May 5, 2021

The Honorable Jessica Rosenworcel, Acting Chairman
The Honorable Brendan Carr, Commissioner
The Honorable Geoffrey Starks, Commissioner
The Honorable Nathan Simington, Commissioner
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Ex Parte Filing
Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93
Addressing the Homework Gap through the E-Rate Program, WC Docket No. 21-31
Modernizing the E-rate Program for Schools and Libraries -- WC Docket No. 13-184

Dear Chairwoman Rosenworcel and Commissioners:

We greatly appreciate your commitment to adopting comprehensive rules and policies governing the new Emergency Connectivity Fund (ECF). We recognize the enormous task of implementing this new program under extremely tight deadlines, and the staff should be commended for diligently synthesizing the record to produce a coherent set of draft policies. The work you and your staff are doing for the school and library communities and to connect students, teachers, staff and library patrons to high-quality and affordable Internet access is essential.

The undersigned organizations (Remote Learning Coalition) have reviewed the draft Order closely and offer the following changes to further ensure maximum reach of the ECF benefits and to improve the effectiveness of the program. We believe that the suggestions, stated below, build upon the general framework set forth in the draft ECF order, and provide clarifications to fulfill the intent of the statute. These recommendations reflect a compromise proposal among the Coalition members, in an effort to assist the Commission in finding common ground among the various interested stakeholders as you finalize the Order.

First, a single filing window covering eligible costs incurred from March 1, 2020, when school and library closures swept across the country, through June 30, 2022, the end of the upcoming school year should be adopted in place of two separate windows covering different periods.

Currently the draft Order (¶¶ 79-82) proposes an initial filing window to cover eligible expenses incurred from July 1, 2020 through April 30, 2021, and then a later filing window(s) to cover expenses incurred

from May 1, 2021 through June 30, 2022 with any remaining funding. This approach tips the balance between future expenditures in favor of retrospective payments, without an underlying rationale. We have concerns with two different aspects to this approach.

Initially, the start date for the retrospective period should be modified to **March 1, 2020** when the pandemic forced schools and libraries to close and required them to begin making emergency purchases of devices and Internet access for their students and patrons so they could continue learning remotely.[1] The draft Order states that the July 2020 start date is more administratively feasible than an earlier date since schools may already have finalized their accounting for the year ending June 2020. Regardless of when a school or library budget year has closed, they can and do still accept reimbursements for this period, no differently than they do currently during the typical E-rate funding cycle when BEAR payments are remitted following the close of the fiscal year. Further, during these early months of the pandemic, other sources of federal relief funds were not readily available to defray these costs, leaving schools and libraries to make these purchases from already-thin local budgets.[2]

Further, there should not be a prioritization that reimburses past expenditures over future expenditures. Schools and libraries should be afforded maximum flexibility in determining which of their qualifying expenses should be submitted for reimbursement – prospective, retrospective or both - subject to the required certifications.[3] The draft Order appropriately recognizes the importance of affording schools and libraries the **flexibility** to make appropriate choices about their needs.[4] This same principle should be applied here and widen the covered period of expenditures. The need for prospective services and connected devices may be just as urgent as the need for reimbursement of past expenditures. With the upcoming school year just a few months away, schools are planning now to undertake these purchases and need to know whether they will be able to access ECF dollars to help pay for these expenses.

A single filing window also offers the most expeditious path to issuing funding awards and disbursing the federal appropriation. Regardless of the number of windows or the associated cover periods, the Order's framework requires that all applications must be submitted first, and demand must be computed before any funding awards can be made. Segregating the covered reimbursement periods into multiple windows ultimately will delay the release of funding letters and reimbursements. If a second window has to wait until commitments are issued for the first application period, it could be January before a second window opens. Applicants that had funds to purchase connectivity and equipment through April 2021 will receive funding while those schools and libraries that did not have the local budget resources could be shut out of funding entirely.

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[1] Education Week reported here that every state in the nation began closing schools in March 2020.

[2] Pennsylvania issued a rapid survey to their schools on May 3, 2021. 35% of respondents purchased off-campus Internet for students between March 1, 2020 and June 30, 2020 which was not paid for from state or federal COVID relief funds. Similarly, 33% of respondents that purchased connected devices between March 1, 2020 and June 30, 2020 reported the devices were not paid for from state or federal COVID relief funds.

[3] Proposed certifications include unmet need (¶ 77); no duplicate funding requested (¶ 120); services are being used primarily for educational purposes (¶ 125); and compliance with local, state and Tribal procurement requirements (¶ 119).

[4] *See, .e.g.,* ¶ 29 of Draft ECF Order ("…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.") and ¶h 49 ("…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."); see also ¶¶ 62, 85 and 132 for other examples of deferring to and providing for flexibility and local decision making.

We believe that a 45-day filing period as suggested in the draft Order would continue to be appropriate for our proposed single application filing window. Given the expected lead time that will be needed to program the online filing system, we surmise and encourage the opening of the filing window by mid-June and the close by the end of July. After expedited reviews, applicants could expect to receive notice of funding awards beginning in August – just in time for schools to reopen.

Uncertainty about how much funding will be requested to meet the needs of students, staff and library patrons, as hinted at in the draft Order, should not drive the public policy setting the rules for the ECF application process.[5] Rather, the program rules should be structured to accommodate the possibility that more funding requests will be submitted than there is available funding, and to establish a fair process for distributing funds should this situation occur. While Congress established the goal of covering 100% of reasonable eligible costs, just as in the traditional E-rate program, the Commission should develop a fair mechanism for allocation of funds in case the funds fall short as we explain in our next recommendation.

Second, the risk of oversubscription should be mitigated by adopting a policy of an across-the board percentage pro-ration if necessary.

Concerns about over-subscription, we submit, should be addressed by adopting a fair and equitable manner of allocating the funding should demand exceed available funds, and not by restricting the reimbursement period only back to July 1, 2020, which we believe will serve to artificially limit demand. Each member organization of the Remote Learning Coalition initially supported some manner of applicant-level budgets as the recommended manner of fairly allocating funds and managing demand, but this concept is not favored in the draft Order. Instead, the draft Order (¶ 87) proposes that should funding be unable to cover all requests, funding would be directed initially to the highest discount applicants until funds were depleted; and, if an entire discount band could not be funded, the applicants with the highest NSLP percentages in that band would be funded first. This approach would enable the highest discount applicants to be fully funded, and thereby receive 100% of their reimbursable costs, and leave all other applicants to receive 0% of their requested funding or zero ECF dollars. The inequity of this result clearly is evident. We do not believe it was Congress's intent when they sought to provide 100% reimbursements to then deny all funding and provide 0% reimbursements to possibly thousands of schools and libraries.

A much more equitable approach that we endorse is an across-the-board pro-ration that would reduce funding for all eligible applicants by the same percentage amount that reflects the percentage of oversubscription. The pro-ration percentage would be computed by dividing total available program funds (approximately $7 Billion) by the total demand. The pro-ration percentage would then be applied to compute the amount of approved funding per applicant.

This method has several inherent benefits:

- **All** ECF applicants would receive funding.
- The higher costs incurred by rural applicants would be automatically captured in the higher base costs included in their applications.

[5] See ¶ 82, "***If*** demand does not exceed available funds for the first application period…", (emphasis added), conveying uncertainty about how far the funds will stretch.

- All applicants with a need for reimbursement of eligible ECF expenses would be treated equally and would share equally in a reduction of their requests if necessary and at the same time receive an equal share of their requested funding.
- Small rural applicants would not be shut out of the ECF program which could very well occur if the prioritization is done using the discount matrix.[6]

Third, applicants that cannot afford to pay the total costs of prospective eligible equipment and service should be allowed to apply for ECF reimbursement upon either issuing a purchase order based a bona fide vendor quote or payment of a vendor invoice subject to appropriate verifications that guard against waste, fraud and abuse.

Since the ECF Program will rely solely on the FCC Form 472 BEAR reimbursement process with no option to use the FCC Form 472 SPI process to obtain discounted bills, many applicants may be unable to afford payment of prospective orders for equipment and service fully from their local budgets. Since approximately half of E-rate applicants elect to receive discounted vendor bills, we can deduce that the current ECF proposal which requires applicants to pay 100% of the costs up-front could be a financial hardship for these many applicants. An accommodation is appropriate, therefore, to ensure that the upfront payment requirement does not preclude applicants from being able to participate in the ECF program.

We recommend that applicants be permitted to obtain payment from the ECF program either after they have made payment to the vendor or after issuing a purchase order that is based on a legitimate vendor quote or contract. We understand that if an applicant elects to use the pre-payment option it is appropriate for the Commission to direct USAC to implement a post-disbursement verification to ensure payment of the funds are transferred to the vendor.

Fourth, "unmet need" certifications should be clarified, and low-income students should be presumed to need a school-purchased connected device and/or Internet access service.

The draft ECF Order (¶ 77) seeks to prioritize funding for those students with an unmet need. While we understand that its purpose is to ensure resources are directed appropriately, we have significant concerns about the proposed certifications and how a school or library could prove such certifications during an audit. Accordingly, we request that the proposed certifications should be clarified to incorporate the definition of unmet need as "otherwise would lack sufficient access and be unable to engage in remote learning and virtual library services."[7] This makes clear that although a student's family may have Internet at home, such as from a data-limited cellular phone hotspot, the bandwidth limitations may not allow the student to be able to engage in remote learning without obtaining additional Internet access from the school. Similarly, a student may own a connected device, but the

[6] Funds for Learning's analysis submitted in its May 3, 2021 *ex parte* estimates that funding would be fully depleted and unavailable for applicants with a discount of 70% or lower based on the policies set forth in the draft Order. In South Dakota, for example, this means that districts that have only 10% of the student enrollment would be able to qualify for ECF which leaves 90% of the students – mainly located in rural areas - unable to benefit from the ECF program. South Dakota Department of Education Reply Comments filed April 23, 2021, page 2; Exhibit A; https://www.fcc.gov/ecfs/filing/10423062933338.

[7] Draft ECF Order, ¶ 138.

device may not be adequate to enable the student to engage in remote learning. It is also important to recognize that any applicant's attestation of households lacking access is just a "snapshot in time."

Further, there should be a **presumption of unmet need** for a connected device, Internet access or both when the school pays for or provides the device to a low-income student or student attending a CEP school by a school.[8]

Schools may be asked to certify to the need of non-low-income students for a connected device or Internet access service, and per the draft Order, but they should not be required to substantiate or document this need during the application review process or any post-commitment review or audit. This presumption is consistent with the EBB Program which provides benefits to low-income families as well as any family with a student attending a CEP school.

For non-low-income and non-CEP family recipients of devices or Internet access, the draft Order should also clarify that for any post-funding review, no specific documentation will be required (such as a parent survey) but rather a reasonable explanation of how the applicant determined which students had an unmet need for ECF eligible equipment or services will suffice.[9]

Fifth, the performance measurements governing USAC's administration of the ECF Program should be clarified to require user input and review of the ECF filing platform during implementation and before it is finalized.

We support the draft Order's declaration that "the application process should be easy for applicants to navigate and to use in requesting funding for eligible equipment and services." (Draft ECF Order, ¶ 20.) To help achieve the goal of making the application process easy for applicants, we encourage the FCC to direct USAC to seek user input and review of the ECF filing platform during development and prior to final implementation and opening of the filing window. Experience has shown that had user input and systems review been sought at the start of and during the development phases, applications and other online systems, hiccups or confusing questions could have been addressed and resolved. The ECF program and its funding distribution is too important to have applicants encounter such challenges. User input will help ensure that the system design will successfully allow applicants to use the online application to submit 'clean' and accurate applications that will facilitate prompt processing of applications and swift issuance of funding commitment decision letters.

[8] If the student's family qualifies for and is using a discounted Internet service that is supported through EBB, the "duplicate funding certification" in ¶ 120 would also govern to preclude the school from paying for the same Internet access service that is already being subsidized by EBB. As noted above, there nevertheless may be some circumstances where a low-income family's receipt of EBB support for home Internet is not sufficient for the student to be able to engage in remote learning, and the school may need to provide additional Internet access for the student to use for remote learning.

[9] For example, a school may have informed students/parents that if the student needed a hotspot for remote learning, they could obtain one by going to the school to pick it up. This explanation is reasonable, and no further documentation or verification should be required during a post-commitment review/audit.

Sixth, the Commission should ensure that for students, school staff and library patrons without sufficient services, extension and installation of broadband facilities for remote learning and online library services will be permitted upon meeting certain prerequisites.

While the draft Order places significant limitations on innovative solutions that would deliver broadband services to students, school staff and library patrons in a cost-effective manner, we believe the Commission can satisfy Congress's intent with a few revisions to the section that currently limits new construction (¶ 39). As the Commission noted in the draft Order, "schools and libraries are in the best position to know what is available and sufficient for their remote learning needs."

Initially, the draft Order requires schools and libraries to demonstrate that there were no commercially available service options sufficient to support remote learning from one or a combination of providers. It is unclear how schools and libraries would make this showing, as the Commission is essentially asking the applicants to prove a negative. Instead, we suggest that applicants certify that, after investigation, they did not identify any existing commercially available service options that could provide sufficient Internet access to the students, staff or patrons for which they are seeking ECF funding.

Next, the draft Order says new construction is only allowed when there are no commercially available service options. The scope and breadth of this requirement is unclear and therefore is subject to misinterpretation and misapplication. It does not seem reasonable for the Commission to require the entire geographic footprint of a school district or library service area have no commercially available providers before a district or library could deploy new facilities to meet the needs of some unserved students, staff and library patrons. This is especially true for the school districts or library service areas that are geographically large found in western states, but we also note this is true in some rural areas where there are gaps in available service within the same county, for example. Even areas where commercial service is technically "available," it may not be practically available because the cellular coverage is too weak, or the prices are too high. Many students/patrons live in urban housing or remote rural areas where hotspots just do not work.

We propose that the Order clarify that new construction, or the installation of new facilities, is allowed when a certain threshold of students or library patrons—such as at least 10 percent of students at a specific school, 10 percent of the school district or 10 percent of a certain geographic area—do not have access to commercially available services sufficient to allow remote learning or access to library services.[10] The extension of facilities would be for the purpose of providing access to these unserved or underserved students, staff and patrons.

Further, we request that the Commission revise paragraph 39 to clarify in each instance that the limitation applies to students, school staff and library patrons that do not have sufficient broadband to enable remote learning or access to online library services.

Seventh, we encourage the Commission to allow E-rate funded Internet access to be used off-campus. We understand that the draft ECF Order focuses exclusively on the implementation of the statute and therefore declined, in paragraph 38, to address the pending request for a waiver of the Internet off-

[10] As the draft Order in ¶ 39 notes, this provision applies to those schools and libraries that already deployed wireless networks where there were no commercially available options sufficient to meet the remote online access needs of their students, staff or library patrons.

campus usage restriction in the E-rate program.[11] But we encourage you to consider the integral intersection between this request and the ECF program. E-rate funded Internet service delivered on campus could be used to provide cost-effective Internet access service for remote learning without any measurable financial impact. The necessity of engaging in cost allocations is administratively burdensome and raises concerns among applicants that they are putting their E-rate funding at risk if the administrator or an auditor disagrees with their calculations. We hope that the Commission will consider granting this requested relief as a pilot covering the ECF timeframe to gather information about the benefits of this waiver during the pandemic, preferably in the ECF order or in a companion order released soon thereafter.

In closing we hope you and your staff will find our above suggestions to have merit and will be incorporated into the final Order. We appreciate the opportunity to provide these views and we are happy to discuss them with you if you have questions.

Respectfully submitted,

John Windhausen, Jr.
Executive Director
Schools, Health & Libraries Broadband (SHLB) Coalition

Debra M. Kriete, Esq.
Chairperson
State E-Rate Coordinators' Alliance

John Harrington
Chief Executive Officer
Funds For Learning

Keith Krueger
Chief Executive Officer
Consortium for School Networking

/s/ Julia Fallon
Julia Fallon
Executive Director
State Educational Technology Directors Association

/s/ Marijke Visser
Marijke Visser, MSLIS
Associate Director and
Senior Policy Advocate
Public Policy and Advocacy Office
American Library Association

/s/ Angela Goodrich
Finance and Administration Executive
Urban Libraries Council

[11] 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).