fund be set aside for Tribal lands); ZP Better Together, LLC Comments at 2 (recommending prioritization, or at a minimum, ensuring access for students with disabilities).

<sup>256</sup> See, e.g., EdLiNC Comments at 3-4.

<sup>257</sup> See, e.g., Alaska DEED Comments at 6-7; West Virginia Department of Education Reply at 4-5.

<sup>258</sup> See, e.g., Remote Learning Coalition *Ex Parte* at 3-4 (seeking an across-the-board percentage proration if necessary).

<sup>259</sup> See, e.g., FFL Comments at 7 (discussing how household income level is the most significant factor in identifying the percentage of school age children who lack adequate Internet access).

<sup>260</sup> See *supra* Section III.A.2, para. 21.

<sup>261</sup> See, e.g., SHLB Comments at 14 (asserting that the Commission should allow either the school or library or vendor to submit an invoice for reimbursement so that the school or library does not have to pay for the entire upfront costs of a project); SETDA Comments at 6 (expressing support for a flexible method of reimbursement); ENA Comments at 18 (stating that applicants should be permitted to choose either the BEAR or the SPI method of invoicing as in the E-Rate Program); EdLiNC Comments at 11 (urging the Commission to ensure maximum flexibility by retaining the option for both vendors and schools and libraries to submit invoices); ALA May 6 *Ex Parte* at 3 (explaining that “allowing both BEAR and SPI invoicing options will increase library participation in the ECF Program”); Letter from Whitney Silverman, National Association of Independent Schools et al to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed May 4, 2021) (requesting that service providers be allowed to invoice for the Emergency Connectivity Program to facilitate private and independent school participation in the program).

actual funds to the service provider where the applicant and service provider have both consented to that approach and the applicant can show that the contractual obligation exists. As part of the invoicing process, applicants and service providers must provide required certifications, along with any necessary documentation to support their requests. We clarify that applicants may use consultants and service providers to assist with the preparation of their reimbursement requests to the extent necessary, but any fees associated with such assistance are not eligible for funding under the Program.

94. In addition, we are also sympathetic to concerns raised by commenters that applicants may not be able to cover the upfront costs associated with eligible equipment and services. We therefore will allow applicants who have entered into contractual arrangements or are otherwise legally obligated to purchase eligible equipment and services from their service provider, to submit requests for reimbursement before they have paid for the requested equipment and services.<sup>262</sup> Applicants must pay their service provider within 30 days after receipt of funds and will be required to certify compliance and provide verification of payment to the service provider.<sup>263</sup>

95. Although we allow applicants to request that their service providers submit invoices for payment from the Emergency Connectivity Fund, we do not require service providers to accept that responsibility.<sup>264</sup> At this juncture, we expect that applicants and service providers may have already entered into contracts for much of the eligible equipment and services to be purchased in the coming school year, and service providers would not have entered into those contracts expecting to have responsibility for invoicing the Emergency Connectivity Fund Program. At the same time, if requested to do so by the school or library, some service providers may be willing to invoice the federal government rather than the school or library for payment. We therefore conclude on balance that allowing both options for submission of Emergency Connectivity Fund Program reimbursement requests is an efficient and effective way to ensure that applicants are actually able to purchase the eligible equipment and services. For administrative simplicity, applicants must specify at the application stage whether the applicant or service provider will be doing the invoicing. If an applicant indicates that the service provider will be doing the invoicing, the applicant will have to submit evidence of the service provider's willingness to do so.

96. *Documentation.* To protect against waste, fraud, and abuse of the Fund, we will require applicants and service providers to submit, along with their reimbursement requests, invoices detailing the items purchased. Invoices must support the amounts requested in the application form and reimbursement request. We agree with commenters that suggest submission of invoices with reimbursement requests is sufficient in most instances and will help expedite review of reimbursement requests and the disbursement of funds.<sup>265</sup> While we will not require applicants and service providers to

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<sup>262</sup> See, e.g., SECA Comments at 19-20 (proposing that applicants be allowed to request up-front payments for eligible equipment and services and be required to submit verification that the service provider was paid after receipt of funds); Remote Learning Coalition *Ex Parte* at 4 (arguing that applicants should be able to invoice after making a payment or issuing a purchase order based on a contract with verification that payment was made to the service provider); SECA May 6 *Ex Parte* at 2 (same).

<sup>263</sup> See 47 CFR § 54.1711(a)(1)(v), (b).

<sup>264</sup> By contrast, the E-Rate Program has a lengthy history of service provider invoicing. See, e.g., CTIA Comments at 14-15 (explaining that the provider-focused funding process used in E-Rate is rooted in a different statute with different purposes and should not be replicated for the Emergency Connectivity Fund Program. "In E-Rate, the Commission historically provided funding to service providers in the first instance, but this is because of language in Section 254(h) that is not present in the American Rescue Plan Act.").

<sup>265</sup> See, e.g., CGCS Comments at 5 (stating that "submitting invoices for products and services that are ordered or received during the emergency period is sufficient documentation that state, local, or district procurements policies were followed to the extent possible"); ClientFirst Comments at 4 (asserting that the submission of invoices and documentation is a reasonable safeguard as it is similar to the documentation required in the E-Rate Program);

(continued....)



submit other supporting documentation at the time they submit their reimbursement requests, as discussed further below and pursuant to our document retention requirements, all participants must certify receipt/delivery of eligible equipment and services and that only eligible equipment and services were invoiced, as well as retain and provide upon request by USAC, Commission staff, or any other authorized federal entity with oversight authority over federal financial assistance and/or the federal response to the pandemic, all records related to their reimbursement request (including, for example, contracts and asset inventories).<sup>266</sup>

97. *Leveraging Existing E-Rate Invoicing Forms.* To further streamline the invoicing process and reduce burdens on applicants, we direct USAC to leverage the existing E-Rate invoicing forms to the extent feasible for the Emergency Connectivity Fund Program. Because we allow applicants and service providers to submit reimbursement requests, we expect USAC to use, to the extent possible, the FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice (SPI) Form) for this purpose. As detailed below, we will require participants to make certain certifications on the form to protect against waste, fraud, and abuse.<sup>267</sup> By leveraging existing E-Rate forms, we expect to save participants time needed to familiarize themselves with new forms and reduce administrative costs.

98. *Invoicing Deadline.* The *Public Notice* sought comment on establishing a short window for schools and libraries to file invoices and reimbursement requests and sought comment on what the shortest possible invoice filing window would be that would not impose undue burden on applicants.<sup>268</sup> In order to allow the Commission to de-obligate committed funds for use by other schools and libraries, we direct USAC to start accepting requests for reimbursement within 15 days of the first wave of commitments in the first application filing window. We permit applicants and service providers to submit reimbursement requests and invoices for prior and prospective purchases for 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding commitment; or service delivery date, whichever is later. That is half the time provided in the E-Rate Program, but necessary to ensure that we can identify unspent funds and make them available to other applicants as quickly as possible. Commenters agree that a shorter invoicing period is reasonable and recommend an invoicing window of between 60 and 90 days.<sup>269</sup> We find that 60 days strikes the correct balance.

## **I. Payment Administration**

99. While USAC will be administering the Emergency Connectivity Fund Program as permitted under section 7402(c)(2)(A) of the American Rescue Plan, and pursuant to the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency Connectivity Fund Program,<sup>270</sup> the Commission must authorize the

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CETF Comments at 20 (supporting that adequate and accurate documentation such as invoices be required); CCA Comments at 9 (supporting a simple, streamlined approach for reimbursements, such as the submission of invoices).

<sup>266</sup> See *infra* Section III.L.2, para. 119.

<sup>267</sup> See *infra* Section III.L.4, paras. 115-37.

<sup>268</sup> *Public Notice* at 14.

<sup>269</sup> See, e.g., M-DCPS Comments at 4 (stating that invoices can be provided within a 30-day window); Milwaukee Public Library Comments at 4 (recommending a 60- to 90-day window to submit reimbursement requests and invoices).

<sup>270</sup> See generally Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company Regarding the Emergency Connectivity Fund (Mar. 19, 2021) (*Emergency Connectivity Fund MOU*), [https://www.fcc.gov/sites/default/files/mou\\_fcc-usac\\_emergency\\_connectivity\\_fund-3.18.21.pdf](https://www.fcc.gov/sites/default/files/mou_fcc-usac_emergency_connectivity_fund-3.18.21.pdf).



payments from the Emergency Connectivity Fund prior to the disbursement of those funds by the United States Department of Treasury.<sup>271</sup> In this Report and Order, we provide guidance on steps participants must be prepared to take to ensure timely payment of reimbursement claims from the Fund, as well as processes used to ensure proper payment.

100. *FCC Red Light Rule.* To implement the requirements of the Debt Collection Improvement Act of 1996, the Commission established what is commonly referred to as the “red light rule.”<sup>272</sup> Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt.<sup>273</sup> If the delinquent debt remains unpaid or other arrangements have not been made within 30 days of being notified of the debt, the Commission will dismiss any pending applications.<sup>274</sup> If an Emergency Connectivity Fund participant is currently on red light, it will need to satisfy or make arrangements to satisfy any debts that it owes to the Commission before its application can be processed.

101. *System for Award Management (SAM) Registration.* All applicants that intend to participate and all service providers that elect to submit requests for reimbursement in the Emergency Connectivity Fund Program must also register with the System for Award Management (SAM). SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government’s partners in support of federal awards, grants, and electronic payment processes. Registration in the SAM provides the Commission with an authoritative source of information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014 (collectively, Transparency Act or FFATA/DATA Act).<sup>275</sup> Only those applicants and service providers that are actively registered in SAM will be able to receive reimbursement from the Emergency Connectivity Fund Program. Applicants and service providers that are already registered with SAM do not need to re-register with that system in order to receive payment from the Emergency Connectivity Fund Program. Applicants who are not already registered with SAM may still participate in the Emergency Connectivity Fund Program, apply for funding, and receive program commitments. However, active SAM registration is required for an applicant or service provider to receive a payment from the Emergency Connectivity Fund Program.<sup>276</sup> To assist participants who are not registered with SAM, we direct USAC to provide information and guidance to participants regarding the SAM registration process. Furthermore, Program recipients may be subject to further FFATA/DATA Act

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<sup>271</sup> See Treasury Financial Manual, Vol. I, Part 4a, Ch. 3000, § 3040- Designation of Certifying Officers, <https://tfm.fiscal.treasury.gov/v1/p4/ac300.html> (explaining that certifying officers who are designated to approve disbursement of federal funds must be government employees).

<sup>272</sup> *Amendment of Parts 0 and 1 of the Commission's Rules; Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, MD Docket No. 02-339, Report and Order, 19 FCC Rcd 6540 (2004).

<sup>273</sup> 47 CFR § 1.1910(b)(2).

<sup>274</sup> 47 CFR § 1.1910(b)(3).

<sup>275</sup> Pub. L. No. 109-282, 120 Stat. 1186 (2006) and Pub. L. No. 113-101, 128 Stat. 114 (2014), codified at 31 U.S.C. § 6101 note. In August 2020, OMB updated the rules governing compliance with the Transparency Act as part of wider ranging revisions to title 2 of the Code of Federal Regulations. 85 FR 49506 (published August 13, 2020) (including revisions to 2 CFR Parts 25, 170, 183, and 200). OMB explained that the SAM registration requirements were expanded “beyond grants and cooperative agreements to include other types of financial assistance” to ensure compliance with FFATA. 85 Fed. Reg. 49506, 49517.

<sup>276</sup> It is strongly recommended that unregistered applicants and service providers that will submit requests for reimbursement start that registration process immediately because it may take up to 20 days for the registration to become active and an additional 24 hours before that registration information is available in other government systems. To register with the system, go to <https://www.sam.gov/SAM/> and provide the requested information.

reporting requirements to the extent that awardees subaward the payments they receive from the Program, as defined by FFATA/DATA Act regulations. Recipients may be required to submit data on those subawards.<sup>277</sup>

102. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019, the Commission is required to ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any federal funds.<sup>278</sup> To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the U.S. Treasury's Bureau of the Fiscal Service.<sup>279</sup> If a check of the Do Not Pay system results in a finding that an Emergency Connectivity Fund Program applicant or service provider should not be paid, the Commission will not issue any funding commitments or issue disbursements. The Emergency Connectivity Fund Program participant is responsible for working with the relevant agency to correct its information in the Do Not Pay system before its Emergency Connectivity Fund Program application is processed and Program payments can be issued.<sup>280</sup>

#### **J. Designating USAC as the Administrator of the Emergency Connectivity Fund Program**

103. Pursuant to the authority granted in section 7402(c)(2)(A) of the American Rescue Plan, and the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency Connectivity Fund,<sup>281</sup> we designate USAC as the Administrator of the Emergency Connectivity Fund Program. We will use USAC's services to review and approve applications for funding, recommend funding commitments, issue funding commitment decision letters, review requests for reimbursement and invoices and recommend payment of funds, as well as other administration-related duties. Commenters that addressed the issue overwhelmingly support using USAC and its processes for the efficient and effective administration of the Emergency Connectivity Fund Program,<sup>282</sup> and we agree that USAC's experience administering the E-Rate Program and other Commission pandemic response programs<sup>283</sup> makes USAC uniquely situated to be the administrator of the Emergency Connectivity Fund Program.

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<sup>277</sup> 2 CFR Part 170, App. A. OMB highlighted part 170 compliance in M-21-20, *Promoting Public Trust in the Federal Government through Effective Implementation of the American Rescue Plan Act and Stewardship of the Taxpayer Resources* (rel. Mar. 19, 2021) ("Agencies are reminded of: (1) the subaward reporting requirements located at 2 CFR part 170, *Reporting Subawards and Executive Compensation Information*; and (2) agencies' responsibilities to implement processes that support the overall quality of subaward data, including actions agencies are expected to take when recipients are non-compliant with these reporting requirements.").

<sup>278</sup> Payment Integrity Information Act (PIIA), Pub. L. No. 116-117, 134 Stat. 113 (2020). PIIA codifies and amends the prior improper payment statutes (*i.e.*, Improper Payments Information Act of 2002, Pub. L. No. 107-300; Improper Payments Elimination and Recovery Act of 2010, Pub. L. No. 111-204; Improper Payments Elimination and Recovery Improvement Act of 2012, Pub. L. No. 112-248; and Fraud Reduction and Data Analytics Act of 2015, Pub. L. No. 114-186).

<sup>279</sup> For additional information, please see: <https://fiscal.treasury.gov/DNP/>.

<sup>280</sup> For additional information, please see: <https://fiscal.treasury.gov/dnp/privacy-program.html#data-correction-process>.

<sup>281</sup> See H.R. 1319, tit. VII, § 7402(c)(2)(A); *Emergency Connectivity Fund MOU*.

<sup>282</sup> See, *e.g.*, FFL Comments at 1-2; SHLB Comments at 8; CETF Comments at 7; E-Rate Central Comments at 2; E-mpa Comments at 11-12.

<sup>283</sup> The Commission has designated USAC as the administrator of the Emergency Broadband Benefit Program and the COVID-19 Telehealth program. See *Emergency Broadband Benefit Order*, 2021 WL 7972753, at \*60, para. 149; *COVID-19 Telehealth Program*, WC Docket No. 20-89, Report and Order, 36 FCC Rcd 1613, 1615-16, para. 8 (2021) (*COVID-19 Telehealth Program USAC Delegation Order*).

104. In designating USAC as Administrator of the Emergency Connectivity Fund Program, we adopt the same requirements for USAC as are currently provided in section 54.702(c)-(d) of our rules governing USAC's duties as Administrator of the Universal Service Support Programs.<sup>284</sup> In so doing, among other things, we prohibit USAC from making policy, interpreting unclear statutes or rules relied upon to implement and administer the Emergency Connectivity Fund Program, or interpreting the intent of Congress.<sup>285</sup>

105. In its administration of the Program, we also direct USAC to comply with, on an ongoing basis, all applicable laws and federal government guidance on privacy and information security standards and requirements, such as the Privacy Act,<sup>286</sup> relevant provisions in the Federal Information Security Modernization Act of 2014,<sup>287</sup> National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

106. Universal Service Fund Program audits have been successful in helping participants become compliant with the Commission's rules and in protecting the funds from waste, fraud, and abuse. We therefore remind Emergency Connectivity Fund Program participants including schools, libraries, consortia, and service providers, that similar to the E-Rate and other Universal Service Fund Programs, they shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund Program. If the Commission determines that USAC should administer program audits for the Emergency Connectivity Fund Program, the Commission will direct USAC to perform such audits pursuant to the Commission and USAC's respective roles and responsibilities in the Memorandum of Understanding.<sup>288</sup>

107. We also provide a path for recourse to parties aggrieved by decisions issued by USAC. Specifically, we adopt the appeals and waiver request rules that govern USAC's administration of the Universal Service Support Programs, including the E-Rate Program.<sup>289</sup> We find these existing processes sufficient to provide a meaningful review of decisions issued by USAC and the Commission regarding the Emergency Connectivity Fund Program. However, we make one modification for the Emergency Connectivity Fund Program appeal and waiver rules and provide a 30-day timeframe to request the review of an action by USAC,<sup>290</sup> or to request the review of a decision by USAC or a waiver of the Commission's rules.<sup>291</sup> We make this change because this is a short-term emergency program and to help provide faster timeframes for issuing appeal and waiver decisions.

#### **K. Children's Internet Protection Act**

108. We find that the obligations of the Children's Internet Protection Act (CIPA), which apply to schools and libraries having computers with Internet access that seek E-Rate funding for Internet access, Internet service, or internal connections under section 254(h)(1)(b) of the Communications Act also apply to schools and libraries making certain purchases through the Emergency Connectivity Fund

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<sup>284</sup> 47 CFR § 54.702(c)-(d).

<sup>285</sup> 47 CFR § 54.1717(c); 47 CFR § 1717(d).

<sup>286</sup> 5 U.S.C. § 552a.

<sup>287</sup> The Federal Information Security Management Act of 2002 (FISMA), enacted as Title III, E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2946 (Dec. 17, 2002), was subsequently modified by the Federal Information Security Modernization Act of 2014 (Pub. L. No. 113-283, Dec. 18, 2014). As modified, FISMA is codified at 44 U.S.C. §§ 3551 et seq.

<sup>288</sup> See *infra* Section III.L.5, paras. 132-34.

<sup>289</sup> See 47 CFR §§ 54.719-54.725, 54.1718.

<sup>290</sup> See 47 CFR § 54.1718(b)(1).

<sup>291</sup> See 47 CFR § 54.1718(b)(2).

Program. Specifically, we conclude that CIPA applies to the use of school or library owned computers, including laptop and tablet computers, if the school or library accepts Emergency Connectivity Fund or E-Rate support for Internet access or Internet services, or E-Rate support for internal connections. We also conclude that CIPA does not apply where schools or libraries have purchased advanced telecommunications and information services through the Emergency Connectivity Fund Program to be used only in conjunction with student-, school staff- or patron-owned computers. As explained below, these conclusions reflect the fact that section 7402(a) of the American Rescue Plan expressly provides that Emergency Connectivity Fund support is to be made available pursuant to section 254(h)(1)(B) and (2) of the Communications Act.<sup>292</sup>

109. Congress enacted CIPA as part of the Consolidated Appropriations Act of 2001, amending section 254 of the Communications Act.<sup>293</sup> CIPA requires a school or library “having” Internet-connected computers and receiving E-Rate funding for Internet access, Internet service, or internal connections to comply with, and certify its compliance with, specific Internet safety requirements for “its” computers, including the adoption and enforcement of an Internet Safety Policy that includes the operation of a technology protection measure.<sup>294</sup> Schools, but not libraries, must also provide education about appropriate online behavior including cyberbullying.<sup>295</sup>

110. Many commenters support the applicability of CIPA requirements in the context of the Emergency Connectivity Fund Program,<sup>296</sup> while others raised concerns regarding the potential challenges of implementing CIPA compliance on services and devices that are outside of the applicant’s direct control.<sup>297</sup> We reject the argument made by at least two commenters that CIPA does not apply to

<sup>292</sup> H.R. 1319, tit. VII, § 7402(a); *see also* 47 U.S.C. § 254(h)(1)(B), (h)(2).

<sup>293</sup> Pub. L. No. 106-554. CIPA is codified at section 254(h)(5)-(6), and (l) of the Communications Act of 1934, as amended. *See* 47 U.S.C. § 254(h)(5)-(6) and (l). CIPA requires each covered school and library to certify that the school or library is: (1) enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers to visual depictions that are, (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) enforcing the operation of such technology protection measure during any use of such computers by minors and adults. 47 U.S.C. §§ 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (6)(B)(i)-(ii) and (C)(i)-(ii) and 254(l); 47 CFR § 54.520(c)(1)(i) and (c)(2)(i); *see also* 2001 CIPA Order; *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 26 FCC Rcd 11819 (2011) (2011 CIPA Order).

<sup>294</sup> 47 U.S.C. § 254(h)(5)(A)(i), (B), (h)(6)(A)(i), (B); *see also id.* § 254 (l) (setting forth other Internet Safety Policy requirements). By its text, CIPA applies to schools and libraries seeking “services at discount rates under paragraph (1)(B)” except for services other than the provision of Internet access, Internet service, or internal connections. *Id.* §§ 254(h)(5)(A)(i)-(ii), (h)(6)(A)(i)-(ii). The Commission has consistently interpreted these provisions to mean that CIPA “only applies to entities receiving Internet access, Internet service, or internal connections” and excludes schools and libraries receiving only telecommunications services. *See, e.g.,* 2001 CIPA Order, 16 FCC Rcd at 8195-96, para. 28 (quotations marks omitted).

<sup>295</sup> 2011 CIPA Order, 26 FCC Rcd at 11821, para. 5.

<sup>296</sup> *See, e.g.,* ACA Connects Comments at 17; M-DCPS Comments at 5; WISPA Comments at 7; South Carolina Comments at 9, 11; Bethlehem Area School District Comments at 5; GCI Communications Corp. Reply at 8-9.

<sup>297</sup> *See, e.g.,* CGCS Comments at 5 (explaining that it would be impossible for applicants to police CIPA compliance with connections that run directly from the home to a service provider); Milwaukee Public Library Comments at 4-5 (asserting that application of CIPA would introduce a costly burden); Tony Thurmond Comments at 3-4 (filed on behalf of the California Department of Education) (seeking clarification regarding situations where a provider does not provide for CIPA compliance); E-mpa Comments at 8 (arguing that it would be impossible for applicants to audit CIPA compliance on end-user devices in the home or other locations); Alaska Communications Comments at 3-4 (observing that CIPA-required filtering often occurs at the network level and certain eligible equipment for off-campus use lack the functionality to implement filtering).

the Emergency Connectivity Fund Program because the American Rescue Plan does not explicitly cite to the CIPA provisions in section 254 of the Communications Act.<sup>298</sup> Section 7402(a) of the American Rescue Plan requires that the Emergency Connectivity Fund is to be made available under section 254(h)(1)(B) and (2),<sup>299</sup> and CIPA requirements apply to eligible entities having computers with Internet access that seek funding for Internet access, and Internet service, and internal connections under the same provision, section 254(h)(1)(B).<sup>300</sup> Therefore, as discussed further in this section, we conclude that CIPA requirements extend to eligible entities having computers with Internet access that seek support for Internet access or Internet service through the Emergency Connectivity Fund pursuant to section 254(h)(1)(B). Few commenters, however, analyzed whether CIPA's applicability might depend on which equipment and services a school or library purchases through the Emergency Connectivity Fund Program. And we conclude that such an analysis is necessary, given the unique text and structure of CIPA.

111. *First*, we conclude that CIPA applies to the use of any computers owned by a school or library, including those purchased with Emergency Connectivity Fund support if the school or library receives Emergency Connectivity Fund or E-Rate support for Internet access or Internet services, or E-Rate support for internal connections. This is true even if the student or library patron does not use Internet access services provided by the school or library.<sup>301</sup> This conclusion follows from the statutory text: CIPA applies to a school or library “having” computers and requires the entity to certify compliance as to “its” computers.<sup>302</sup> Both words indicate that CIPA is triggered by ownership of a device, not the location where the device is used or temporarily possessed. We disagree with the suggestion that CIPA applicability is narrowly limited to school- or library-owned computers within a school or library building.<sup>303</sup> While the drafters of CIPA may have been primarily focused on computers within schools or libraries, that is because of the circumstances at the time,<sup>304</sup> and the plain language of the statute is not so limited. It reaches the use of devices owned by schools and libraries, regardless of whether the device is used off-campus, including use of such devices by students in their homes.

112. *Second*, we conclude that CIPA does *not* apply to the use of computers owned by a school or library including those laptop computers or tablet computers purchased with support from the Emergency Connectivity Fund Program, if the purchasing entity does not *also* receive Emergency Connectivity Fund or E-Rate discounted Internet access or Internet services, or E-Rate discounted internal connections—or network equipment for Internet access, Internet service, or internal connections. Here too, our conclusion follows from the plain text of the statute. CIPA prohibits a school or library from

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<sup>298</sup> See, e.g., Massachusetts Board of Library Commissioners Reply at 4; Chief Officers of State Library Agencies Reply at 2 (COSLA Reply).

<sup>299</sup> See H.R. 1319, tit. VII, § 7402(a); see also 47 U.S.C. § 254(h)(1)(B), (h)(2).

<sup>300</sup> See 47 U.S.C. § 254(h)(5)(A)(i)-(ii) and (h)(6)(A)(i)-(ii).

<sup>301</sup> We clarify that Internet access, Internet service, or internal connections include modems, routers, and hotspots, which qualify as eligible “Network Equipment” for Internet access, Internet service, or internal connections.

<sup>302</sup> 47 U.S.C. §§ 254(h)(5)(A)(i), (B)(i) and (h)(6)(A)(i), (B)(i); see also SECA April 23 *Ex Parte* at 5 (arguing the word “its” in the statute refers to the schools’ computer, which demonstrates the intent to require CIPA compliance on school-owned computers, whether on-campus or off-campus).

<sup>303</sup> See, e.g., ALA Comments at 12 (arguing that the statutory reference to “a library” demonstrates intent to limit applicability to inside a library building); Milwaukee Public Library Comments at 5 (contending that CIPA was intended to protect children inside of schools and libraries); Altice Comments at 10 (asserting that CIPA does not apply outside of a school or library building); COSLA Reply at 2 (understanding that the language in CIPA applies to use inside of library buildings); Urban Libraries Council Reply at 4; Massachusetts Board of Library Commissioners Reply at 4.

<sup>304</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11378, para. 272 (2013) (“When CIPA was enacted, most school and library computers that provided Internet access were found at large, stationary terminals.”).

“receiv[ing] services at discount rates” unless it complies with CIPA.<sup>305</sup> CIPA also makes clear that this prohibition does not apply to a school or library that receives discounted services “only for purposes other than the provision of Internet access, Internet service, or internal connections.”<sup>306</sup> The Commission has construed these provisions to mean that CIPA “applies [only] to entities receiving Internet access, Internet service, or internal connections” under section 254(h).<sup>307</sup> Thus, there is no statutory basis for requiring CIPA compliance from a school or library that does not receive those services through E-Rate or the Emergency Connectivity Fund—even if it purchases laptop computers or tablet computers through the Emergency Connectivity Fund.

113. *Third and finally*, we conclude that CIPA does not apply to the use of third-party owned devices, even if the school or library receives Emergency Connectivity Fund or E-Rate support for Internet access or Internet services, or E-Rate support for internal connections. This interpretation flows from the statute. A school or library does not “hav[e]” student-, school staff- or patron-owned devices, nor would it make sense for a school or library to certify that those devices are “its” devices for purposes of CIPA compliance.<sup>308</sup> Moreover, when read in conjunction with section 254(h)(5) and (6), section 254(l) is meant to apply only to a school’s or library’s computers—and not to the delivery of services for a student’s, school staff’s or library patron’s personal computer. Schools and libraries are free to decide whether to allow the use of third-party devices on their own networks or the broadband connections purchased for use by their students, school staff, and library patrons and to adopt measures to protect or limit the use of those connections by students, school staff or library patrons using their own devices to access those connections.

114. *CIPA Certifications.* In recognition of the long history of CIPA compliance in the E-Rate application process,<sup>309</sup> we find that an Emergency Connectivity Fund applicant need not complete additional CIPA compliance certifications if it has already certified its CIPA compliance for E-Rate support for the relevant funding year (i.e., has certified its compliance in an FCC Form 486 or FCC Form 479).<sup>310</sup> To the extent an applicant for Emergency Connectivity Fund Program support has not already certified its CIPA compliance for E-Rate applications, these applicants will be required to certify either (1) that it is in compliance with CIPA requirements under section 254(h) and (l); (2) that it is undertaking the actions necessary to comply with CIPA requirements;<sup>311</sup> or (3) if applicable, that the requirements of CIPA do not apply, because the applicant is not receiving discounted Internet access, Internet services, or internal connections. We conclude that our approach will best ensure full accountability and compliance

<sup>305</sup> 47 U.S.C. §§ 254(h)(5)(A)(i), (6)(A)(i).

<sup>306</sup> 47 U.S.C. §§ 254(h)(5)(A)(ii), (6)(A)(ii).

<sup>307</sup> 2001 CIPA Order, 16 FCC Rcd at 8195-96, para. 28 (quotation marks omitted).

<sup>308</sup> 47 U.S.C. §§ 254(h)(5)(A)(i), (B)(i) and (h)(6)(A)(i), (B)(i).

<sup>309</sup> In the E-Rate Program, applicants are required to certify compliance with the CIPA requirements set out in section 254(h) and (l) on the Receipt of Service Confirmation Form (FCC Form 486), or the Certification by Administrative Authority to Billed Entity of Compliance with the Children’s Internet Protection Act (FCC Form 479). See 47 U.S.C. § 254(h) and (l); 47 CFR § 54.520 (providing the Commission’s requirements for compliance with CIPA).

<sup>310</sup> See 47 U.S.C. § 254(h)(5)(A)(i), (6)(A)(i) (requiring certifications concerning section 254(h)(5), (h)(6), and (l)). If an applicant’s existing certification states that CIPA does not apply because the applicant is receiving only telecommunications services, and if the applicant’s Emergency Connectivity Fund purchases trigger CIPA compliance requirements, the applicant will be required to provide new certifications via the FCC Form 471.

<sup>311</sup> We find that requiring applicants to certify that they are undertaking such actions necessary to comply with CIPA is consistent with CIPA and will not impose an undue burden on new applicants and is in the interest of getting the funding out expeditiously. See 47 U.S.C. § 254(h)(5)(E)(ii)(II)(aa), (6)(E)(ii)(II)(aa) (requiring schools and libraries without Internet safety policy and technology protection measures in place to certify to “undertaking such actions” to put the requirements into place).

on the part of all schools and libraries, while minimizing administrative burdens and costs for applicants and the Commission. To streamline the application and reimbursement process, the CIPA certifications will be included on the FCC Form 471 that will be used for the Emergency Connectivity Fund Program and will not be on a separate FCC form.

## **L. Protections Against Waste, Fraud, and Abuse**

115. We take seriously our obligation to be a careful steward of the Emergency Connectivity Fund, and to protect the Program from waste, fraud, and abuse. We are committed to ensuring the integrity of the Emergency Connectivity Fund Program and will pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies. The specific procedures identified below regarding asset inventory requirements, document retention requirements, the prohibition on gifts, certifications, audits, and treatment of eligible equipment are tools at our disposal to protect the Emergency Connectivity Fund and to ensure the limited funding is used for its intended purposes to support and enable remote learning for students, school staff, and library patrons nationwide.

### **1. Device and Service Inventory Requirements**

116. We require Emergency Connectivity Fund Program participants to maintain inventories of devices and services purchased with Program support.<sup>312</sup> Commenters are very supportive of requiring Emergency Connectivity Fund Program participants to maintain device and service inventories, which are also required in the E-Rate Program.<sup>313</sup> Requiring eligible entities to keep and maintain inventories for eligible equipment and services purchased through the Emergency Connectivity Fund Program ensures that schools and libraries know where the Emergency Connectivity Fund-supported equipment and services are located and that they are being used consistent with the same requirement in the E-Rate Program.<sup>314</sup> We are sympathetic to concerns expressed by some commenters that keeping track of equipment in the homes of students and library patrons is more difficult than maintaining an inventory list of equipment in a school or library. We acknowledge the fact that some loss of equipment as a result of students, school staff, or library patrons breaking or losing the equipment or moving out of the area and not returning it, and other similar scenarios is to be expected and is not *per se* evidence of waste, fraud and abuse by the applicants.<sup>315</sup> However, it is the obligation of schools and libraries to keep track of and document the devices and other equipment that they distribute, and that includes documenting information about missing, lost, or damaged equipment.

117. For the Emergency Connectivity Fund Program, the asset inventory for devices provided to individuals, must include the following information: (a) device type (i.e., laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the person to whom the device was provided; and (e) the dates the device was loaned out and returned to the school

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<sup>312</sup> See *Public Notice* at 16.

<sup>313</sup> See, e.g., M-DCPS Comments at 5 (noting the district will continue to apply the E-Rate rules for retaining and presenting records and maintaining asset and service inventories); Bethlehem Area School District Comments at 5 (agreeing that an inventory of services and devices funded through the Emergency Connectivity Fund should be retained); SECA Comments at 16 (“[A]pplicants should be required to maintain records of their purchases and other documentation consistent with the traditional E-rate program.... Asset inventories already must be maintained for equipment purchased with E-rate funds”); EducationSuperHighway Comments at 8 (supporting the requirement that asset and service inventories are retained); see also Alaska DEED Comments at 5-6 (explaining that asset inventories should be retained with the location, make, model, serial number, but without the individual person’s name and address because of privacy concerns).

<sup>314</sup> 47 CFR § 54.516(a) (requiring asset and inventory records of E-Rate-supported equipment to verify location of the assets).

<sup>315</sup> See, e.g., E-mpa Comments at 8-11 (highlighting the challenges faced by schools and libraries in managing devices that often move, break, or go missing at a higher rate in the hands of students and library patrons).

or library.<sup>316</sup> The inventory for devices not provided to individual students, school staff, or library patrons, but used to provide service to multiple eligible users, for example, a Wi-Fi hotspot used to provide service on a school bus, must include the following information: (a) device type (i.e., laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the school or library employee responsible for that device; and (e) the dates the device was in service.<sup>317</sup>

118. We further require Emergency Connectivity Fund Program participants to maintain a record of services purchased with Emergency Connectivity Fund support.<sup>318</sup> This record of services must include the following information: (a) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: upload and download speeds and monthly data cap; (c) the name(s) of the person(s) to whom the service was provided; and for fixed broadband service; (d) the service address, and (e) the installation date of service; and (f) the last date of service (as applicable).<sup>319</sup> The inventory for service not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users must include the following information: (a) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: upload and download speeds and monthly data cap; and (c) the name of the school or library employee responsible for the service; (d) a description of the intended service area; and for fixed broadband service; (e) the service address; (f) the installation date of service, and (g) the last date of service (as applicable).<sup>320</sup>

## 2. Document Retention Requirements

119. We also adopt records retention rules for the Emergency Connectivity Fund Program.<sup>321</sup> Specifically, we require Emergency Connectivity Fund Program participants to retain records related to their participation in the Program sufficient to demonstrate compliance with all Program rules for at least 10 years from the last date of service or delivery of equipment.<sup>322</sup> This 10-year document retention requirement is consistent with the document retention requirement in the E-Rate Program, and many commenters were supportive of conforming the document retention requirements of the two programs.<sup>323</sup> Doing so allows E-Rate participants to rely on their existing retention policies and mitigates the confusion that different retention periods might create. Some commenters supported a shorter document retention period, explaining that the emergency nature of the Emergency Connectivity Fund Program makes the 10-year document retention period too long.<sup>324</sup> We find some of the shorter suggested document retention

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<sup>316</sup> See 47 CFR § 54.1715(a)(1).

<sup>317</sup> See 47 CFR § 54.1715(a)(2).

<sup>318</sup> See *Public Notice* at 16.

<sup>319</sup> See 47 CFR § 54.1715(a)(3).

<sup>320</sup> See 47 CFR § 54.1715(a)(4).

<sup>321</sup> See 47 CFR § 54.1715(b).

<sup>322</sup> 47 CFR § 54.1715(b).

<sup>323</sup> See, e.g., E-mpa Comments at 5 (agreeing that existing E-Rate document retention requirements should apply to the Emergency Connectivity Fund); AT&T Comments at 7; CETF Comments at 21. Our commitment to protect the privacy of students, school staff, and library patrons should alleviate the concerns expressed by Buffalo & Erie County Public Library that records retention requirements regarding use of certain devices could be an invasion of the privacy of library patrons. Our rules cannot and should not be interpreted to require schools or libraries to collect, maintain, or produce to Commission staff or USAC information regarding the browsing history or application usage of students, school staff or library patrons.

<sup>324</sup> See, e.g., NCTA Comments at 9 (recommending that a six-year document retention period be used consistent with the Emergency Broadband Benefit Program); Los Angeles Unified School District Comments, Attach. at 3

(continued....)



periods of only one or two years inadequate to protect the integrity of the Fund – as they would not provide sufficient time to uncover and investigate instances of waste, fraud, and abuse. Although the Commission has adopted shorter document retention periods for both the Emergency Broadband Benefit Program<sup>325</sup> and the COVID-19 Telehealth Program,<sup>326</sup> we note that Emergency Connectivity Fund Program support may be available through September 30, 2030 and given the size of the fund, \$7.17 billion, a longer document retention period is reasonable for this Program. On balance, we find that a 10-year period is appropriate for the Emergency Connectivity Program, because it allows the Commission the ability to protect the integrity of the Emergency Connectivity Fund Program and is consistent with the document retention requirements for the E-Rate Program. Participants are further required to present this information upon request to the Commission or its delegates, including USAC, as well as to the Commission’s Office of Inspector General.<sup>327</sup>

### 3. Gift Rule

120. In balancing the longstanding goal of fair and open procurement of eligible equipment and services, with the efforts made to date by schools and libraries and service providers to meet remote learning needs during the pandemic, we agree with commenters that gift restrictions should apply to the Emergency Connectivity Fund Program.<sup>328</sup> As AT&T explains, not applying the gift rule “could compromise fair and open procurement.”<sup>329</sup> We recognize that many schools and libraries may have taken advantage of free or discounted connections and devices offered by service providers over the course of the pandemic as a result of the waiver of the E-Rate gift rule granted by the Bureau last year.<sup>330</sup> That waiver currently enables service providers to offer and provide, and schools and libraries to solicit and accept improved broadband connections or equipment for remote learning through June 30, 2021. Moreover, it is impractical to try to impose restrictions on activity that occurred before Congress established the Emergency Connectivity Fund.<sup>331</sup>

121. Therefore, we adopt gift restrictions for the Emergency Connectivity Fund Program that take into account that waiver. The gift restrictions we adopt for the Program prohibit eligible schools and libraries receiving support through the Emergency Connectivity Fund Program, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards, from soliciting or accepting any gift or other thing of value from a service provider

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(arguing that “the three-year documentation retention and audit period as prescribed for the COVID-19 Telehealth Program is more appropriate than the typical 10-year requirement that applies for the traditional E-rate program”); Alaska DEED Comments at 5-6 (claiming that a two-year document retention period beyond the end of the emergency period is reasonable); South Carolina Comments at 12 (recommending a one-year document retention period following the end of the emergency period).

<sup>325</sup> *Emergency Broadband Benefit Order*, 2021 WL 792753, \*29, para. 67 (requiring providers to retain documentation related to the eligibility determination and reimbursement claims for a subscriber for as long as the subscriber receives the Emergency Broadband Benefit discount from that participating provider, but for no less than the six full preceding calendar years).

<sup>326</sup> *Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order, 35 FCC Rcd 3366, 3383, para. 32 (2020) (adopting a three-year document retention period from the last date of service for the COVID-19 Telehealth Program).

<sup>327</sup> 47 CFR § 54.1715(c).

<sup>328</sup> See M-DCPS Comments at 5 (suggesting that the Commission apply gift restrictions moving forward, but not retroactively); T-Mobile Reply at 34-35.

<sup>329</sup> AT&T Comments at 7-8.

<sup>330</sup> See *E-Rate Gift Rule Waiver Orders*.

<sup>331</sup> See *supra* Section III.G., para. 88; see also T-Mobile Comments at 26 (arguing that imposing the gift rule “would effectively punish schools for accepting critical connectivity support when they needed it most”).

participating in or seeking to participate in the Emergency Connectivity Fund Program. Participating service providers are likewise prohibited from offering or providing any gift or other thing of value to eligible entities, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards.<sup>332</sup>

122. In light of the extraordinary needs of schools and libraries to meet the remote learning needs of students, school staff, and library patrons during the pandemic, and the existing partial waiver of the gift rule in the E-Rate program, we provide an exception in the Emergency Connectivity Fund Program gift rule that allows service providers to offer and provide, and applicants to solicit and accept, broadband connections, devices, networking equipment, or other things of value that are directly related to addressing the pandemic-related needs of students, school staff, and library patrons through June 30, 2022.<sup>333</sup> We provide this limited exception for the Emergency Connectivity Fund Program through the end of June 2022 with the hope that by the end of this coming school year, the pandemic-related needs of schools and libraries for broadband connections, devices and networking equipment will have, for the most part, been met. Should that not be the case, affected parties will be able to seek a waiver of the gift rules, following the sunset of this exception. We find that this approach protects the integrity of the procurement of purchases through the Emergency Connectivity Fund Program without unnecessarily burdening applicants or hindering beneficial partnerships between participating service providers, schools, and libraries that support remote learning efforts during these unprecedented times.

#### 4. Certifications

123. As an additional measure to safeguard the Emergency Connectivity Fund from waste, fraud, and abuse, we require participants to provide several certifications as part of the application and invoicing processes. We have found, and participants largely agree, that the use of certifications are a key compliance mechanism to protect the limited funds from waste, fraud, and abuse.<sup>334</sup> All certifications must be made subject to the provisions against false statements contained in the Communications Act<sup>335</sup> and Title 18 of the United States Code.<sup>336</sup>

124. *Compliance with Local, State, and Tribal Procurement Requirements Certification.* To streamline and promote an efficient application process without adopting competitive bidding requirements for the Emergency Connectivity Fund Program, applicants will be required to certify as part of the FCC Form 471 that they have complied with all applicable local, state, and Tribal procurement requirements for any equipment and services purchased, or that will be purchased, with Emergency Connectivity Fund Program support.<sup>337</sup> Schools and libraries that are not subject to public procurement requirements must certify that they have complied with their own procurement processes and requirements, such as those included in a written charter. Complying with local, state, and Tribal procurement rules is an important safeguard to ensure that costs for eligible equipment and services are reasonable and cost-effective. If applicants are unable or unwilling to certify that they have complied with local, state, or Tribal procurement requirements, they will not receive support from the Emergency Connectivity Fund Program.<sup>338</sup> We recognize this may cause hardship for certain schools and libraries,

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<sup>332</sup> See 47 CFR § 54.1704.

<sup>333</sup> See 47 CFR § 54.1704(b).

<sup>334</sup> See, e.g., Buffalo & Erie County Public Library Comments at 3; EdLiNC Comments at 10; E-mpa Comments at 4; SECA Comments at 16-17.

<sup>335</sup> See 47 U.S.C. §§ 502, 503(b).

<sup>336</sup> See 18 U.S.C. § 1001.

<sup>337</sup> See 47 CFR § 54.1703(a).

<sup>338</sup> See, e.g., CETF Comments at 18 (urging the Commission to not deny funding to applicants who did not comply with state, Tribal or local procurement requirements).

but given the importance of protecting the Emergency Connectivity Fund Program, we must ensure applicants are compliant with local, state, or Tribal procurement requirements to receive commitments and reimbursements through the Program.

125. *Duplicate Funding Certification.* To avoid duplicative funding, protect against waste, fraud, and abuse, and to stretch the limited support available through the Emergency Connectivity Fund Program, we will not provide support from the Fund for eligible equipment and services that have already been reimbursed through other federal pandemic relief programs (e.g., CARES Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan); state programs specifically targeted to providing funding for eligible equipment and services; other external sources of funding or gifts specifically targeted to providing funding for eligible equipment and services.<sup>339</sup> For example, if a student's household is receiving support from the Emergency Broadband Benefit Program for broadband Internet access connectivity, the student would not be eligible for broadband connectivity under the Emergency Connectivity Fund Program.<sup>340</sup> Commenters are supportive of adopting this limitation to stretch the limited funds.<sup>341</sup>

126. However, we also agree with commenters that argue schools and libraries should be able to request reimbursement for a portion of the costs of eligible equipment and services if they received funding from another source for only a portion of the costs of that equipment or services.<sup>342</sup> For example, the California Public Utilities Commission (CPUC) explains that it established the California Teleconnect Fund Distance Learning Discount in March 2020 to provide a 50% discount on monthly recurring charges for mobile data services (hotspots) to qualifying K-12 schools, libraries, and other community-based organizations. We agree that the schools and libraries that received 50% discounts through this Program should still be able to seek reimbursement through the Emergency Connectivity Fund Program for the portion of the costs that were not covered by the CPUC's program.<sup>343</sup> We therefore make clear that schools and libraries may request and receive reimbursement for the portion of the costs of eligible equipment and services that were not covered through other sources of funding.

127. We agree, to an extent, with commenters that argue that if applicants were able to pay for eligible equipment and services through a financial gift or donation, that they should be allowed to also seek reimbursement through the Emergency Connectivity Fund in some situations. If the donor specified that the gift was to be used for the type of equipment or services at issue, the applicant cannot seek to use the Emergency Connectivity Fund Program as a second source of funding for the same equipment or service. But, if the school or library simply used general funds it had available to it as the result of gifts or donations, it can seek reimbursement of the cost of the equipment or services from the Emergency Connectivity Fund Program.<sup>344</sup>

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<sup>339</sup> See *Public Notice* at 15.

<sup>340</sup> A student whose household is receiving broadband service through the Emergency Broadband Benefit Program, however, could receive a connected device through the Emergency Connectivity Fund if she would otherwise lack such access.

<sup>341</sup> See, e.g., T-Mobile Comments at 17 (agreeing with this limitation and expressing concerns that without it, schools and libraries could be pressured into applying for Emergency Connectivity Fund support in order to return spent funds); USTelecom Comments at 8-9 (supporting this limitation and requiring applicants to certify that they are not requesting duplicate funding); CTIA Comments at 17 (agreeing that the Commission should limit reimbursements to eligible equipment and services that are not funded through other programs); WISPA Comments at 6 (agreeing that schools and libraries should be reimbursed if funding was received through other programs to avoid duplicate funding).

<sup>342</sup> See, e.g., CPUC Comments at 6-7.

<sup>343</sup> *Id.*

<sup>344</sup> See NCTA Comments at 6 ("To the extent the school does pay for eligible services or equipment, it should be reimbursed through ECF, even if the payment was made possible by a financial gift or donation.").

128. To implement this prohibition on requesting or receiving duplicative funding, we will require applicants to certify, on the application for funding and on the invoicing form that they are not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed with other federal pandemic-relief funding (e.g., CARES Act, Emergency Broadband Benefit Program, Emergency Connectivity Fund Program); targeted state funding; other external sources of targeted funding or targeted gifts; or eligible for discounts through the schools and libraries universal service support mechanism or other universal service support mechanisms.<sup>345</sup> We take this action to ensure that the limited Emergency Connectivity Fund Program support will be used for its intended purposes and if the eligible equipment and services were reimbursed through other federal funds or other sources targeted for those purposes, the applicants should not be seeking funding through the Emergency Connectivity Fund Program.

129. *Non-Usage Certification.* In order to ensure that the Emergency Connectivity Fund Program makes the best use of limited funding, the *Public Notice* sought comment on whether service providers providing monthly services reimbursed through the Emergency Connectivity Fund should be required to report and validate usage of the supported services.<sup>346</sup> The *Public Notice* also sought comment on whether, if there is non-usage during a service month, service providers should be required to notify the school or library regarding the non-usage, and to remove the cost for any non-used service from the invoice provided to the school or library for that service month.<sup>347</sup> The *Public Notice* further sought comment on whether service providers should also be required to certify that they have notified the school or library regarding any non-usage during a service month and have removed charges from such non-usage from the invoices submitted to the school or library for payment.<sup>348</sup> There was widespread agreement that such actions to address non-usage would be overly burdensome on both the service providers<sup>349</sup> and the applicants.<sup>350</sup>

130. Based on the record before us, we find that the better course will be to have applicants certify on requests for reimbursement (i.e., the invoicing form) that the equipment and services are being primarily used for educational purposes by students, school staff, or library patrons and both applicants

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<sup>345</sup> See ACA Connects Comments at 16-17; AT&T Comments at 7; CETF Comments at 20-21; SECA Comments at 16-17; T-Mobile Comments at 17-18; see also 47 CFR §§ 54.1710(a)(1)(vii), 54.1711(e)(7), 54.1712.

<sup>346</sup> *Public Notice* at 16.

<sup>347</sup> *Public Notice* at 16.

<sup>348</sup> *Public Notice* at 16.

<sup>349</sup> See, e.g., CETF Comments at 21 (agreeing that there should be some oversight, but not to the degree that it is insensitive to school schedules or imposes a digital literacy training as a requirement that would take time to schedule); South Carolina Comments at 12 (explaining that requiring service providers to notify the school of library on non-usage every month is overly burdensome); City of San Jose Comments at 4-5 (explaining that requiring monthly reporting and use and reviewing detailed invoices for large inventories of over 15,800 devices will cause an undue burden on staff); T-Mobile Comments at 22 (requiring service providers to submit documentation about non-usage will impose a monthly recurring obligation on applicant).

<sup>350</sup> See, e.g., WTA Comments at 4-5 (arguing that “requiring service providers to monitor, report, and adjust pricing for non-usage constitutes a major complication and disincentive [to offer bulk purchasing pricing]”); Verizon Comments at 11 (explaining that requiring “service providers to ‘report and validate usage of the supported service’ and ‘remove the cost of any non-used service from the invoice’ would be overly burdensome for service providers to implement”); CTIA Comments at 19 (asserting that not all providers will have the ability to identify non-usage and those that are able to, may not be able to do so in real time and the costs for implementing this administrative requirement will outweigh any benefit for this rule). We decline to adopt Verizon’s suggestion that we allow a period of non-usage up to three months. See *Verizon Ex Parte* at 3. We require parties to take reasonable steps to track non-usage but without adding specific timeframes that must be accounted for applicants to determine whether there was non-usage. Although Verizon used summertime in its example, the three-month period could occur any time during the school year.

and service providers are not willfully or knowingly requesting reimbursement for equipment or services that are not being used. Participants should take reasonable actions to monitor and track the usage of equipment and services that are purchased and reimbursed through the Emergency Connectivity Fund, for example, requiring their service providers to provide monthly reports or other information on data use.<sup>351</sup> We adopt these measures to ensure that the equipment and services purchased through the Emergency Connectivity Fund Program are being used for educational purposes and to prevent wasteful spending for unused services, and determine the certification requirement strikes a fair balance between the burdens on applicants and service providers to monitor non-usage and the need to protect the Emergency Connectivity Fund Program from wasteful non-usage.

131. *Additional Certification Requirements.* We also require participants when submitting requests for reimbursement (i.e., invoicing forms) to provide several additional certifications.<sup>352</sup> Participants will also certify that they are seeking funding only for eligible equipment and services. In addition, consistent with the asset and service inventories and records retention requirements discussed above, participants will be required to certify that they maintain an asset inventory, an inventory of services provided, and data regarding fixed broadband services. Participants will also be required to certify that they will retain all program records for 10 years following the last date of service, as well as to their agreement to participate in audits and other post-commitment reviews as may be required.

## 5. Audits

132. As we have for all the Universal Service Fund Programs, we consider audits in the Emergency Connectivity Fund Program to be an important tool in ensuring compliance, and identifying instances of waste, fraud, and abuse.<sup>353</sup> Every dollar lost to waste, fraud, and abuse is funding that does not go to provide devices or connectivity to students, school staff, or library patrons. Not surprisingly, commenters are largely supportive of establishing audit procedures for the Emergency Connectivity Fund Program.<sup>354</sup> To that end, we delegate authority to the Office of the Managing Director to develop and implement an audit process for participants that complies with the requirements and procedures of the Emergency Connectivity Fund Program. The Office of the Managing Director may obtain the assistance of third parties, including but not limited to USAC, in carrying out this effort.

133. In developing audit requirements, the Office of the Managing Director should be mindful of the emergency nature of the pandemic and the intended use for eligible equipment and services purchased with Emergency Connectivity Fund Program support.<sup>355</sup> Specifically, Emergency Connectivity Fund participants shall be subject to audits and other investigations to evaluate compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund, including what equipment and services may be purchased using support from the Emergency Connectivity Fund, and how the

<sup>351</sup> See, e.g., ALA Comments at 13 (stating that there is merit in requiring service providers to provide information to applicants on usage of services supported through the Program, but opposing removing the cost for the service or device from the invoice provided to the applicant); Bethlehem Area School District Comments at 5 (agreeing that it is acceptable to have service providers provide monthly reports and valid usage of the supported services); M-DCPS Comments at 5 (same). See also T-Mobile Comments at 22 (offering that if this requirement was adopted, service providers be able to provide the data on a quarterly basis instead of a monthly basis to ease the burden on applicants). See also 47 CFR § 54.1711(e)(8).

<sup>352</sup> See, e.g., 47 CFR §§ 54.1710(a)(1)(i)-(xii), 54.1711(e)(1)-(12).

<sup>353</sup> See 47 CFR § 54.1714.

<sup>354</sup> See, e.g., CETF Comments at 21; City of Thousand Oaks Comments at 3; SECA Comments at 16-17; USTelecom Comments at 13; WISPA Comments at 9-10; U.S. Cellular Comments at 4.

<sup>355</sup> Some commenters, owing to the emergency nature of this program, argue for a “gentle hand” during audits and other enforcement. See E-mpa Comments at 4. E-Rate Management Professionals Association asks that we not penalize schools during an audit for equipment that is lost or breaks during the first three years of use, given that students may lose or break connected devices used at home. E-mpa Comments at 8, 10-11.

equipment and services may be used.<sup>356</sup> Funding recipients are required to maintain documentation sufficient to demonstrate their compliance with program rules for ten years after the last date of delivery of services or connected devices supported through the Emergency Connectivity Fund Program.<sup>357</sup> Upon request, Emergency Connectivity Fund Program participants must submit documents sufficient to demonstrate compliance with Program rules.<sup>358</sup> Additionally, schools and libraries participating in the Emergency Connectivity Fund Program, may be subject to other audit processes including audits by the Office of Inspector General, and certain schools and libraries participating in the Emergency Connectivity Fund Program that meet the thresholds for being audited under the Single Audit Act are subject to a single audit that contains the FCC compliance supplement for the Emergency Connectivity Fund Program.<sup>359</sup>

134. We are also mindful of the privacy concerns raised regarding providing personally identifiable information to USAC or Commission staff about the individual (e.g., student, school staff member, or library patron) that is receiving and using the Emergency Connectivity Fund-supported equipment and/or services.<sup>360</sup> USAC and Commission staff will abide by all applicable federal and state privacy laws. We also direct USAC and Commission staff to take into account the importance of protecting the privacy of students, school staff and library patrons, to design requests for information from schools and libraries that minimize the need to produce information that might reveal personally identifiable information, and to work with auditors to accept anonymized or deidentified information in response to requests for information wherever possible.<sup>361</sup> If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient for auditors' or investigative purposes, the auditors or investigators may request that the school or library obtain consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to this personally identifiable information or explore other legal options for obtaining personally identifiable information.<sup>362</sup> In the event consent is not available, we recognize that the auditors may need to use other

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<sup>356</sup> 47 CFR § 54.516(c).

<sup>357</sup> See 47 CFR § 54.1715(b).

<sup>358</sup> See 47 CFR § 54.1715(c).

<sup>359</sup> The Single Audit Act is codified, as amended, at 31 U.S.C. §§ 7501-06, and implementing OMB guidance is reprinted in 2 CFR Part 200 (2020). Federal award recipients that expend \$750,000 or more in federal awards in a fiscal year are required to undergo a single audit, which is an audit of an entity's financial statements and federal awards, or a program-specific audit, for the fiscal year. 31 U.S.C. § 7502; 31 CFR § 200.501 (2020).

<sup>360</sup> See, e.g., CDT Comments at 9-12 (arguing that only aggregated student data should be used for funding decisions and audits because of legal protections for personally identifiable information of students and concerns that individual-level student data may not be reliable); ALA Comments at 2-3, 7 (opposing the adoption of any metric that requires libraries to collect patron use and explaining that various state privacy laws protect against such disclosures); NNTRC Comments at 8 (expressing concern that some parents may not feel comfortable with having their students participate in a program where personal information is being collected); SHLB Comments at 6 (stating that requiring schools and libraries to record which individuals used any Emergency Connectivity Fund supported services or equipment and make that information available to the Commission or USAC violates student and patron privacy laws).

<sup>361</sup> See, e.g., E-mpa Comments at 11 (recommending that audit procedures for the Emergency Connectivity Fund focus on invoicing, payments, and delivery of supported equipment and services); The City of Chicago, Chicago Public Library and Chicago Public Schools Remote Learning Comments, WC Docket No. 21-31, at 9-10 (acknowledging that audits are a useful tool but requesting that the Commission consider differences in audits of off-site devices and services).

<sup>362</sup> Several commenters are supportive of using deanonymized or deidentified information for use in audits. See, e.g., ALA Comments at 3 ("We recommend circulation data and data use statistics, with redacted personally identifiable information, would indicate the reach and demand for services provided through libraries."); City of San Jose Comments at 2 (suggesting libraries could provide de-identified and aggregated data from voluntary library patron surveys that collects data on the use and need for the Wi-Fi hotspot devices supported through the Emergency

(continued....)

procedures or take different actions to determine if there is any evidence of waste, fraud or abuse in the Emergency Connectivity Fund Program.

## **6. Treatment of Eligible Equipment during and after the COVID-19 Emergency Period**

135. In order to protect against waste, fraud, and abuse in the Emergency Connectivity Fund Program, and consistent with the current E-Rate rules, we prohibit schools and libraries from selling, reselling, or transferring equipment funded through the Emergency Connectivity Fund Program in consideration of money for three (3) years after its purchase.<sup>363</sup> We conclude that eligible equipment purchased with Emergency Connectivity Fund Program support that has been in use for at least three years will be considered obsolete.<sup>364</sup> Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded. This approach is consistent with section 254(h)(3) of the Communications Act, which applies to the E-Rate Program, and the existing E-Rate Program rules, which prohibit sale, resale or transfer of E-Rate-supported equipment for five years.<sup>365</sup> We adopt this shorter three-year time frame for the Emergency Connectivity Fund, because we agree with commenters that devices and other equipment loaned to students, school staff, and library patrons and installed off-campus will likely have a shorter average life cycle than equipment installed and maintained on school or library premises.<sup>366</sup>

136. We consider but reject suggestions that we “should not prohibit the sale, resale, or transfer of the purchased equipment for anything of value despite the current E-Rate Program rules so long as any such proceed or value be employed for educational or library purposes.”<sup>367</sup> Congress has authorized the use of billions of dollars for purchase of specific types of equipment, and we think permitting schools and libraries to trade in that equipment to fund other programs or services would be inconsistent with Congress’ intent.

137. We hope and expect that the useful life of much of the eligible equipment purchased through the Emergency Connectivity Fund Program will extend beyond the COVID-19 emergency period, and that schools and libraries can continue to use the equipment as the pandemic recedes. At the same time, we recognize that needs may change over the next few years. To that end, commenters urge the Commission to provide schools and libraries the flexibility to determine how such equipment should

(Continued from previous page) \_\_\_\_\_  
Connectivity Fund Program). Others suggest using circulation data for library-loaned equipment and services. *See, e.g.,* Buffalo & Erie County Public Library Comments at 6; ALA Comments at 3.

<sup>363</sup> This restriction is consistent with 47 U.S.C. § 254(h)(3) (“Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.”); *see also* 47 CFR § 54.513 (codifying the requirement for E-Rate eligible services).

<sup>364</sup> *See* 47 CFR § 54.1713(b). This is also consistent with the record on equipment disposal. *See* Los Angeles Unified School District Comments, Attach. at 3 (estimating that the lifespans of Chromebooks and tablets typically range from three to five years); *see also* SETDA Comments at 5-6 (supporting adoption of the E-Rate Program’s five-year equipment retention policy).

<sup>365</sup> *See* 47 U.S.C. § 254(h)(3); *see also* 47 CFR §§ 54.513(a)-(b), 54.1713(a)-(b).

<sup>366</sup> E-mpa Comments at 8-11 (emphasizing that higher levels of “device churn” can be expected for equipment used by children, who often lose, misplace or break devices, and for equipment used at home compared to network equipment, which is generally locked away on school or library premises); Joint Venture Silicon Valley et al. Comments at 5 (recognizing that the eligible devices under the Emergency Connectivity Fund do not have the same expected lifespan as the usual category two networking equipment).

<sup>367</sup> Local Governments Comments at 29. *See also* Milwaukee Public Library Comments at 4 (“Libraries should be allowed to transfer used equipment to community organizations for use in training programs or for refurbishment and use by clients of youth-serving or social service organizations.”).

be treated after the pandemic ends.<sup>368</sup> We agree with commenters that argue that schools and libraries are in the best position to determine the best use of their equipment. We therefore allow participating schools and libraries to use the equipment after the emergency period for such purposes as the school or library considers appropriate, provided that the equipment be used for educational purposes.<sup>369</sup> We find this approach will provide schools and libraries the flexibility to account for the limited lifespan of eligible equipment, while simultaneously combating potential waste, fraud, and abuse.

#### **M. Cost-Effectiveness Analysis**

138. The American Rescue Plan requires us to take action by May 10, 2021 to promulgate rules for the provision of support from the Emergency Connectivity Fund to schools and libraries for specified equipment and services.<sup>370</sup> We have no discretion to diverge from statutory direction and thus a conventional cost benefit analysis, which would seek to determine whether the costs of the required actions exceed their benefits, is not directly called for.<sup>371</sup> Instead, we consider whether the actions we take today are the most cost-effective means to implement this legislation, recognizing that these actions are designed to mitigate a crisis and require swift action.

139. In that regard, because eligible schools and libraries are already very familiar with the E-Rate Program, by leveraging, to the extent feasible, existing E-Rate rules and processes to provide support from the Emergency Connectivity Fund Program,<sup>372</sup> we are adopting the most cost-effective means currently at our disposal for timely implementation of the legislative direction. Those rules have been developed through a series of careful, and iterative rulemaking proceedings, and are well understood. The alternative of devising new approaches would lengthen the process of implementation and, given that they would need to be developed quickly and without the degree of scrutiny usually applied, they would be prone to unintended consequences. Further, a new process would require the benefiting schools and libraries to deal with the unfamiliar, increasing the time and effort they would necessarily expend exactly when both those things come at a premium, and increasing the likelihood of error. We also find that limiting funding to schools which certify that they are using support from the Emergency Connectivity Fund Program to satisfy otherwise unmet needs for connectivity or for devices of students or staff make our actions more cost-effective than other alternatives.

#### **N. Enforcement**

140. The *Public Notice* sought comment on imposing administrative forfeitures and other penalties on Emergency Connectivity Fund Program participants found to be in violation of the Program rules and requirements.<sup>373</sup> The record supports the application of our existing enforcement powers, including imposing administrative forfeitures and other penalties on participating providers that violate the Program rules and requirements, to protect the integrity of the Emergency Connectivity Fund

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<sup>368</sup> SHLB Comments at 14 (opposing restrictions on use of equipment after the Program “as long as the school/library actually uses or tries to use the equipment or services for its intended purpose”); M-DCPS Comments at 5; SETDA Comments at 6; Local Governments Comments at 28-29.

<sup>369</sup> CETF Comments at 20 (recommending a school or library be allowed to keep eligible equipment after the Program for educational purposes).

<sup>370</sup> H.R. 1319, tit. VII, § 7402(a) (directing the Commission to promulgate rules providing for the provision of support from the Emergency Connectivity Fund no later than 60 after the date of enactment of the Act).

<sup>371</sup> See, e.g., *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, WC Docket No. 18-89, Second Report and Order, 35 FCC Rcd 14382, 14371-72, para. 220 (2020) (not conducting a full cost-benefit analysis because certain rules were mandated by statute).

<sup>372</sup> See *supra* Section III.G, para. 90; Section III.H, para. 97 (discussing leveraging E-Rate processes and forms to ease the burden on applicants).

<sup>373</sup> *Public Notice* at 17.



Program,<sup>374</sup> thus we conclude it is appropriate to use the Commission's existing, statutorily permitted enforcement powers for the Program. We also find it appropriate to apply the Commission's suspension and debarment rules currently applicable to the Universal Service Fund Programs to the Emergency Connectivity Fund Program participants.<sup>375</sup> We will withhold Emergency Connectivity Fund Program support from participants found to be in violation of the Program rules, if appropriate, and will also seek to recoup improperly disbursed funds, in addition to appropriate enforcement penalties. We think T-Mobile's concern that an "unduly strict approach to enforcement" could discourage participation in the Program and undermine the goals of the Program is misplaced.<sup>376</sup> The rules we adopt today are straightforward and consistent with the goals of the statute, and we do not think a safe harbor to protect against good faith errors is warranted. Instead, we find that these enforcement mechanisms sufficiently balance the need for widespread participation in the Emergency Connectivity Fund Program with the importance of maintaining the Program's integrity and protecting the Program from waste, fraud, and abuse.

#### **O. Delegations to the Bureau and the Office of Managing Director**

141. We delegate authority to the Bureau, in consultation with the Office of the Managing Director, to implement the decisions reached here. Those implementing decisions may include providing additional detail and specificity to the requirements of the Program to conform with the decisions in this Report and Order, thus ensuring the efficient functioning of this Program.

142. In addition, we delegate financial oversight of this program to the Commission's Managing Director and direct the Office of the Managing Director to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties fall within the Office of the Managing Director's current delegated authority to ensure that the Commission operates in accordance with federal financial statutes and guidance.<sup>377</sup> Such financial oversight must be consistent with the rules adopted in this Report and Order. The Office of the Managing Director performs this role with respect to USAC's administration of the Commission's Universal Service Programs,<sup>378</sup> the COVID-19 Telehealth Program,<sup>379</sup> and the Emergency Broadband Benefit Program,<sup>380</sup> and we anticipate that the Office of the Managing Director will leverage existing policies and procedures, to the extent practicable and consistent with the American Rescue Plan, to ensure the efficient and

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<sup>374</sup> See, e.g., Infinity Comments at 7-8; M-DCPS Comments at 5; CETF Comments at 21; SETDA Comments at 3; ALA Comments at 10; ESU #9 Comments at 7.

<sup>375</sup> See 47 CFR § 54.8 (setting forth the Commission's rules regarding suspension and debarment).

<sup>376</sup> T-Mobile Comments at 27.

<sup>377</sup> 47 CFR § 0.11(a)(3)-(4) (stating that the Office of the Managing Director will "[a]ssist the Chairman in carrying out the administrative and executive responsibilities" and "[a]dvice the Chairman and Commission on management, administrative, and related matters; review and evaluate the programs and procedures of the Commission; initiate action or make recommendations as may be necessary to administer the Communications Act most effectively in the public interest"); 47 CFR § 0.11(a)(8) (stating that the Office of the Managing Director's current responsibility is to "[p]lan and manage the administrative affairs of the Commission with respect to the functions of . . . budget and financial management"); 47 CFR § 0.5(e) (requiring Bureau and Office coordination with the Office of the Managing Director on recommendations "that may affect agency compliance with Federal financial management requirements").

<sup>378</sup> See, e.g., Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company (Dec. 19, 2018) <https://www.fcc.gov/sites/default/files/usac-mou.pdf> (stating that the Commission is responsible for the effective and efficient management and oversight of the Universal Service Fund, including Universal Service Fund policy decisions, and USAC is responsible for the effective administration of the programs).

<sup>379</sup> *COVID-19 Telehealth Program USAC Delegation Order*, 36 FCC Rcd at 1615-16, para. 8.

<sup>380</sup> *Emergency Broadband Benefit Order*, 2021 WL 7972753, at \*60, para. 153.

effective management of the Emergency Connectivity Fund Program. Finally, we provide that the Office of the Managing Director is required to consult with the Bureau on any policy matters affecting the Emergency Connectivity Fund Program, consistent with section 0.91(a) of the Commission's rules. The Office of the Managing Director, in coordination with the Bureau, may issue additional directions to USAC and Emergency Connectivity Fund Program participants in furtherance of the decisions reached here.

143. We direct the Bureau, as well as the Commission's Consumer and Governmental Affairs Bureau (CGB), to conduct outreach to educate eligible schools and libraries about the Emergency Connectivity Fund Program, and to coordinate, as necessary, with Congressional offices, other federal agencies, and state, local and Tribal governments. We also direct USAC to develop and implement a communications strategy, under the oversight of the Bureau, in coordination with CGB, to provide training and information necessary for schools and libraries to successfully participate in the Emergency Connectivity Fund Program and provide support to students, school staff, and library patrons who lack adequate access to connected devices and broadband connections necessary for remote learning. At the suggestion of several stakeholder groups, we also direct USAC to engage with external users for the testing of any new systems for the Emergency Connectivity Fund Program.<sup>381</sup> Outreach, education, and engagement with eligible schools and libraries will be an important tool in ensuring the Emergency Connectivity Fund Program meets its goals of providing connected devices and broadband connections to students, school staff, and library patrons that otherwise would lack sufficient access and be unable to engage in remote learning and virtual library services.

144. We recognize that, once implementation of the Emergency Connectivity Fund Program begins, the Bureau or USAC may encounter unforeseen issues or problems with the administration of the Program that will need to be resolved. To promote maximum effectiveness and smooth administration of the Emergency Connectivity Fund Program, we delegate this authority to Bureau staff to address and resolve such issues related to the administration of the Emergency Connectivity Fund Program provided that doing so is consistent with the decisions we reach here today.

#### IV. PROCEDURAL MATTERS

145. *Administrative Procedure Act Exception.* Except those rules that require approval of new or revised information collections, which will be effective upon approval of the Office of Management and Budget, we find good cause exists for making the rules we adopt today effective upon publication of a summary of this Report and Order in the Federal Register. The Administrative Procedure Act (APA) provides that with a showing of "good cause," an agency is permitted to make rules effective before 30 days after publication in the Federal Register.<sup>382</sup> "In determining whether good cause exists, an agency should 'balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'"<sup>383</sup> As a general matter, we believe that the APA requirements are an essential component of our rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, we find there is good cause to make the Program rules effective upon publication of this Report and Order in the Federal Register.<sup>384</sup> Waiting an additional 30 days to make this relief available "would undermine the public interest by delaying" Congress' intent to quickly provide resources to eligible schools and libraries to provide the greatly

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<sup>381</sup> See Remote Learning Coalition *Ex Parte* at 5.

<sup>382</sup> 5 U.S.C. § 553(d)(3).

<sup>383</sup> *Omnipoint Corp. v. FCC*, 78 F.3d 620, 630 (D.C. Cir. 1996) (citation omitted).

<sup>384</sup> 5 U.S.C. § 553(d). See 47 CFR §§ 1.103(a), 1.427(b).

needed connectivity and connected devices to enable students, school staff, and library patrons to fully engage in remote learning during the COVID-19 emergency period.<sup>385</sup>

146. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis “whenever an agency promulgates a final rule under [5 U.S.C. § 553], after being required by that section or any other law to publish a general notice of proposed rulemaking.”<sup>386</sup> We find good cause that the notice and public procedure on the rule adopted herein are impracticable, unnecessary, or contrary to the public interest, and thus no final regulatory flexibility analysis is required.

147. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the Emergency Connectivity Fund Program are a “major rule” under the Congressional Review Act, 5 U.S.C. § 804(2). We find for good cause that notice and public procedure on the rules adopted herein are impracticable, unnecessary, or contrary to the public interest, and therefore this Report and Order will become effective upon publication in the Federal Register pursuant to 5 U.S.C. § 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

148. *Paperwork Reduction Act.* This document contains new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. §§ 3501-3521. It will be submitted to the Office of Management and Budget for review and emergency processing pursuant to section 3507(j) of the PRA, 44 U.S.C. § 3507(j). The *Public Notice* sought specific comment on how the Commission may reduce the information collection burden on small business concerns with fewer than 25 employees pursuant to 44 U.S.C. § 3506(c)(4).

149. *Late-Filed Comments.* We note there were several comments filed in this proceeding after the April 5, 2021 comment deadline. In the interest of having as complete and accurate record as possible, and because we would be free to consider the substance of those filings as part of the record in any event,<sup>387</sup> we will accept the late-filed comments and waive the requirements of 47 CFR § 1.46(b), and have considered them in this Report and Order. This does not apply to late-filed comments that are prohibited under our *ex parte* rules as modified in this proceeding by the Wireline Competition Bureau in a Public Notice dated April 30, 2021.

## V. ORDERING CLAUSES

150. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Pub. L. No. 117-2, 135 Stat. 4, this Report and Order IS ADOPTED and SHALL BECOME EFFECTIVE upon publication in the Federal Register.

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<sup>385</sup> *Id.* We also find that the APA’s good cause exception to notice and comment is satisfied. We find that there was good cause to seek comment through a Bureau-level Public Notice, published as a “proposed rule” in the Federal Register (85 FR 15172), because of the unprecedented nature of this pandemic and the need for immediate action. Because of the 60-day statutory deadline in section 7402 of the American Rescue Plan, if we had issued a Commission-level Notice of Proposed Rulemaking, we likely would not have had adequate time to receive and incorporate informed comment from interested parties, or to circulate and make public a draft of this Report and Order far enough in advance of the statutory deadline to give the public a meaningful opportunity to provide feedback. Thus, issuing a Notice of Proposed Rulemaking in these circumstances would have been impracticable and not in the public interest, and therefore not required under the “good cause” exception of section 553(b)(B). *See* 5 U.S.C. § 553(b)(B) (permitting deviation from formal rulemaking procedures where the agency “for good cause” finds that they are “impracticable, unnecessary, or contrary to the public interest.”).

<sup>386</sup> 5 U.S.C. § 604(a).

<sup>387</sup> *See* 47 CFR § 1.1206 (discussing *ex parte* filings in permit-but-disclose proceedings).

151. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 808(2) of the Congressional Review Act, 5 U.S.C. § 808(2), and 5 U.S.C. § 553(d), this Report and Order SHALL BECOME EFFECTIVE upon publication in the Federal Register.

152. IT IS FURTHER ORDERED, that pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Pub. L. No. 117-2, 135 Stat. 4, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective after the publication of this Report and Order in the Federal Register, except for those rules which are subject to the Paperwork Reduction Act approval process, including sections 54.1710(a)-(b), 54.1711(a)-(b), 54.1714, and 54.1715, which will become effective upon announcement in the Federal Register of OMB approval of the information collection requirements.

153. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**APPENDIX A****Final Rules**

For the reasons set forth above, Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54 – UNIVERSAL SERVICE**

Add new Subpart Q to part 54 to read as follows:

**Subpart Q – Emergency Connectivity Fund****Sec.**

54.1700 Terms and definitions.

54.1701 Eligible recipients.

54.1702 Emergency Connectivity Fund eligible equipment and services.

54.1703 Emergency Connectivity Fund competitive bidding requirements.

54.1704 Emergency Connectivity Fund gift restrictions.

54.1705 Emergency Connectivity Fund eligible uses.

54.1706 Emergency Connectivity Fund service locations.

54.1707 Emergency Connectivity Fund reasonable support amounts.

54.1708 Emergency Connectivity Fund cap and requests.

54.1709 Availability period of the Emergency Connectivity Fund.

54.1710 Emergency Connectivity Fund requests for funding.

54.1711 Emergency Connectivity Fund requests for reimbursement.

54.1712 Duplicate support.

54.1713 Treatment, resale, and transfer of equipment.

54.1714 Audits, inspections, and investigations.

54.1715 Records retention.

54.1716 Children's Internet Protection Act certifications.

54.1717 Administrator of the Emergency Connectivity Fund.

54.1718 Appeal and Waiver Requests.

**§ 54.1700 Terms and definitions.**

(a) *Advanced telecommunications and information services.* “Advanced telecommunications and information services” are services, as such term is used in section 254(h) of the Communications Act, 47 U.S.C. § 254(h).

(b) *Billed entity.* A “billed entity” is the entity that remits payment to service providers for equipment and services rendered to eligible schools and libraries.

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

(d) *Consortium.* A “consortium” is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

(e) *COVID-19 emergency period.* The “COVID-19 emergency period” is the period of time that (A) begins on the date of a determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. § 247d) that a public health emergency exists as a result of COVID-19; and (B) ends on the June 30 that first occurs after the date that is one year after the date on which such determination (including any renewal thereof) terminates.

(f) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students in the case of a school, or integral, immediate and proximate to the provision of library services to library patrons in the case of a library, qualify as “educational purposes.”

(g) *Elementary school.* An “elementary school” means an elementary school as defined in 20 U.S.C. § 7801, a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

(h) *Library.* A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) A Tribal library;
- (4) An academic library;
- (5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library 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

(6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

(i) *Library consortium.* A “library consortium” is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

(j) *National school lunch program.* The “national school lunch program” is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced-price lunches to economically-disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced-price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(k) *Secondary school.* A “secondary school” means a secondary school as defined in 20 U.S.C. § 7801, a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

(l) *Wi-Fi.* “Wi-Fi” is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

(m) *Wi-Fi hotspot.* A “Wi-Fi hotspot” is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

#### **§ 54.1701 Eligible recipients.**

##### *(a) Schools.*

(1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in § 54.1700 of this subpart, and not excluded under paragraphs (a)(2) or (3) of this section shall be eligible for support under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for support under this subpart.

(3) Schools with endowments exceeding \$50,000,000 shall not be eligible for support under this subpart.

##### *(b) Libraries.*

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act and not excluded under paragraphs (b)(2) or (3) of this section shall be eligible for support under this subpart.

(2) A library’s eligibility for Emergency Connectivity Fund support shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including,

but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for support as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for support under this subpart.

*(c) Consortia.*

(1) For consortia, reimbursement through the Emergency Connectivity Fund shall apply only to the portion of eligible equipment and services purchased by eligible schools and libraries and used by students, school staff, or library patrons as provided for by these rules.

**§ 54.1702 Emergency Connectivity Fund eligible equipment and services.**

*(a) Eligible equipment.* For the purposes of this subpart, the following shall be considered equipment eligible for Emergency Connectivity Fund support:

- (1) Wi-Fi hotspots;
- (2) Modems;
- (3) Routers;
- (4) Devices that combine a modem and a router; and
- (5) Connected devices.

*(b) Eligible services.*

(1) For purposes of this subpart, except as provided in paragraph (b)(2) of this section, services eligible for Emergency Connectivity Fund support shall be commercially-available fixed or mobile broadband Internet access services, including those available for purchase by schools and libraries through bulk purchasing arrangements.

(2) For eligible entities unable to provide students, school staff, or library patrons commercially-available fixed or wireless broadband Internet access services, services eligible for Emergency Connectivity Fund support shall include the reasonable costs of construction of new networks, including self-provisioned networks included in the Emergency Connectivity Fund eligible services list; and/or the reasonable costs of customer premises equipment to receive datacasting services.

**§ 54.1703 Emergency Connectivity Fund competitive bidding requirements.**

A school, library, or consortium seeking to participate in the Emergency Connectivity Fund must comply with all applicable state, local, or Tribal procurement requirements for all equipment and services supported by the Emergency Connectivity Fund.

**§ 54.1704 Emergency Connectivity Fund gift restrictions.**

*(a) Gift restrictions.* (1) Subject to paragraphs (b)(3) through (5) of this section, an eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. No



such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth \$20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this rule, if the value of these items received by any individual does not exceed \$50 from any one service provider per funding year. The \$50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (b)(2)(ii) of this section.

(2) For purposes of this paragraph:

- (i) The terms “school, library, or consortium” include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Emergency Connectivity Fund Program, including individuals who prepare, approve, sign or submit Emergency Connectivity Fund Program applications, or other forms related to the Emergency Connectivity Fund Program, or who prepare bids, communicate or work with Emergency Connectivity Fund Program service providers, Emergency Connectivity Fund Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Emergency Connectivity Fund Program; and
- (ii) The term “service provider” includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

- (i) Are motivated solely by a personal relationship,
- (ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium, and
- (iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to Emergency Connectivity Fund procurement activities or decisions and are not given by service providers to circumvent Emergency Connectivity Fund Program rules.

(b) *COVID-19 Pandemic Exception.* Any service provider may offer and provide, and any applicant may solicit and accept, broadband connections, devices, networking equipment, or other things of value directly related to addressing remote learning needs of students, school staff, and library patrons due to the COVID-19 pandemic through June 30, 2022.

**§ 54.1705 Emergency Connectivity Fund eligible uses.**

Eligible equipment and services purchased with Emergency Connectivity Fund support must be used primarily for educational purposes, as defined in § 54.1700 of this subpart.

**§ 54.1706 Emergency Connectivity Fund service locations.**

(a) Eligible schools and libraries can request and receive support for the purchase of eligible equipment and services for use by (1) in the case of a school, students and school staff at locations other than the school; and (2) in the case of a library, patrons of the library at locations other than the library. Service locations may include, but are not limited to, homes, community centers, churches, school buses, bookmobiles, and any other off-campus locations where students, school staff, and library patrons are engaged in remote learning activities.

(b) Eligible schools and libraries cannot request and receive support from the Emergency Connectivity Fund for the purchase of eligible equipment and services for use solely at the school or library during the COVID-19 emergency period. However, some use of eligible equipment, as defined in § 54.1700 of this subpart, and eligible mobile services, purchased for off-campus may be used at the school or library is permitted.

(c) Emergency Connectivity Fund support for eligible equipment and services is limited to no more than one fixed broadband Internet access connection per location, and one connected device and one Wi-Fi hotspot device per student, school staff member, or library patron. For purposes of the per-location limitation imposed on fixed broadband Internet access services, each unit in a multi-tenant environment is a separate location for purposes of this paragraph.

**§ 54.1707 Emergency Connectivity Fund reasonable support amounts.**

(a) Except as provided elsewhere in this Part, in providing support from the Emergency Connectivity Fund, the Commission shall reimburse 100% of the costs associated with the eligible equipment and/or services, except that any reimbursement of for the costs associated with any eligible equipment or service may not exceed a reasonable support amount as provided in paragraphs (a)(1)-(2) of this section.

- (1) Support amounts are limited up to \$400 for connected devices and up to \$250 for Wi-Fi hotspots.
- (2) The Wireline Competition Bureau is delegated authority to provide guidance to the Administrator to assess the reasonableness of requests for other eligible equipment or services, including those identified by the Administrator as containing costs that are inconsistent with other requests.

**§ 54.1708 Emergency Connectivity Fund cap and requests.**

(a) *Cap.*

- (1) The Emergency Connectivity Fund shall have a cap of \$7,171,000,000.
- (2) \$1,000,000 to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund.
- (3) Not more than 2% of the cap, or approximately \$143,420,000, shall be used by the Commission and the Administrator for administration of the Emergency Connectivity Fund.

(b) *Requests.* The Administrator shall implement an initial filing window, covering funding for purchases made between July 1, 2021 and June 30, 2022 for eligible equipment and services provided to students, school staff, and library patrons who would otherwise lack connected devices and/or broadband Internet access services sufficient to engage in remote learning. All schools and libraries filing an application within that the initial filing period will have their applications treated as if they were simultaneously received. The initial filing period shall conclude after 45 days. If demand does not exceed available funds for the first filing window, the Wireline Competition Bureau will direct the Administrator to open a second application window for schools and libraries to seek funding for eligible equipment and services schools and libraries previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID-19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services. If demand does not exceed available funds after the close of the second filing window, the Wireline Competition Bureau may direct the Administrator to open additional filing windows until the funds are exhausted or the emergency period ends, whichever is earlier.

(c) *Rules of distribution.* When the filing window(s) described in paragraph (b) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing window. If total demand exceeds the total support available, the Administrator shall allocate funds to these requests for support, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries category one discount matrix in 47 CFR § 54.505(c) adjusted to provide a five percent increase for rural schools and libraries, as shown in the following matrix.

	Emergency Connectivity Fund Prioritization Matrix	
	Discount Level	
% of students eligible for National School Lunch Program	Urban	Rural
< 1.....	20	30
1-19.....	40	55
20-34.....	50	65
35-49.....	60	75
50-74.....	80	85
75-100.....	90	95

Schools and libraries eligible for a 95 percent discount shall receive first priority for the funds. The Administrator shall next allocate funds toward the requests submitted by schools and libraries eligible for an 90 percent discount, then for a 85 percent discount, and shall continue committing funds in the same manner to the applicants at each descending discount level until there are no funds remaining. If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program.

#### **§ 54.1709 Availability Period of the Emergency Connectivity Fund.**

The Emergency Connectivity Fund was established by Congress in the United States Treasury through an appropriation of \$7.171 billion, to remain available until September 30, 2030.

**§ 54.1710 Emergency Connectivity Fund requests for funding.**

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive Emergency Connectivity Fund support for eligible equipment and services under this subpart shall submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

- (i) I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729 – 3733).
- (ii) In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.
- (iii) By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286-287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).
- (iv) The school meets the statutory definition of “elementary school” or “secondary school” as defined in § 54.1700 of this subpart, does not operate as for-profit businesses, and does not have endowments exceeding \$50 million;
- (v) The library or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996, does not operate as for-profit businesses, and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities);
- (vi) The school, library, or consortia listed on the FCC Form 471 application has complied with all applicable state, local, or Tribal local laws regarding procurement of services for which support is being sought;
- (vii) The school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who

would otherwise lack connected devices and/or broadband services sufficient to engage in remote learning;

- (viii) The library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.
- (ix) The school, library, or consortia is not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed in full with other federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanism;
- (x) The applicant or the relevant student, school staff member, or library patron has received the equipment and services for which funding is sought.
- (xi) The equipment and services the school, library, or consortium purchases using Emergency Connectivity Fund support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713;
- (xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.1715;
- (xiii) The school, library, or consortium has complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding;
- (xiv) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce shall records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the entity; and
- (xv) No kickbacks, as defined in 41 U.S.C. § 8701 and/or 42 U.S.C. § 1320a-7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(2) Applicants seeking support for new network construction or end-user equipment for datacasting services through the Emergency Connectivity Fund must also certify under penalty of perjury that: The applicant sought service from existing service providers in the relevant area and that such service providers were unable or unwilling to provide broadband Internet access services sufficient to meet the remote learning needs of their students, school staff, or library patrons.

(3) All information submitted as part of an FCC Form 471 application shall be treated as public and non-confidential by the Administrator.

(b) *Service substitution.*

(1) A request by an applicant to substitute equipment or service for one identified on its FCC Form 471 must be in writing.

(2) The Administrator shall approve such written request where:

- (i) The equipment or service has the same functionality; and
- (ii) this substitution does not violate any contract provisions or state, local, or Tribal procurement law.

(2) In the event that an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. Reimbursement for substitutions shall only be provided after the Administrator has approved a written request for substitution.

(c) *Mixed eligibility equipment and services.* If equipment or service includes both ineligible and eligible components, the applicant must remove the cost of the ineligible components of the equipment or service from the request for funding submitted to the Administrator.

**§ 54.1711 Emergency Connectivity Fund requests for reimbursement.**

(a) *Submission of Request for Reimbursement (FCC Form 472 or FCC Form 474).* Emergency Connectivity Fund Program reimbursement for the costs associated with eligible equipment and/or services shall be provided directly to an eligible school, library, consortium that includes an eligible school or library, service provider seeking reimbursement from the Emergency Connectivity Fund Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.

(1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

- (i) I am authorized to submit this request for reimbursement on behalf of the above-named school, library or consortium and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729 – 3733).
- (ii) In addition to the foregoing, the school, library or consortium is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.

- (iii) By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286-287 and 1341 and Title 31, sections 3729-3730 and 3801-3812).
- (iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements and received by either the school, library, or consortium, or the students, school staff, or library patrons as appropriate;
- (v) The portion of the costs eligible for reimbursement and not already paid for by another source was either paid for in full by the school, library, or consortium, or will be paid to the service provider within 30 days of receipt of funds;
- (vi) The amount for which the school, library, or consortium is seeking reimbursement from the Emergency Connectivity Fund consistent with the requirements set out in § 54.1707;
- (vii) The school, library, or consortium is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other federal pandemic relief funding (e.g., CARES Act, Emergency Broadband Benefit Program or other provisions of the American Rescue Plan), targeted state funding, other external sources of targeted funding, or targeted gifts or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms;
- (viii) The equipment and services the school, library, or consortium purchased using Emergency Connectivity Fund support will be used primarily for educational purposes as defined in § 54.1700 and that the authorized person is not willfully or knowingly requesting reimbursement for equipment or services that are not being used;
- (ix) The equipment and services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713;
- (x) The school, library, or consortium recognizes that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state or federal agency with jurisdiction over the entity;
- (xi) No kickbacks, as defined in 41 U.S.C. § 8701 and/or 42 U.S.C. § 1320a-7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund;
- (xii) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of

advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10.

- (2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:
- (i) I am authorized to submit this request for reimbursement on behalf of the above-named service provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. §§ 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. § 1001), or can lead to liability under the False Claims Act (31 U.S.C. §§ 3729 – 3733).
  - (ii) In addition to the foregoing, the service provider is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.
  - (iii) By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286-287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).
  - (iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements and received by either the school, library, or consortium, or by students, school staff, or library patrons, as appropriate;
  - (v) The amount for which the service provider is seeking reimbursement from the Emergency Connectivity Fund is consistent with the requirements set forth in § 54.1707;
  - (vi) The service provider is not willfully or knowingly requesting reimbursement for services that are not being used;
  - (vii) The service provider is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services for which it has already been paid;



- (viii) The service provider recognizes that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state or federal agency with jurisdiction over the entity;
  - (ix) No kickbacks, as defined in 41 U.S.C. § 8701 and/or 42 U.S.C. § 1320a-7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund; and
  - (x) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by 47 CFR § 54.10.
- (b) *Required Documentation.* Along with the submission of a completed FCC Form 472 or a completed FCC Form 474, an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund must submit invoices detailing the items purchased or ordered to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted. Applicants that seek payment from the Emergency Connectivity Fund prior to paying their service provider(s) must also provide verification of payment to the service provider(s) within 30 days of receipt of funds.
- (c) *Reimbursement and Invoice Processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.
- (d) *Invoice Filing Deadline.* Invoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.

**§ 54.1712 Duplicate support.**

Entities participating in the Emergency Connectivity Fund may not seek Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased with or reimbursed in full from other federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

**§ 54.1713 Treatment, resale and transfer of equipment.**

(a) *Prohibition on resale.* Eligible equipment and services purchased with Emergency Connectivity Fund support shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) *Disposal of obsolete equipment.* Eligible equipment purchased using Emergency Connectivity Fund support shall be considered obsolete if the equipment are at least three years old. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

**§ 54.1714 Audits, inspections, and investigations.**

(a) *Audits.* Schools, libraries, consortia, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund, including those requirements pertaining to what equipment and services are purchased, what equipment and services are delivered, and how equipment and services are being used.

(b) *Inspections and Investigations.* Schools, libraries, consortia, and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General or any local, state or federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements of the Emergency Connectivity Fund.

(c) *Production of Records for Audits, Inspections, and Investigations.* Where necessary for compliance with federal or state privacy laws, Emergency Connectivity Fund participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

**§ 54.1715 Records retention.**

(a) *Equipment and service inventory requirements.* Schools, libraries, and consortia shall keep asset and service inventories as follows:

(1) For each connected device or other piece of equipment provided to an individual student, school staff member, or library patron, the asset inventory must identify:

(i) the device or equipment type (i.e. laptop, tablet, mobile hotspot, modem, router);

(ii) the device or equipment make/model;

(iii) the device or equipment serial number;

(iv) the full name of the person to whom the device or other piece of equipment was provided; and

(v) the dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(2) For each connected device or other piece of eligible equipment not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the asset inventory must contain:

- (i) the device type or equipment type (i.e. laptop, tablet, mobile hotspot, modem, router);
- (ii) the device or equipment make/model;
- (iii) the device or equipment serial number;
- (iv) the name of the school or library employee responsible for that device or equipment; and
- (v) the dates the device or equipment was in service.

(3) For services provided to individual students, school staff, or library patrons, the service inventory must contain:

- (i) the type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless);
- (ii) the service plan details, including, upload and download speeds and monthly data cap;
- (iii) the full name of the person (s) to whom the service was provided;
- (iv) the service address (for fixed broadband service only);
- (v) the installation date of the service (for fixed broadband service only); and
- (vi) the last date of service, as applicable (for fixed broadband service only).

(4) For services not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the service inventory must contain:

- (i) the type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless);
- (ii) the service plan details, including, upload and download speeds and monthly data cap;
- (iii) the name of the school or library employee responsible for the service;
- (iv) a description of the intended service area;
- (v) the service address (for fixed broadband service only);
- (vi) the installation date of the service (for fixed broadband service only); and
- (vii) the last date of service, as applicable (for fixed broadband service only).

(b) *Records retention.* All Emergency Connectivity Fund participants shall retain records related to their participation in the Program sufficient to demonstrate compliance with all program rules for at least ten (10) years from the last date of service or delivery of equipment.

(c) *Production of records.* All Emergency Connectivity Fund participants shall present such records upon request any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General or any local, state or federal agency with jurisdiction over the entity. When requested by the Administrator or the Commission, schools, libraries and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

**§ 54.1716 Children's Internet Protection Act certifications.**

(a) *Definitions.*

- (1) *School.* For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.
- (2) *Library.* For the purposes of the certification requirements of this rule, library means library, library board or authority responsible for administration of a library.
- (3) *Billed entity.* Billed entity is defined in § 54.1700. In the case of a consortium, the billed entity is the lead member of the consortium.
- (4) *Connected devices.* Connected devices are defined in § 54.1700.

(b) *Who is required to make certifications?* (1) A school or library that receives support for Internet access, Internet service, or internal connections services under the federal universal service support mechanism for schools and libraries, or Internet access or Internet service through the Emergency Connectivity Fund, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) A school or library that receives support for connected devices through the Emergency Connectivity Fund and uses Internet access or Internet service funded through the federal universal service support mechanism for schools and libraries or through the Emergency Connectivity Fund must make the certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(3) Schools and libraries that are not receiving support for Internet access, Internet service, or internal connections under the federal universal service support mechanism for schools and libraries; Internet access or Internet service through the Emergency Connectivity Fund; or connected devices that do not use Internet access or Internet service funded through the federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund are not subject to the requirements 47 U.S.C. §§ 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they are not receiving support for such services or that the connected devices do not use Internet access or Internet service funded through the federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund.

(c) *Certifications required under 47 U.S.C. §§ 254(h) and (l).*

(1) An Emergency Connectivity Fund applicant need not complete additional CIPA compliance certifications if the applicant has already certified its CIPA compliance for the relevant funding year (i.e., has certified its compliance in an FCC Form 486 or FCC Form 479).

(2) Emergency Connectivity Fund applicants that have not already certified their CIPA compliance for an E-Rate application for the relevant funding year (i.e., have not completed a FCC Form 486 or FCC Form 479), will be required to certify (1) that they are in compliance with CIPA requirements under sections 254(h) and (l); (2) that they are undertaking the actions necessary to comply with CIPA requirements as part of their request for support through the Emergency Connectivity Fund; or (3) if applicable, that the requirements of CIPA do not apply, because the applicant is not receiving support for Internet access, Internet service, or internal connections under the federal universal service support mechanism for schools and libraries or Internet access or Internet service through the Emergency Connectivity Fund, or the connected devices do not use Internet access or Internet service funded through the federal universal support mechanism for schools and libraries or the Emergency Connectivity Fund.

(d) *Failure to provide certifications*—(1) *Schools and libraries*. A school or library that knowingly fails to submit certifications as required by this section, shall not be eligible for support through the Emergency Connectivity Fund until such certifications are submitted.

(2) *Consortia*. A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire consortium ineligible for support through the Emergency Connectivity Fund.

(3) *Reestablishing eligibility*. At any time, a school or library deemed ineligible for equipment and services under the Emergency Connectivity Fund because of failure to submit certifications required by this section, may reestablish eligibility for support by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications*—(1) *Schools and libraries*. A school or library that knowingly fails to comply with the certifications required by this section, must reimburse any funds and support received under the Emergency Connectivity Fund for the period in which there was noncompliance.

(2) *Consortia*. In the case of consortium applications, the eligibility for support of consortium members who comply with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to comply with such requirements.

(3) *Reestablishing compliance*. At any time, a school or library deemed ineligible for support through the Emergency Connectivity Fund for failure to comply with the certification requirements of this section and that has been directed to reimburse the program for support received during the period of noncompliance, may reestablish compliance by complying with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for support through the Emergency Connectivity Fund.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements*. Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section, cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements, prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section before the close of the relevant funding year.

**§ 54.1717 Administrator of the Emergency Connectivity Fund**

- (a) The Universal Service Administrative Company is appointed the permanent Administrator of the Emergency Connectivity Fund and shall be responsible for administering the Emergency Connectivity Fund.
- (b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration-related duties.
- (c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.
- (d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Emergency Connectivity Fund.
- (e) The Administrator shall create and maintain a website, as defined in 47 CFR § 54.5, on which applications for services will be posted on behalf of schools and libraries.
- (f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Emergency Connectivity Fund.
- (g) The administrator shall provide performance measurements pertaining to the Emergency Connectivity Fund as requested by the Commission by order or otherwise.
- (h) The Commission shall have the authority to audit all entities reporting data to the Administrator regarding the Emergency Connectivity Fund. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator, conducts audits of the participants of the Emergency Connectivity Fund, such audits shall be conducted in accordance with generally accepted government auditing standards.
- (i) The Commission shall establish procedures to verify support amounts provided by the Emergency Connectivity Fund and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator.
- (j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Emergency Connectivity Fund ends. If its participation in administering the Emergency Connectivity Fund ends, the Administrator shall be subject to close-out audits at the end of its term.

**§ 54.1718 Appeal and Waiver Requests.**

- (a) *Parties permitted to seek review of Administrator decision.*

(1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.

(2) Any party aggrieved by an action taken by the Administrator under paragraph (1) of this subsection, may seek review from the Federal Communications Commission, as set forth in § 54.1718(b).

(3) Parties seeking waivers of the Commission's rules shall seek relief directly from the Commission and need not first file an action for review from the Administrator under paragraph (1) of this subsection.

*(b) Filing deadlines.*

(1) An affected party requesting review of a decision by the Administrator pursuant to § 54.1718(a)(1) shall file such a request within thirty (30) days from the date the Administrator issues a decision.

(2) An affected party requesting review by the Commission pursuant to § 54.1718(a)(2) of a decision by the Administrator under § 54.1718(a)(1) shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under § 54.1718(a)(3) shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under § 54.1718(a)(1), within thirty days from the date of the Administrator's decision resolving such an appeal.

(3) In all cases of requests for review filed under § 54.1718(a)(1) through (3), the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

(4) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR § 1.45.

*(c) General filing requirements.*

(1) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference the applicable docket numbers.

(2) A request for review pursuant to § 54.1718(a)(1) through (3) shall contain:

- (i) A statement setting forth the party's interest in the matter presented for review;
- (ii) A full statement of relevant, material facts with supporting affidavits and documentation;
- (iii) The question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; and
- (iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(3) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(4) If a request for review filed pursuant to § 54.1718(a)(1) through (3) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent

with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

*(e) Review by the Wireline Competition Bureau or the Commission.*

(1) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.

*(f) Standard of review.*

(1) The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issued by the Administrator.

(2) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

*(g) Emergency Connectivity Fund disbursements during pendency of a request for review and Administrator decision.* When a party has sought review of an Administrator decision under § 54.1718(a)(1) through (3), the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.



**APPENDIX B****ELIGIBLE SERVICES LIST FOR EMERGENCY CONNECTIVITY FUND PROGRAM**

The Federal Communications Commission provides this list as guidance for applicants on the equipment and services that are eligible for funding under the Emergency Connectivity Fund Program (Program). Pursuant to section 7402 of American Rescue Plan, support from the Emergency Connectivity Fund is to be used for the purchase during the COVID-19 emergency period of eligible equipment and/or “advanced telecommunications and information services” as the term is used in section 254(h) of the Communications Act.<sup>1</sup>

We caution applicants to carefully review all Program guidance. Applicants are ultimately responsible for compliance with Program rules and requirements, including all deadlines and eligibility requirements.

**Eligible Equipment****Eligible Equipment includes:**

- Wi-Fi hotspots
- 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) Smartphones and desktop computers are ineligible for support under this Program.

(3) A manufacturer’s multi-year warranty for a period of up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, is also eligible.

**Eligible Advanced Telecommunications and Information Services**

In general, eligible advanced telecommunications and information services include commercially available fixed or mobile broadband Internet access services. These services must be purchased by a school or library for off-campus use by students, school staff, or library patrons.

**Eligible Services include:**

- Cable Modem
- Digital Subscriber Line (DSL)
- Leased Lit Fiber (e.g., fiber to the home or to the premises)
- Satellite
- Wireless (e.g., fixed wireless, microwave, or mobile broadband)

*Notes:* (1) *Limited Exception for Construction of a Network or Customer Premises Equipment to Receive Datacasting Services Where No Commercially Available Services Exist.* In the limited instance where there is no commercially available service for purchase available to reach students, school staff, and library patrons, eligible schools and libraries may seek support to construct a third-party broadband

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<sup>1</sup> H.R. 1319, tit. VII, § 7402(a)(1)-(2), (d)(1); *see also* 47 U.S.C. § 254(h)(2)(A) (“The Commission shall establish competitively neutral rules—(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”).

network or a self-provisioned broadband network, and/or purchase customer premises equipment to receive datacasting services. Applicants seeking support for network construction, self-provisioning, and/or customer premises equipment to receive datacasting services must demonstrate that there were no commercially available options and that services were provided to students, school staff, or library patrons during the COVID-19 emergency period. Only if these conditions are met are the following equipment and services eligible with respect to construction of third-party broadband networks or self-provisioned broadband networks, and/or customer premises equipment to receive datacasting services:

- (a) Eligible costs include monthly charges, special construction, installation and activation charges, modulating electronics and other equipment necessary to make a broadband Internet access service functional (“Network Equipment”), and maintenance and operation charges.
  - (b) The eligible components of special construction are construction of network facilities, design and engineering, and project management.
  - (c) Customer premises or end-user equipment to receive datacasting services.
- (2) The construction of new networks (including the construction of self-provisioned networks) are ineligible for funding except in the limited instance described above.
- (3) Dark fiber and the electronics to light dark fiber are ineligible.

### Miscellaneous

Installation, activation, and initial configuration costs, taxes, shipping charges, and other reasonable fees incurred with the purchase of the eligible equipment and services are eligible for support under the Emergency Connectivity Fund Program.

### Examples of Ineligible Costs

Examples of ineligible costs include:

- Administrative costs, e.g., personnel expenses, consultant fees, payroll, training, customer service, project management, records management, etc.
- Charges for termination liability, penalty surcharges, and other charges not associated with purchase of the eligible equipment and services.
- Software, user licenses, filtering and firewall services that are purchased separately and are not included in the base price for the equipment.
- Back-up power equipment, e.g., back-up batteries, redundant power cords, uninterruptible power supply (UPS), generators, and surge protectors, etc.
- Cybersecurity tools (including, for example, virtual private network (VPN) licenses, firewall software, network monitoring, and filtering services).
- Dark fiber.
- Eligible equipment or services purchased before March 1, 2020.
- Filtering services needed for Children’s Internet Protection Act compliance.
- Headsets.
- Learning management systems.
- Separate costs for non-connected accessories, e.g., cases, mouse pads, cable clips, laptop bags, tablet stands, wall mounts, and charging stations, etc.
- Mobile phones, including smartphones.
- Standalone microphones.
- Standalone cameras.
- Technical support, maintenance costs, separate costs for warranties and protection plans.
- Video conferencing equipment and related software subscriptions (e.g., Zoom subscriptions).

- Voice services.

*National Security Supply Chain Restrictions.* Pursuant to section 54.10 of the Commission's rules, applicants are prohibited from using Federal subsidies (including Emergency Connectivity Fund Program support) to purchase, rent, lease, or otherwise obtain any covered communications equipment or service from a company identified as posing a national security threat to the integrity of communications networks or the communications supply chain.<sup>2</sup> Also, Federal subsidies may not be used to maintain any such equipment or service that was previously obtained. A list of covered equipment and services was posted on the Commission's website on March 12, 2021 and will be updated to reflect any future determinations.<sup>3</sup>

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<sup>2</sup> See *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Second Report and Order, 35 FCC Rcd 14284, 14287, para. 4 (2020). 47 CFR § 54.10.

<sup>3</sup> See Federal Communications Commission, *List of Equipment and Services Covered by Section 2 of the Secure Networks Act*, <https://www.fcc.gov/supplychain/coveredlist> (last visited May 10, 2021).

**STATEMENT OF  
ACTING CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Establishing the Emergency Connectivity Fund to Close the Homework Gap*,  
WC Docket No. 21-93

Today the Federal Communications Commission sets up the Emergency Connectivity Fund. This is a big deal. It's the largest single effort in our nation's history to make sure students have access to the broadband and devices they need for school. It will help close the Homework Gap so that kids who have been locked out of the virtual classroom can go online for class and do their nightly schoolwork. Plus, it will make it possible for libraries nationwide to offer their patrons—including students—new ways to go online and bring connectivity home.

Even before the coronavirus pandemic upended so much of day-to-day life, seven in ten teachers were assigning homework that required access to the internet. But data from this agency demonstrate that one in three households do not subscribe to broadband. Where those numbers overlap is the Homework Gap.

For too long, the Homework Gap has been a troubling and persistent digital equity problem in the United States. But before this cruel virus reached us where we live, many of the students who struggled without reliable broadband at home had other options—like sticking around after class, sliding into a seat at the public library, or heading to a friend's home with a connection. However, with classes themselves moving online and the pandemic requiring us to stay home, we went from having millions of children who couldn't do online homework assignments to having millions of children who couldn't do schoolwork at all. In other words, the Homework Gap became a full-fledged learning and education gap.

According to one estimate, there are close to 17 million students who fall into this learning limbo. These children are disproportionately Black, Latino, and American Indian or Alaska Natives. They live in rural and urban communities and everywhere in between. It's a problem that unites us nationwide—and it's one we absolutely need to fix.

It's also important that we address this now. Because as we exit this pandemic, we know that education has been changed. Like so much else in our lives, it has been digitized. There are new ways of teaching, learning, researching, and collaborating that we will take with us out of this period. When we do, we need to ensure that every student gets the connectivity they need to thrive so no child is left offline.

Of all the memories and images of the past months, the one that keeps coming back to me is a viral picture of two young girls sitting outside a Taco Bell. They were sitting cross-legged on the ground with laptops on their knees, using the free Wi-Fi from the restaurant to do their schoolwork. It was heart-wrenching to see. But they were not alone. Kids elsewhere sat in cars outside of libraries to catch a signal to go online for class. Others cobbled together the connectivity they needed by doing everything from borrowing mobile phones to lingering outside of shuttered school and municipal buildings.

We should salute the grit of each and every one of these young people who found ways to go online and keep up with school. But it shouldn't be this hard—and going forward it won't.

That's because today, pursuant to Section 7402 of the American Rescue Plan Act, we set up the Emergency Connectivity Fund. This legislation provides the FCC with \$7.171 billion to help schools and libraries get people connected where they live. This means we have a terrific opportunity get devices—laptops and tablets—into the hands of students, staff, and library patrons who lack them and connect these learners to fixed or mobile broadband service at home. It means we can help address the Homework Gap and get more students and households nationwide connected to the high-speed internet service that is now needed to fully participate in education and modern life.

I want to thank each of my colleagues for reviewing these rules and providing their input on an especially fast schedule. I want to thank Commissioner Carr for putting a premium on prospective relief

and encouraging stakeholder input while keeping to our tight statutory deadline. I want to thank Commissioner Starks for his creative ideas about collecting data so that we size the Homework Gap across the country and fix it once and for all. I also want to thank Commissioner Simington for his focus on remote communities and his thoughtful suggestion that rural schools and libraries would benefit from a further boost.

Last but not least, I am grateful to the expert staff of this agency, who released a public draft of this item just 50 days after the American Rescue Plan Act was signed into law and worked many nights and weekends to get us over the finish line. From the Wireline Competition Bureau, Cheryl Callahan, Zachary DiLeo, Kate Dumouchel, Justin Faulb, Gabriela Gross, Clint Highfill, Lisa Hone, Jesse Jachman, Gavin Logan, Sue McNeil, Kris Monteith, Molly O'Connor, Ryan Palmer, Carol Pomponio, Joseph Schlingbaum, Johnnay Schrieber, Greg Vadas, Adrian Wright, and David Zesiger; from the Public Safety and Homeland Security Bureau, Ken Carlberg; from the Office of General Counsel, Malena Barzilai, Margaret Drake, Michele Ellison, Andrea Kearney, Elizabeth Lyle, Rick Mallen, Bahareh Moradi, Linda Oliver, Bill Richardson, Paula Silberthau, Jeffrey Steinberg, Elliot Tarloff, and Chin Yoo; from the Office of Economics and Analytics, Eugene Kiselev, Ken Lynch, Giulia McHenry, Eric Ralph, Steve Rosenberg, Don Stockdale, Emily Talaga, Shane Taylor, and Aleks Yakelovich; from the Office of Managing Director, Regina Brown, Tim Dates, Sheela Kailasanath, Sandeep Khana, Hua Lu, James Lyons, Timothy Siekierka, Jasson Soemo, Jae Song, Mark Stephens, Virginia Tucker, Cara Voth, and Pat Wolan; from the Consumer and Governmental Affairs Bureau, Robert Aldrich, Diane Burstein, Daryl Cooper, Matthew Duchesne, Barbara Esbin, Derik Goatson, Elliot Greenwald, Sayuri Rajapkse, Michael Scott, Suzy Rosen Singleton, and Patrick Webre; and from the Office of Inspector General, Hillary Burchuk, Jeffrey Dickey, and Sharon Diskin. They are deeply committed to improving digital equity and all-star public servants.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

Re: *Establishing the Emergency Connectivity Fund to Close the Homework Gap*,  
WC Docket No. 21-93

The ongoing COVID-19 pandemic has made access to the Internet more important than ever before, including for millions of America's students. Last year, several organizations estimated that it would require approximately \$6.8 billion in support to ensure that every school kid in this country has access to a high-speed Internet connection. That is why my priority in this proceeding has been to ensure that the \$7.2 billion initiative we stand up today focuses on bringing all of those still unconnected students across the digital divide.

I want to extend my thanks and appreciation to Acting Chairwoman Rosenworcel and my other colleagues for agreeing to a series of significant changes to the decision we reach today—all of which prioritize the needs of America's unconnected students. As originally drafted, there was a risk that the FCC's decision would not have connected a single unconnected student, focusing instead on reimbursing schools for the work they did over the past year to bring students across the digital divide. The final order we adopt today now gives us a fair shot at ensuring that 100 percent of the \$7.2 billion goes towards connecting those students that remain offline. Indeed, our first application window will now be exclusively focused on providing equipment and services on a forward-looking basis to unconnected students. We also leave open the possibility of a second window for prospective funding before looking to reimburse school systems for their past expenses. This approach ensures that school kids who are unconnected today are the ones who benefit from this program, as intended by Congress.

I appreciate that my colleagues also agreed to a series of additional changes. We now provide rural students with a fairer shot at receiving an equitable distribution of these funds. We now recognize that homeschooled children are eligible for support through this program, as well as qualifying students that attend private school. We now ensure that any funding for school staff, rather than students, is limited to those staff that will be providing educational services to students. We now take steps to allow broadcast Internet services, including ATSC 3.0 offerings, to play a role in connecting unconnected students. We now have a series of additional checks against waste, fraud, and abuse. And we now take additional steps to ensure that these limited funds are not spent overbuilding existing networks.

Finally, I would like to extend my thanks to Acting Chairwoman Rosenworcel for releasing a public draft of the item, which allowed for public feedback. This was not an action required by law, but her decision to do so brought an important level of transparency and public participation to this process. Our final decision has been greatly improved as a result. I also want to recognize the FCC staff who have worked quickly—through long nights and weekends—in preparing the order we adopt today.

From the Wireline Competition Bureau: Kris Monteith, Lisa Hone, Sue McNeil, Ryan Palmer, Jesse Jachman, Justin Faulb, Johnnay Schrieber, Kate Dumouchel, Gabriela Gross, Molly O'Connor, David Zesiger, Zachary DiLeo, Joseph Schlingbaum, Ken Carlberg, Cheryl Callahan, Adrian Wright, Clint Highfill, Carol Pomponio, Greg Vadas, and Gavin Logan. From the Office of the General Counsel: Michele Ellison, Linda Oliver, William Richardson, Chin Yoo, Richard Mallen, Malena Barzilai, Elliot Tarloff, Elizabeth Lyle, Jeffrey Steinberg, Paula Silberthau, Andrea Kearney, Margaret Drake, and Bahareh Moradi. From the Office of Economics and Analytics: Giulia McHenry, Eric Ralph, Emily Talaga, Eugene Kiselev, Steve Rosenberg, Aleks Yakelovich, Don Stockdale, Shane Taylor, and Ken Lynch. From the Office of the Managing Director: Mark Stephens, Cara Voth, Regina Brown, Jae Song, Jasson Soemo, Virginia Tucker, James Lyons, Pat Wolan, Hua Lu, Sheela Kailasanath, Tim Dates, Timothy Siekierka, and Sandeep Khana. And, finally, from the Consumer and Governmental Affairs Bureau: Patrick Webre, Barbara Esbin, Diane Burstein, Suzy Rosen Singleton, Elliot Greenwald, Robert Aldrich, Daryl Cooper, Michael Scott, Matthew Duchesne, Sayuri Rajapkse, and Derik Goatson.

**STATEMENT OF  
COMMISSIONER GEOFFREY STARKS**

Re: *Establishing the Emergency Connectivity Fund to Close the Homework Gap*,  
WC Docket No. 21-93

Last week, the New York Times highlighted the challenges facing Jordyn Coleman, a fifth-grade student in Clarksdale, Mississippi. Jordyn, who transferred schools during the pandemic, described his struggles with online school. Jordyn’s family does not have internet access at home, and he can only participate in virtual classes by using his mother’s cellphone. But his mother works night shifts as a security guard at a casino and, like most of us, takes her phone with her. Ms. Coleman has difficulty making it home in time for Jordyn’s first morning classes due to her 40-mile commute on public transportation. Consistently connecting to online lessons would no doubt be easier with a home Wi-Fi connection. But for a family that has faced stiff economic headwinds during the pandemic, other basic needs have to come first. Ms. Coleman usually makes dinner on a hot plate or in an electric pot, because she does not have a refrigerator or stove in her apartment. She told the Times, “My priorities are a stove, a fridge, a car. . . . Then maybe we can talk about internet.”<sup>1</sup> Millions of households are in the same spot.

Stories like Jordyn’s illustrate a basic truth: families that are struggling during the pandemic should not have to choose between Internet and devices for their children—requirements for an equitable education—and paying for basic necessities. Internet access is a necessity. Beginning in March 2020, school for many children transformed into a virtual institution nearly overnight—locking millions of students without broadband and adequate devices out of the classroom. Though many schools and other organizations have worked to close the gap, Boston Consulting Group reported that as of January 2021, up to 12 million K-12 students remain digitally underserved.<sup>2</sup> And the problem is most significant in communities of color. The divide disproportionately affects Black, Latinx, and Native American students. Students of color, who make up 40% of the population, collectively make up 54% of the divide.<sup>3</sup>

The educational consequences have been significant. For many years, we have recognized that students who go home to a place without internet access after school miss important opportunities. During the pandemic, when so many children are learning at home all day, no home broadband access can mean no access to education. The Homework Gap has turned into a learning chasm. Researchers at McKinsey & Company found that, due to the pandemic and the transition to remote learning, on average, students could lose five to nine months of learning by the end of June 2021.<sup>4</sup> Students of color could be six to twelve months behind, compared with four to eight months for white students.<sup>5</sup> Other researchers

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<sup>1</sup> Rukmini Callimachi, ‘*I Used to Like School*’: An 11-Year-Old’s Struggle With Pandemic Learning, The New York Times (May 5, 2021), <https://www.nytimes.com/2021/05/05/us/remote-learning-education-pandemic.html>.

<sup>2</sup> Boston Consulting Group, *The U.S. K-12 Digital Divide Has Narrowed, but Must Close to Eliminate Risks to Students and the Economy* (Jan. 27, 2021), <https://www.bcg.com/press/27january2021-digital-divide-narrowed-must-close-eliminate-risks-students-economy>.

<sup>3</sup> Titilayo Tinubu Ali & Sumit Chandra, et al., Looking Back Looking Forward: What it will take to permanently close the K–12 digital divide at 9 (2021), [https://www.common sense media.org/sites/default/files/uploads/pdfs/final\\_-\\_what\\_it\\_will\\_take\\_to\\_permanently\\_close\\_the\\_k-12\\_digital\\_divide\\_vfeb3.pdf](https://www.common sense media.org/sites/default/files/uploads/pdfs/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf).

<sup>4</sup> Emma Dorn, Bryan Hancock, Jimmy Sarakatsannis, and Ellen Viruleg, COVID-19 and Learning Loss—Disparities Grow and Students Need Help at 6 (2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help>.

<sup>5</sup> *Id.* at 8.

have concluded that the pandemic has put low-income students in most grades “substantially further behind than higher-income students.”<sup>6</sup>

Earlier this year, I heard directly from students about how challenging the transition to remote learning has been. In February, I met with students and Principal Willie Brewster from Brenda Scott Academy in Detroit, Michigan. Brenda Scott Academy is a performing arts school at which 88% of students are Black and 80% of students qualify for free or reduced-price lunch. I met with middle school students who talked about their dreams of one day working in digital animation, film, and civil rights law. While I learned about the students’ dreams, I also gained insight into their reality. They spoke about both the successes and challenges of their experiences with online learning during the COVID-19 pandemic. Students were in need of faster, more reliable broadband, so they can engage in synchronous learning. They also needed upgraded devices, so they are not as dependent on their cell phones to learn. The most striking moment was when one eighth grader said plainly that she “needed a better internet.”

I agree, and that is why I am pleased to approve today’s Order. This essential \$7.17 billion investment in our children, society, and future leaders has the potential to change the lives of children who need support to get the most out of school—especially those in low-income communities. The Emergency Connectivity Fund will also support the many Americans who rely on their local library for connectivity and access to educational resources. By leveraging the E-Rate program’s discount matrix, the framework we adopt today will prioritize our country’s highest-need schools and libraries.

I am especially pleased that the Commission has made special provisions for organizations that serve students, staff, and patrons with disabilities. A group of 13 organizations representing people with disabilities demonstrated in the record how connected devices support accessible video conferencing platforms and other software necessary to ensure students who are deaf, hard of hearing, deafblind, or deaf with mobility issues can fully participate in the remote learning experience.<sup>7</sup> These students can experience accessibility problems when using video conferencing platforms that do not provide captioning, causing them to miss crucial information during class.<sup>8</sup> But accessible equipment can be expensive. Giving organizations that serve students with disabilities the opportunity to see a waiver from the standard price cap for connected devices will ensure that these students, staff, and patrons receive equipment that meets their educational needs.

I also thank my colleagues for agreeing to changes to the draft Order that will allow the Commission to gather data that is critical to creating better policy. As I have consistently stated—from the Rural Digital Opportunity Fund to today’s Emergency Connectivity Fund—we must push for better, clearer data to drive sound policymaking. And when so many schools were forced to go online-only in spring 2020, many collected information about students who needed devices or connections. More than a year into the pandemic, many of those schools have refined their data-gathering techniques to get an even clearer picture of which students are still in need of devices and connectivity. By adding a few basic questions to the Emergency Connectivity Fund application, the Commission will gain insight about where

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<sup>6</sup> Heather J. Hough, *COVID-19, the educational equity crisis, and the opportunity ahead*, Brookings (Apr. 29, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/04/29/covid-19-the-educational-equity-crisis-and-the-opportunity-ahead/>. A study for Policy Analysis for California Education (PACE) of learning loss between fall 2019 and fall 2020 found a “learning gap of approximately 12 percent of a year of typical growth” between low-income and other students in Grade 4 and similar results in Grade 8. The PACE researchers warn that this “severe” equity impact will “continue to widen achievement gaps that already existed between individual students in these groups.” Libby Pier, Heather J. Hough, Michael Christian, Noah Bookman, Britt Wilkenfeld, and Rick Miller, *COVID-19 and the Educational Equity Crisis: Evidence on Learning Loss From the CORE Data Collaborative* (2021), <https://edpolicyinca.org/newsroom/covid-19-and-educational-equity-crisis>.

<sup>7</sup> Telecommunications for the Deaf and Hard of Hearing, Inc., et. al. Comments, WC Docket No. 21-93, at 2 (filed Apr. 5, 2021).

<sup>8</sup> *Id.* at 3.



the Homework Gap is and how wide the gap is. This information will help inform all of us, including policymakers.

While I am confident that the Emergency Connectivity Fund will improve the educational outlook of millions of children across the country, I am mindful that making sure every child has the necessary digital tools will require a long-term commitment. Tens of millions of Americans lacked access to broadband services long before COVID-19, and the digital divide will not go away when the coronavirus does. For example, in October 2019, before the pandemic, as many as 40% of Detroit residents did not have an Internet connection in their home.<sup>9</sup> Even when students are back in the classroom full time, equitable education will require connectivity at home. The Emergency Connectivity Fund is an important step forward, but we also need to develop a long-term solution.

I thank the Commission staff who have put a tremendous amount of effort and expertise into preparing this Order on a short timeline. Your unwavering dedication will ensure members of our most vulnerable communities experience the transformative impact of broadband connectivity.

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<sup>9</sup> Meghin Mather, *A City Offline: Bridging Detroit's Digital Divide* (Oct. 17, 2019), <https://datadrivendetroit.org/blog/2019/10/17/a-city-offline-bridging-detroits-digital-divide/>.

**STATEMENT OF  
COMMISSIONER NATHAN SIMINGTON**

Re: *Establishing the Emergency Connectivity Fund to Close the Homework Gap*,  
WC Docket No. 21-93

It is my pleasure to vote to approve the Report and Order establishing the Emergency Connectivity Fund to Close the Homework Gap. The Fund's size is closely tailored to the amount estimated to be required to ensure that all students nationwide have access to broadband during the ongoing COVID-19 pandemic. This program will connect currently unserved students, school staff, and library patrons so that they can all engage in remote learning on a level playing field with their connected peers. This is an important part of closing the larger digital divide and will encourage broadband adoption.

I particularly appreciate the analysis and suggestions provided by the stakeholders who reached out to point out changes that needed to be made to the original draft, and to Acting Chairwoman Rosenworcel, her advisors, and the outstanding Wireline Competition Bureau team that took so many stakeholders' concerns to heart and made changes to the Report and Order as originally proposed. We particularly appreciated that the final Report and Order recognizes that the priority of this program is to serve those not yet served, while providing necessary financial support for reimbursements of necessary past spending the minute that those needs have been satisfied. Congress gave the Commission a mandate to connect currently unconnected students, and I believe that this mandate will be fulfilled in the final Report and Order.

Further, I appreciate the clarity thoughtfully added to the original draft. Two points to particularly note are the addition of standards and clarifying language on when self-construction would be appropriate, and the guardrails added for all program participants to guarantee that funds from this program will go for remote learning as intended by Congress. Changes made to clarify that the \$400 equipment cap is on reimbursements rather than prices, and language requiring additional information on broadband availability championed by Commissioner Starks, both significantly improved the Report and Order.

The final Report and Order prioritizes rural users when funds are nearing depletion, accommodates non-profit private schools and includes homeschoolers, as championed by Commissioner Carr. The inclusion of ATSC 3.0 datacasting as appropriate technology for self-provisioned systems, as requested by both Commissioner Carr and my office, is also an important addition to the Report and Order.

I also appreciated the opportunity to discuss my call for protection of school and library data. Though not included in the Report and Order, I look forward to working on this issue in future E-Rate discussions. Now, when many of our schools and library systems are suffering attacks targeting student and faculty personal data, and when critical infrastructure is more and more subject to damaging hacks and cyber-attacks, we must ensure that E-Rate support provides safe, secure technology.

The collegial process by which the Commission has jointly arrived at this final Report and Order was made particularly effective by Acting Chairwoman Rosenworcel's release of a public draft. Education is a vast field. The final Report and Order benefited from the input of a wide range of concerned parties, which could not help but refine our work at the Commission, allowed us to carefully assess the ramifications of every choice we made, and made our final Report and Order more transparent and informed than it would have been otherwise.

I fully support this Report and Order and am honored to vote for it. Thank you again for all who worked to get it into this final form. I look forward to hearing great things from this effort.