



June 4, 2021

Kris Monteith, Chief
Lisa Hone, Deputy Bureau Chief
Johnnay D. Schrieber, Deputy Division Chief, TAPD
Wireline Competition Bureau
Federal Communications Commission
45 L St. NE
Washington, DC 20554

**Re: *Ex Parte Submission*
Emergency Connectivity Fund for Educational Connections and
Devices to Address the Homework Gap During the Pandemic,
WC Docket No. 21-93**

Dear Ms. Monteith, Ms. Hone and Ms. Schrieber:

The Schools, Health & Libraries Broadband Coalition (SHLB) congratulates you and your colleagues on developing the rules and policies for the new E-rate Emergency Connectivity Fund (ECF) fairly and expeditiously. The ECF Order addresses many complex issues and will provide tremendous opportunities for schools and libraries to facilitate the provision of affordable broadband service to students, teachers, staff, and library patrons to engage in remote learning and educational activities.

As with any new program of this size and complexity, several questions have arisen regarding the implementation of this program. Potential applicants are exploring many options and the variety of technologies that could be used to fulfill the mission of the program. We know that our colleagues at SECA have already submitted some good questions, and we have developed some additional questions below that supplement those SECA questions. Because the Order delegates responsibility to the Wireline Competition Bureau and the Office of the Managing Director to implement the program, we respectfully ask you to swiftly provide this additional guidance to applicants to help them prepare for the application window and to help ensure that the program operates smoothly and accomplishes our shared objectives.

Impact of School and Library Re-openings on Eligibility

1. We ask the Bureau to clarify that any broadband equipment and services used off campus is eligible for ECF support, regardless of whether the particular student, patron, or staff member is also attending school in person, or whether the library is open to the public. We understand that the Order says equipment such as laptops are not eligible

for ECF funding if they are used *exclusively* on-campus. We interpret this to mean that such equipment and services *are* eligible for ECF support if they are used *partially* on-campus and *partially* off-campus. We would appreciate it if you could clarify that this interpretation is correct.

Eligibility for Prospective Funding

2. The Order calls for an initial filing window to open in June for prospective services and devices to be used between July 1, 2021 and June 30, 2022 for those students, patrons and staff who have unmet needs. We ask the Bureau to confirm that schools and libraries can apply for prospective funding to continue serving students, patrons, and staff who had unmet needs at the beginning of the pandemic and who received equipment and/or services during the past year through some other source of funding. Those eligible users have had their needs met through various means prior to July 1, 2021, but need additional funding to continue those services.¹

Unmet Need

Schools are required to certify on the FCC Form 471 that they are only seeking support for eligible services and equipment provided to students and staff who would otherwise lack broadband services sufficient to engage in remote learning. Similarly, library patrons will be required to 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.

These certifications/statements raise several challenges for schools and libraries. First, these certifications establish a bright-line standard that may be difficult for most schools and libraries to meet, given that their funding requests are going to be estimates at best.

Second, contrary to the Commission's finding in paragraph 81 of the Order, this certification requirement is burdensome because it requires that schools and libraries estimate future demand when submitting their applications prior to the actual provision of service. While some schools may have collected the "need" information earlier in the pandemic when school buildings closed, others found it challenging to compile this information and do not have it readily in their possession.

Third, schools welcome the opportunity to leverage the ECF program to help offset these costs but are unsure what information is needed to support the certifications and how to go about

¹ For example, suppose a school identified 10 families that did not have broadband access at the beginning of the pandemic, and then the school provided the funding so that these 10 families could get an Internet connection through July 1, 2021. Our understanding is that these 10 families are still considered an "unmet need," because, without assistance from the school, the family could not maintain that Internet connection for its students next year. Similarly, if the school provided a laptop for that student but has determined that it is no longer "sufficient" for remote learning (because, for example, it stopped working), the school would be able to use ECF support to purchase a new laptop for that student.

compiling the information in order to determine unmet need. We want to ensure that we understand the parameters of the documentation requirement so as to avoid any funding denials due to lack of acceptable “unmet need” information.

To that end, we ask the Bureau to clarify the following:

3. Is it sufficient to support an ECF funding request if a school surveys its families about their access to broadband at home, and then extrapolates the results of the survey to estimate the number of devices and Internet service plans to request in their funding application?²
4. Is it sufficient to support an ECF funding request if a school relies on a survey of families conducted during 2020 that identified the families’ needs for ECF eligible services and equipment?
5. Is it sufficient to support an ECF funding request if a school or library relies on third-party research regarding Internet subscribership information or connected device access in the general area (city, county, or region) and extrapolates this information to identify the need for devices and services?
6. Is it sufficient to support an ECF funding request if a library estimates need based on a method the library has used to estimate patron needs for other services in the past?
7. Is it sufficient to support an ECF funding request if a school uses free and reduced lunch data as a basis for estimating need (i.e., assuming that a student that qualifies for free and reduced lunch has an unmet need)?

Availability of Service/New Network Construction

The Order, in paragraphs 41 and 42 (and in the Eligible Services List and 47 C.F.R. § 54.1710(a)(2)), prescribes a limited exception for network construction and/or datacasting where there is no commercially available Internet service option to support remote learning. While we understand the Commission’s policy decision not to allow schools and libraries to deploy networks where commercially available service already exists, it is difficult for schools and libraries to make that determination in practice. For instance, service providers often exaggerate their coverage areas on their websites and marketing materials, as the Commission has found in its current broadband mapping proceeding.

Applicants must also define the geographic area to be served, and the number of students, school staff or library patrons that would be served. We seek to understand the specific documentation requirements in support of this service option.

8. Is there an overarching consideration of reasonable price when determining whether service is realistically available and sufficient to support remote learning? The statute

² The school or library would be required to show the actual costs for assigned equipment and services during the reimbursement process.

and regulations require that only reasonable costs of Internet service will be reimbursed. Many of the students, staff and library patrons that this program is intended to benefit come from low-income households that often cannot afford the commercially available broadband services in their market. If the price of commercial Internet service is considerably more expensive compared to the cost of deploying a self-provisioned network, can the school/library make the case that commercially available service is not available in practice if the service is not reasonably priced and the school/library could provide service at a more affordable price?

9. Similarly, if a broadband service provider claims that it is providing service in a region but the school or library demonstrates that the provider's prices are higher than the Commission's expected price of \$10 to \$25 per month per student, is that sufficient to demonstrate that no service is effectively available because it is not offered at an affordable and/or reasonable price?
10. When schools and libraries consider whether commercial Internet service is available, must they consider low-earth orbiting satellite Internet service? Such satellite services cover an increasingly large portion of the country. If low-earth orbiting satellite service is considered "commercially available", then this would seem to eliminate the option for schools/libraries to deploy new network facilities altogether.
11. If a school or library contacts all the commercial Internet providers that advertise or otherwise report to the FCC that they serve a geographic area, to inquire whether the provider is able and willing to provide the requested service, but the service provider does not respond after a reasonable period of time such as 10 business days, is that sufficient to demonstrate that the provider is unwilling or unable to provide service?
12. If a school tries to purchase a commercially available but that finds that that service is not sufficient to support remote learning, is an affidavit detailing the facts "clear evidence" that services are not available (assuming no other service providers)?
13. If an Internet service provider claims that it *could* provide the requested Internet service sometime in the future, but in response to a request does not provide a firm order completion date (a confirmed in-service date), does this constitute sufficient evidence that the commercial service provider is unable to provide the requested service? Some vendors may state they are able to provide service, subject to future contingencies such as performing a site survey or first requiring that a contract be signed. These time-consuming steps could undermine the goal of provisioning service to the students, staff and patrons who need such service within the upcoming funding year.
14. If an Internet service provider does not currently provide the requested Internet service but is willing to do so in the future and provides an in-service date (firm order completion date) that is later than the projected in-service date for a self-provisioned network, does this establish that the service provider is unable to provide the requested service?
15. Is there a particular definitive resource or website that the Bureau has verified that identifies all commercial Internet service providers and their providers' service areas? Does the Bureau recommend a way for applicants to identify all the providers in their

area that they must contact to determine whether Internet service is available to serve a particular location or geographic region?³

Eligible Services and Equipment/Cost Allocation

The Eligible Services List states: “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.” We fully support the Commission’s efforts in paragraph 45 of the Order to alleviate the need for challenging cost allocations for minimal expenses. However, a few questions have arisen relating to the definition of a manufacturer’s included component that is necessary for equipment to operate:

16. Connected devices require a license to use a laptop or tablet to access a school’s online educational content. For example, each Chromebook requires an education license to enable the student or teacher to access the school’s educational content. While the device can access the Internet without the license, the user cannot access the school’s specific educational content without it. These licenses may or may not be priced separately, but they are a manufacturer component that is necessary for the connected device to be used for remote learning. Are such licenses eligible for ECF support, or would they be considered an ineligible user license that is purchased separately and not included in the base price of the equipment? In other words, is the Education License considered to be a necessary component to operate the device, and thus would be eligible, or is it a separately priced user license that is ineligible?
17. Manufacturers may sell connected devices with other components that are bundled with the price of the equipment (in addition to cords and power chargers), and it is unclear whether the Commission would consider those other components to be necessary for the equipment to operate. Examples include equipment protective cases or covers, peripheral keyboards, and peripheral mice. The ineligible equipment list states that *separate costs* for non-connected accessories, e.g., cases, mouse pads, cable clips, laptop bags, tablet stands, wall mounts, and charging stations, etc. are ineligible. But are these components eligible if they are included by the manufacturer in the sale price of the connected device and the sale price is the same with or without the inclusion of these non-connected accessories?

³ We recognize that the Commission’s Lifeline program operates a web portal called “Companies Near Me”. Unfortunately, we have found that the Companies Near Me tool search results are not helpful. When I asked about some discrepancies in the search tool results and the actual availability of service, the response I received from USAC said that “the Companies Near Me tool search results are based on program enrollment and information provided by the companies. The search results may include a company listed in your area that may not provide service to your address. Also, the search results might not show every company that is near you.”

18. Is cost allocation of connected devices required when the device includes items that are ineligible if provided separately? We appreciate and support the Order's language in paragraph 33 that says "importing cost allocation requirements into the Emergency Connectivity Fund Program is inconsistent with our goals of administrative simplicity and fast funding decisions." However, schools and libraries do not want to take the risk that USAC will deny funding for devices because they include some ineligible components or features (such as cases for tablets included in a 10-pack bundle). Will ECF fund the whole device as long as the ineligible features or functions are "integral" to the device? Or will ECF funding be provided for the bundled package unless the ineligible feature or function is offered for sale on a separate stand-alone basis? Other examples include firewalls or cybersecurity software that is included in the device. We request that the Bureau clarify what "ancillary" components will be allowed without cost-allocation.
19. In areas where commercial service is available, the Order generally prohibits the use of ECF funds for the purchase of "antennas." Particularly in some rural areas, an antenna and amplifier can turn an unserved address into a served address by boosting a weak and otherwise insufficient wireless signal. In other situations, a service provider may require the consumer to purchase an antenna/receiving dish or other customer premises equipment that is necessary to receive the service (such as for satellite service). Are antennas and associated equipment at the customer premises (CPE) eligible for ECF support in areas where commercial service does exist? Or does ECF only cover the monthly service subscription and the device but no other CPE necessary to use the service in these areas?

Competitive Bidding/Contracting

20. Schools and libraries that have to comply with their state/local competitive bidding requirements may not have time to complete those processes prior to the closing of the application window. But applicants nonetheless have to identify a service provider on the FCC Form 471. Will USAC allow applicants to change the service provider listed on Form 471 if, at the end of a state-mandated competitive bidding process, a different vendor wins the bid?

Invoicing

21. The Order requires applicants to invoice within 60 days of the Funding Commitment Decision Letter (FCDL) or "service delivery date." This requirement is appropriate for a one-time purchase of equipment. However, Internet access is often invoiced on a monthly basis. We ask the Bureau to clarify that the deadline for submitting invoices for services invoiced monthly is August 30, 2022, which is within 60 days of the funding year end date. This would allow applicants to submit all monthly invoices for the year at one time; otherwise, they may have to submit invoices every month to ensure they can receive reimbursement for all of their services. Such a process would be much more burdensome than the existing E-rate process.

22. Paragraphs 93 and 94 seem to require a contract at the invoicing stage, but not prior. School districts often use purchase orders instead of contracts to procure services, and that is especially true for equipment. Are contracts required to be signed in advance of submitting an application for ECF funding? Or is another legally binding agreement such as a purchase order acceptable? If legally binding agreements/contracts are required, we request that the Bureau clarify that any funding sought retroactively for services and equipment already provided could use performance to demonstrate a legally binding agreement.

CIPA

23. If a library uses ECF funds to purchase hotspots but the Internet access (e.g., data card) is purchased with non-ECF funds, when do CIPA filtering requirements apply? We understand that CIPA filtering does apply if the library also receives E-rate support for the Internet access or internal connections, but does not apply if the library receives ECF funds solely for the hot spot but does not receive E-rate funding for Internet access or internal connections. Can the Bureau confirm that this reading is correct?

School Bus Wifi

24. The ECF Order currently limits funding for hot spots to \$250 per unit. The Order also allows Wi-fi on school buses to be eligible for ECF support, but unfortunately, paragraph 61 uses the term “hot spot” when describing the equipment used to provide Wi-fi on school buses. The typical Wifi access point used on school buses (which combines a router and modem as described in paragraph 71) is much more robust and carries much more traffic than a typical individual hot spot. The cost of a Wi-fi access point used on a school bus typically ranges from \$400 to \$1200 and is comparable to the type of access points used for community centers. Are Wi-fi access points on a school bus subject to the limit of \$250 per unit? Or do applicants have greater flexibility to apply for ECF funding for school bus Wifi equipment as long as the cost is reasonable?

Requested Clarification for Library Recordkeeping Responsibilities

25. In relation to the inventory requirements in paragraphs 116-118, we interpret these as requiring the library to record the names of patrons who currently have checked out a device or hotspot. We do not believe the 10-year document retention requirements of paragraph 119 require libraries to retain every single record of every single patron who checked out a device or hotspot for 10 years. Requiring such a lengthy record retention is onerous and is fundamentally at odds with a core principle of library service that libraries do not retain personally identifiable information (PII) of their patrons' use of library services. We seek confirmation of our position that libraries only need to record patrons who *currently* have on loan a connected device or hotspot. If the Commission does not accept our position and requires a 10 year record retention of device or hotspot

use, we request the ability of libraries to redact the PII from the circulation record once the patron returns the device or hotspot. The library will retain data for 10 years that an anonymous patron checked out/in a device or hotspot on specific dates.

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We welcome the opportunity to discuss this letter and inquiries with you and look forward to receiving further guidance from the Bureau so that stakeholders will be able to apply successfully for ECF funding. We also very much appreciate your willingness to participate in our ECF Workshop on June 9, 2021.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized flourish at the end.

John Windhausen, Jr.
Executive Director
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1250 Connecticut Ave. NW Suite 700
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cc: Mark Stephens, Managing Director