

ALA American Library Association

Public Policy and Advocacy Office 1615 New Hampshire Ave. NW Washington, DC 20009

June 28, 2021

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

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

Dear Secretary Dortch:

Since the release of the draft order for the Emergency Connectivity Fund (ECF), the American Library Association (ALA) has been actively engaged with the library community to both promote this unprecedented opportunity and to determine how best to support libraries to successfully participate in the program. As you know, libraries are an integral part of the digital safety net for families, students, and others who do not have a home internet connection. ALA appreciates the Commission's acknowledgement of this important role in ensuring libraries are able to leverage the ECF program to augment critical connectivity services in response to the COVID-19 pandemic. ALA appreciates the yeoman's work by the Commissioners and staff to establish the ECF program, as well as the outreach and timely information provided to the applicant community. We are hopeful that many libraries will participate.

But we also have heard significant concerns that re-affirm issues ALA anticipated and already submitted on the record in our initial and reply comments, as well as in several ex parte meetings. Specifically, libraries have reported that the rules related to (1) patron data and (2) the ten-year documentation requirement of that data constitute significant barriers to participation in the ECF program, both in terms of library policy and practice. To maximize library participation, especially among small, rural, and tribal libraries, we ask the Commission to consider how it might further mitigate the impact on patron privacy policies while still meeting the regulations in the ECF order. We provide additional detail on these issues and propose a scenario below that we believe could aid libraries in addressing these challenges within program rules. We respectfully request the Commission provide guidance for libraries that reaffirms its commitment to deferring to state privacy laws while clarifying libraries are not responsible for linking patron data with the device record if both records are made available upon a legitimate request by the FCC, USAC, or an auditor. In addition, we request a modest enforcement delay to enable libraries to establish needed systems.

Patron Privacy

We appreciate the Commission recognized state privacy laws that preclude libraries from supplying patron records without, in many instances, a court order stipulating the library must do so. The rule stating that participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format (§ 54.1714(c)) to comply with federal or state privacy laws is critical. Because guarding patron privacy is a fundamental principle of library service, however, library staff remain concerned that compliance with the ECF program rules does not run afoul of this hallmark.¹ The scenario below supports the FCC acknowledgement of this principle.

Ten-year document retention

The program rules (§ 54.1715(b)) require libraries (and schools) to retain any and all records related to their participation in the program for ten years. For example, this includes information on each wi-fi hotspot checked out to patrons, along with their names and when they returned the hotspot to the library. While the library's automated circulation system retains data on who has a specific item *while* it is checked out, the link between the item (e.g., tablet, book) and the patron is removed when the item is returned to the library. Circulation systems have been specifically designed this way primarily to protect patron privacy. Some circulation systems may have an option to retain the required data for ten years, but it may require the circulation system vendor to modify its system's data retention and report capabilities to do so. Some (generally large) libraries may have the staff expertise to code these changes, and other (generally small) libraries will resort to manual documentation. In all cases, the requirement will create a new administrative burden on libraries to improve digital equity in their communities through the ECF program. The scenario below does not eliminate the burden but seeks to mitigate it by providing clear guidance and flexibility for applicants while addressing program compliance.

Library Patron Data Retention Scenario

As part of the Emergency Connectivity Fund (ECF) libraries are required to maintain inventory records for devices (e.g., tablets, hotspots) they lend to patrons that are paid from the ECF program. The primary system libraries use to track which patron has which item is called an integrated library system (ILS). An ILS includes several major modules including an online catalog and a circulation system. While the circulation system tracks who has a specific item checked out, once the item is returned to the library and checked in, the link between the item record (e.g., tablet, book) and the patron record is removed. This means there is no longer any link or connection between the item record and who had checked out that item. Further, ILSs are programmed to wipe patron data completely once the item is checked back into the library. ILSs were specifically designed this way primarily to protect patron privacy.

As part of the ECF record retention, libraries need to keep records of:

- (a) Device type (e.g., tablet, hotspot, modem/router);

¹ Privacy is enshrined in the American Library Association's Library Bill of Rights that states: "All people, regardless of origin, age, background, or views, possess a right to privacy and confidentiality in their library use." (<https://www.ala.org/advocacy/intfreedom/librarybill>.)

- (b) Device make/model and serial number;
- (c) The patron to whom the device was checked-out; and
- (d) The date the device was checked-out and checked-in.

The ILS circulation module can contain all the above information, but the issue is how to retain the information for the ten years as required in the ECF regulations. Here is one scenario to meet the ECF ten-year information retention regulations.

- The above information (a-d) will be entered and maintained as part of the ILS circulation module.
- To enable devices to be checked out, each will have a cataloging (i.e., item) record and barcode, just like other items (e.g., books) that are checked out. In addition, some field(s) in the cataloging item record will store the device type and its make/model and serial number (lines a and b above). These data can then be used to determine the circulation records of ECF-purchased devices and indicate that these records should be extracted for the daily report.
- The ILS will be set to run a report daily extracting the above information (lines a through d) for items purchased with ECF funds that were checked out and checked back in. Upon check in, patron information (i.e., line c above) will no longer be associated with the circulation module.
- These daily reports will be stored with previous daily ECF reports for a period of ten years. (If the library is open 300 days annually, there will be a total of 3,000 daily reports.)
- Any request by the FCC, USAC or auditors for these reports will be honored only after patron personally identifiable information (PII) has been removed. If the FCC, USAC or their auditors request patron PII, these parties will need to follow the process outlined in the state's library patron privacy law.
- In the event that PII is requested following the state law, the library will not be required to match the patron record to the circulation record. This will be the responsibility of the auditor, USAC, or the FCC using the information in the daily ECF funded device circulation reports.

Some ILSs will be capable of running the type of report outlined above. In other instances, it may be necessary for the ILS vendor to modify its report options to include the above type of report. Another option is that some library staff may have the expertise to develop the ECF-device required data retention report.

The above scenario represents one way in which libraries may approach compliance with the patron data and document retention rules. However, by offering this example, we do not intend that this is the only way libraries can provide ECF-funded devices to patrons and remain in compliance.

Finally, to allow for adequate time for libraries to implement a system that adheres to state and local privacy laws and policies in order to comply with the ECF program rules, we respectfully request the Commission allow for a reasonable delay in enforcing the data retention requirements (e.g., 90 days after the application window closes). This modest delay will help ensure libraries are well prepared to develop a reasonable system for documenting the required information.

Libraries are committed to keeping their communities connected, and the ECF program provides a significant opportunity to immediately add to their capacity. As the application window opens, we are eager to continue to work with the Commission and USAC to ensure libraries are ready.

Thank you for your consideration of these core library concerns.

Sincerely,

A handwritten signature in black ink on a light-colored background, reading "Kathi Kromer".

Kathi Kromer

Associate Executive Director,
Public Policy and Advocacy, American Library Association

cc:

FCC Interim Chairwoman Jessica Rosenworcel

FCC Commissioner Brendan Carr

FCC Commissioner Geoffrey Starks

FCC Commissioner Nathan Simington

Sue McNeil, Associate Bureau Chief, Wireline Competition Bureau

Marijke Visser, Senior Policy Advocate, American Library Association