

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554**

In the Matter of )  
 )  
Addressing the Homework Gap ) WC Docket No. 21-31  
Through the E-Rate Program )

**REPLY COMMENTS OF ACA CONNECTS – AMERICA’S COMMUNICATIONS  
ASSOCIATION ON THE PUBLIC NOTICE**



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**I. INTRODUCTION AND SUMMARY**

ACA Connects – America’s Communications Association (“ACA Connects”)<sup>1</sup> hereby submits reply comments on the Public Notice issued by the Wireline Competition Bureau (“WCB”) of the Federal Communications Commission (“Commission”) regarding the use of E-Rate funds to support remote learning during the COVID-19 pandemic.<sup>2</sup> ACA Connects joins other commenters in supporting the targeted and limited use of E-Rate funds to address the “classroom gap” caused by pandemic-related school

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<sup>1</sup> ACA Connects’ membership is made up of more than 700 small- and medium-size independent operators providing video, broadband, and phone services. ACA Connects’ members provide service to more than 11 million households and businesses, some of whom have no other means of receiving vital communication services. As such, they understand how important it is to close the digital divide, particularly for low-income students, and they support sound programs to do so.

<sup>2</sup> *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, DA 21-98 (WCB 2021) (“Public Notice”).

closures.<sup>3</sup> In its initial comments, ACA Connects recommended steps the Commission should take to ensure that funds are used efficiently, effectively, and equitably to support students lacking in-home broadband connectivity that need to engage in virtual classroom learning.<sup>4</sup> Many stakeholders supported similar actions and safeguards for the emergency program, especially to focus funding where it can do the most good – on in-need students for remote learning – and to provide schools with sufficient flexibility when directing support.<sup>5</sup> Accordingly, as discussed below, the Commission should establish a targeted, limited, and distinct E-Rate program that: (1) directs support to in-need students so they can engage in virtual classroom learning; (2) because of the need for immediate connectivity, relies on existing providers, except in exceptional circumstances; (3) provides support on a prospective basis to conserve limited funding and to treat all schools fairly; and (4) offers schools flexibility, subject to guardrails and accountability measures to prevent waste.

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<sup>3</sup> Comments of ACA Connects – America’s Communications Association on the Public Notice, WC Docket No. 21-31, 1-4 (Feb. 16, 2021) (“ACA Connects Comments”). See, e.g., Comments of the Wireless Internet Service Providers Association, WC Docket No. 21-31, 2-3 (Feb. 16, 2021) (“WISPA Comments”) (noting that the “classroom shifted, almost overnight, from the school to the home” with mandated remote learning); Comments of NTCA – The Rural Broadband Association, WC Docket No. 21-31, 1 (Feb. 16, 2021) (“NTCA Comments”) (highlighting that pandemic-related school closures “have forced millions of students all across the nation to attend school from home,” to the detriment of students lacking in-home broadband connectivity); Comments of Verizon, WC Docket No. 21-31, 6 (Feb. 16, 2021) (“Verizon Comments”) (“There is no question that today the ‘classrooms’ where learning is occurring are located outside traditional school buildings.”); Comments of USTelecom – The Broadband Association, WC Docket No. 21-31, 4 (Feb. 16, 2021) (“USTelecom Comments”) (“[T]oday the classroom has moved to the home.”).

<sup>4</sup> ACA Connects Comments at 6-18.

<sup>5</sup> Comments of AT&T Services, Inc., WC Docket No. 21-31, 4-8 (Feb. 16, 2021) (“AT&T Comments”); Comments of NCTA – The Internet & Television Association, WC Docket No. 21-31, 8-10 (Feb. 16, 2021) (“NCTA Comments”); WISPA Comments at 4-7; NTCA Comments at 2-5; Verizon Comments at 12-15; USTelecom Comments at 4-9.

## II. THE COMMISSION SHOULD ESTABLISH A TARGETED, LIMITED PROGRAM THAT DIRECTS SUPPORT TO IN-NEED STUDENTS TO ENGAGE IN VIRTUAL CLASSROOM LEARNING

The Commission should establish a targeted, limited program – separate and apart from the existing E-Rate program – that addresses the inability of students lacking in-home broadband connectivity to participate in remote learning while schools are closed. As ACA Connects and others explained, the Commission has the authority to use E-Rate funding to support such virtual classroom learning on an emergency basis and has supported off-campus use of broadband services on a limited basis in the past.<sup>6</sup> ACA Connects agrees with WISPA and other commenters that students lacking in-home broadband connectivity are in danger of “rapidly falling behind” their connected peers, and remote learning represents an extension of the physical classroom that is “integral, immediate, and proximate to the education of students” during the pandemic.<sup>7</sup> However, as WISPA and others emphasized, this emergency support should be directed to in-need students that lack broadband connectivity at home necessary to participate in virtual classroom learning mandated by pandemic-related school closures.<sup>8</sup> The Commission therefore should not allocate emergency funding generally

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<sup>6</sup> ACA Connects Comments at 7; AT&T Comments at 7; WISPA Comments at 4; Verizon Comments at 6; USTelecom Comments at 4. *See Schs. and Libraries Universal Serv. Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, ¶ 17 (2003); *Schs. and Libraries Universal Serv. Support Mechanism, et al.*, CC Docket No. 02-6, *et al.*, Sixth Report and Order, 25 FCC Rcd 18762, ¶¶ 41-50 (2010).

<sup>7</sup> WISPA Comments at 3, 6. *See* ACA Connects Comments at 7; Verizon Comments at 3; USTelecom Comments at 12; *see also* 47 C.F.R. § 54.500.

<sup>8</sup> WISPA Comments at 5-6. *See* AT&T Comments at 8 (stating WCB “should limit the services and equipment eligible for support under the emergency program to those that are consistent with meeting the current, pandemic-related emergency”); NCTA Comments at 8 (advocating use of emergency funding “to

to all students or schools that are open. Further, support should not be provided to a household that already has sufficient broadband connectivity – including through another government program – which would reduce the support available for truly in-need students.<sup>9</sup> Instead, ACA Connects submits that the Commission should divide available funding among schools based on the number of each school's students participating in the federal free/reduced school lunch program (which is a reasonable proxy for student need),<sup>10</sup> adjusted to reflect the number of such school's eligible students engaged in online learning during a month.<sup>11</sup>

To speed relief to in-need students, ACA Connects supports AT&T's proposal to establish this emergency expansion of the E-Rate program as a stand-alone program.<sup>12</sup> As AT&T pointed out, “[e]xpanding the traditional E-Rate program to fund ‘off-campus’ devices and services could have a large and destabilizing effect on the balance of existing rules designed to prevent waste, fraud and abuse, and on the existing contribution base, the customers who fund it, and the entities who rely on it.”<sup>13</sup>

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support broadband connections to those who need them to engage in remote learning during the ongoing pandemic”).

<sup>9</sup> ACA Connects Comments at 13. See WISPA Comments at 5 (asserting “there is no reason to permit double-dipping” across federal broadband support programs).

<sup>10</sup> ACA Connects further recommends that schools located in especially difficult-to-serve locations, such as in Tribal and rural areas, should receive an additional five percent in funding per eligible student.

<sup>11</sup> ACA Connects at 11-12.

<sup>12</sup> AT&T Comments at 4-8.

<sup>13</sup> *Id.* at 4. AT&T also noted that Congress currently is considering significant COVID-19 relief bills that likely will include billions of dollars for expanded E-Rate support. *Id.* at 5. (See Budget Reconciliation pursuant to S.Con.Res. 5, the Concurrent Resolution on the Budget for Fiscal Year 2021, Subtitle D, Sec. 3312.) If such legislation is enacted, the Commission would not have to dip into existing E-Rate funds to provide support to in-need students and could instead establish an emergency program that is financially independent from the

Establishing a stand-alone program would allow the Commission to adopt streamlined rules reflecting the emergency nature of the relief while still supporting “educational purposes” under its existing E-Rate authority.<sup>14</sup> Establishing such a distinct program also would be consistent with recent Commission actions to implement emergency programs designed to provide low-income consumers with access to affordable broadband services.<sup>15</sup>

In the same vein, ACA Connects concurs with commenters urging the Commission not to adopt more sweeping proposals that would transform the traditional E-Rate program and allow emergency funding to be used to support all off-campus uses of broadband services and equipment, even if not tied to specific virtual classroom activities.<sup>16</sup> As Verizon noted, such proposals lack important safeguards to ensure

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traditional E-Rate program. Establishing such a program will avoid increases to the contribution factor as well as the fees paid by consumers to support federal universal service programs. If such funding is not available, the Commission should consider providing emergency support by tapping existing program reserves and, if also necessary, moving forward future program disbursements. See AT&T Comments at 5-6; ACA Connects Comments at 16-18.

<sup>14</sup> AT&T Comments at 7. See 47 U.S.C. § 254(h)(1)(B) (authorizing universal service support to schools “for educational purposes”).

<sup>15</sup> See, e.g., *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, WC Docket No. 20-445, Public Notice, DA 21-6 (WCB 2021).

<sup>16</sup> ACA Connects Comments at 18-20; USTelecom Comments at 4; Verizon Comments at 8. See Schools, Health & Libraries Broadband Coalition, *et al.*, Petition for Expedited Declaratory Ruling and Waivers Allowing the Use of E-Rate Funds for Remote Learning During the COVID-19 Pandemic, WC Docket No. 13-184, 20-24 (Jan. 26, 2021) (requesting that WCB declare that any use of E-Rate funds to support remote learning during the pandemic serves an “educational purpose.”); Comments of New America’s Open Technology Institute & Education Policy Program, *et al.*, WC Docket No. 21-31, 7-8 (Feb. 16, 2021) (stating that schools should not have to engage in any cost-allocation between on-campus/off-campus use of broadband services and devices during the pandemic).

support is used for educational purposes and could quickly exhaust available funding.<sup>17</sup> Multiple commenters also correctly noted that such proposals present “novel questions of fact, law or policy” that would significantly delay establishment of the program.<sup>18</sup> In light of the emergency need for this program, the Commission should not get bogged down with such novel issues or with seeking to integrate this limited program with the long-established and differently-directed traditional E-Rate program.

### **III. THE COMMISSION SHOULD FOCUS EMERGENCY SPENDING ON PROVIDING IMMEDIATE CONNECTIVITY FROM EXISTING PROVIDERS, EXCEPT IN EXCEPTIONAL CIRCUMSTANCES**

The Commission should direct spending for the emergency program toward providing immediate connectivity from existing providers, subject to limited exceptions. Commenters largely agreed with ACA Connects that the most efficient and effective use of emergency funding to support virtual classroom learners now is through leveraging existing providers and networks under a technology-neutral approach.<sup>19</sup> For example, Verizon observed that the deployment of new networks “generally requires large up-front spending,” which would rapidly deplete available funding and reduce the number of students supported by the emergency program.<sup>20</sup> In addition, AT&T explained that new network deployments “are inherently longer-term projects that are not appropriate for

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<sup>17</sup> Verizon Comments at 8. See USTelecom at 11-12 (arguing safeguards are necessary to prevent the use of supported broadband services for non-educational purposes).

<sup>18</sup> 47 C.F.R. § 0.291(a). See ACA Connects Comments at 19, n.57; AT&T Comments at 6; WISPA Comments, 9-10; Verizon Comments at 13-14.

<sup>19</sup> ACA Connects Comments at 8; AT&T Comments at 9; WISPA Comments at 4; NCTA Comments at 9-10; NTCA Comments at 4; USTelecom Comments at 6-7

<sup>20</sup> Verizon Comments at 13. See NTCA Comments at 4 (contending that, “to the extent E-rate support is used for a redundant connection, limited program funds that could have gone to another student would be wasted”)

the emergency goals of the program,”<sup>21</sup> while USTelecom similarly stated that deploying new networks is “a time consuming process that would not allow for immediate access to broadband services by students in need right now.”<sup>22</sup> As a result, allowing emergency support to be used for new network deployments would further delay in-need students’ access to broadband connectivity and would waste limited funding by overbuilding existing networks already capable of providing the necessary service. ACA Connects therefore urges the Commission to leverage existing broadband services and direct spending for the emergency program to existing providers to facilitate immediate connectivity of in-need students. Existing providers are best suited to provide the immediate relief needed by students lacking in-home broadband connectivity and the emergency program should focus on funding existing providers and networks over new deployments.

A few commenters, including Starry, suggest that the Commission should allow schools to use emergency funds to construct new broadband networks to serve in-need students.<sup>23</sup> But Starry – a startup broadband provider that seeks to become a major competitor to existing providers in large markets<sup>24</sup> – provides no evidence that such constructions will be faster or more cost-effective over the course of the COVID-19

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<sup>21</sup> AT&T Comments at 9.

<sup>22</sup> USTelecom Comments at 6. See NCTA Comments at 9 (“Deploying new facilities will cost more and take longer than utilizing existing services to connect households that require broadband.”); Verizon Comments at 13 (arguing that new network deployments “would at a minimum delay the provision of broadband to students”).

<sup>23</sup> See, e.g., Comments of Starry, Inc., WC Docket No. 21-31, 3-6 (Feb. 16, 2021).

<sup>24</sup> Jeff Baumgartner, LightReading, “Starry's base growing by 10% per month, nearing 100K sub mark – analyst,” available at <https://www.lightreading.com/5g/starrys-base-growing-by-10--per-month-nearing-100k-sub-mark---analyst-/d/d-id/761416>.

emergency than leveraging existing broadband services offered by existing providers over existing networks. Indeed, Starry's proposal contains no mechanism for identifying whether existing service providers can meet schools' remote learning needs in advance, thereby avoiding wasteful overbuilding. As ACA Connects explained, the Commission instead should direct schools to conduct an expedited competitive selection process where they first issue a notice asking local service providers that wish to participate to provide their published prices for their eligible services (and equipment) and their service locations within the school's district before choosing the provider or providers that can best address their unique needs.<sup>25</sup> Under this approach, providers could discount the prices for existing offerings at the time of Public Notice's issuance, but not create new, higher-priced offerings with the same performance capabilities as existing plans. This will avoid providers "pricing up" their offerings to take advantage of emergency funding, preserving limited support. Only in exceptional circumstances, when existing providers either do not respond to a school's notice or cannot provide sufficiently robust connectivity (*i.e.*, 25/3 Mbps minimum speeds with no data caps), should the Commission allow emergency funding to be used for the construction of entirely new broadband networks.<sup>26</sup> This approach provides sufficient flexibility to schools to select the broadband solution addressing their remote learning needs while ensuring limited program funds are not spent on unnecessary overbuilding.

The Commission should direct spending for the emergency program toward providing immediate connectivity from existing providers on a technology-neutral basis.

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<sup>25</sup> ACA Connects Comments at 9-10.

<sup>26</sup> *Id.* at 8-9.

Among others, the Competitive Carriers Association asserted that an emergency E-Rate program should prefer wireless connectivity because it “often can be deployed more quickly and efficiently than wired connectivity to provide broadband service.”<sup>27</sup> However, according to the Commission’s 2020 Communications Marketplace Report, at the end of 2019, over 95% of the population had access to fixed broadband service at speeds of at least 25/3 Mbps, and over 91% had access to 100/10 Mbps service.<sup>28</sup> Even in rural areas, over 82% had access to 25/3 Mbps fixed service.<sup>29</sup> And, fixed providers deployed additional plant to many unserved locations in 2020, and further increased their network performance. Not only is fixed service readily available, ACA Connects members readily install wireline service within days of getting an order, and the performance of their services far exceeds the performance of mobile wireless service, which averaged speeds of approximately 25/3 Mbps at the end of 2019.<sup>30</sup> In its initial comments, ACA Connects argued that the emergency E-Rate program should prefer existing providers, fixed or mobile, because of the need to provide immediate

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<sup>27</sup> Comments of Competitive Carriers Association, WC Docket No. 21-31, 2 (Feb. 16, 2021).

<sup>28</sup> *Commc’ns Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, FCC 20-188, ¶ 126, Fig. II.B.23 (2020).

<sup>29</sup> *Id.* at ¶ 128, Fig. II.B.25.

<sup>30</sup> *Id.* at ¶ 64, Figs. II.A30-31. See ACA Connects – America’s Communications Association, Comments on Emergency Broadband Benefit Program, WC Docket No. 25-455, 4 (Jan. 25, 2021) (“[T]he majority of ACA Connects members are wireline providers that offer DOCSIS and/or fiber-to-the-home service, delivering speeds that vastly exceed the Commission’s 25/3 Mbps speed benchmark for fixed broadband deployment. In the majority of areas these companies serve, an ACA Connects member provides the highest broadband speeds available to consumers, and the ACA Connects member is often the only provider delivering at least 25/3 Mbps. Service offerings of this kind will be particularly attractive to eligible households that require a robust connection that can support online activities such as distance learning and telehealth from multiple simultaneous users in the home.”).

connectivity for in-need students to engage in virtual classroom learning.<sup>31</sup> ACA Connects stands by that position, which would best serve in-need students and the aim of the program.

#### **IV. THE COMMISSION SHOULD PROVIDE EMERGENCY FUNDING FOR PROSPECTIVE USE ONLY**

The Commission should provide funding under the emergency program on a prospective basis. A number of commenters joined ACA Connects in advocating for the prospective application of emergency funding, which will ensure that available support lasts longer and reaches more students that currently lack in-home broadband access.<sup>32</sup> In addition, both AT&T and USTelecom asserted that prospective application of the emergency funding will ensure that support is not used to pay for broadband services already covered through other federal funding programs, such as the CARES Act.<sup>33</sup> ACA Connects agrees with these concerns about wasting limited funds and adds that retroactive application of the emergency funding would disproportionately reward schools that had the resources to purchase and implement broadband connectivity solutions last year without any expectation of reimbursement, to the detriment of schools that could not afford such connectivity without support.<sup>34</sup>

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<sup>31</sup> ACA Connects Comments at 8-10.

<sup>32</sup> *Id.* at 14-15; AT&T Comments at 4; Verizon Comments at 5; USTelecom Comments at 5.

<sup>33</sup> See AT&T Comments at 4 (stating that applying emergency support prospectively “will help ensure there is no overlap” with CARES Act funding disbursed in 2020); USTelecom Comments at 5 (noting that retroactive application of emergency support would make it impossible for the Commission “to determine what services are eligible for th[e] emergency relief and what are not, particularly because some of these services may have already been paid for by CARES Act funding”).

<sup>34</sup> ACA Connects Comments at 14.

For administrative efficiency, the Commission should establish a clear timeframe for the emergency support. ACA Connects agrees with AT&T and Verizon that the emergency funding initially should be in place until June 30, 2022, in line with the end of the 2021 E-Rate funding year.<sup>35</sup> As ACA Connects explained, this proposed timeframe would allow emergency funds to be used throughout the 2021-2022 school year on an as-needed basis by individual schools.<sup>36</sup> If the Commission later finds that additional relief may be necessary to combat the continued impact of the pandemic on remote learning, it can seek comment on whether to extend the program in 2022 and, if so, whether any modifications to the program are appropriate.<sup>37</sup>

**V. THE COMMISSION SHOULD PROVIDE SCHOOLS FLEXIBILITY TO MEET IN-NEED STUDENT NEEDS FOR REMOTE LEARNING, SUBJECT TO GUARDRAILS AND ACCOUNTABILITY MEASURES TO PREVENT WASTE**

The Commission should adopt rules for the emergency program that provide sufficient flexibility to schools while ensuring support is used efficiently and effectively. ACA Connects shares USTelecom’s concern that strict application of the E-Rate rules to the emergency program “would be inconsistent with the public interest” and divert scarce school, provider, and Commission resources better spent on connecting in-need students to broadband.<sup>38</sup> ACA Connects also concurs with Verizon that the emergency nature of the program necessitates a streamlined funding process to “minimize the administrative burdens imposed on schools.”<sup>39</sup> The Commission therefore should allow

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<sup>35</sup> AT&T Comments at 4; Verizon Comments at 5.

<sup>36</sup> ACA Connects Comments at 15.

<sup>37</sup> *Id.*

<sup>38</sup> USTelecom Comments at 9.

<sup>39</sup> Verizon Comments at 9.

schools flexibility to determine the broadband service needs of each student (above the minimum level) and how much of its total allocation to spend to provide such service.<sup>40</sup> As ACA Connects and others demonstrated, this flexible approach “will dramatically speed up getting funding in the hands of the schools who need it”<sup>41</sup> and recognizes that each school is in the best position to determine the needs of each of its students lacking in-home broadband connectivity necessary to participate in virtual classroom learning.<sup>42</sup> The Commission also should adopt flexible program requirements to meet the Children’s Internet Protection Act (“CIPA”) mandates to filter content that reflect the unique nature of in-home remote learning, including by permitting providers to use a wider range of filtering tools.<sup>43</sup> As NCTA and others demonstrated, a number of managed device services exist to help schools meet the CIPA mandates and the Commission should not dissuade schools from participating in the emergency program by imposing highly prescriptive filtering requirements.<sup>44</sup>

However, the emergency program must contain safeguards to ensure funding is used efficiently and solely for the intended purpose. ACA Connects therefore supports

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<sup>40</sup> ACA Connects Comments at 13. See USTelecom Comments at 13 (recommending the Commission provide lump-sum payments to schools to use to cover the broadband service costs of in-need students); AT&T Comments at 9 (same). However, ACA Connects reiterates that, while a school may elect to use its emergency funds to provide at-home broadband connectivity that exceeds the minimum performance standards set forth by the Commission for connectivity (*i.e.*, 25/3 Mbps minimum speeds with no data caps), a school may not rely upon its above the minimum performance levels as justification to deploy its own network infrastructure to a location where a local service provider is willing to offer service satisfying the Commission’s minimum performance standards. ACA Connects Comments at 13, n.40.

<sup>41</sup> AT&T Comments at 9.

<sup>42</sup> See ACA Connects Comments at 12; USTelecom Comments at 13.

<sup>43</sup> ACA Connects Comments at 10.

<sup>44</sup> NCTA Comments at 7-8. See Verizon Comments at 7.

proposals by AT&T and others to require schools to retain documentation supporting their emergency funding requests and detailing how such funds actually were spent.<sup>45</sup> ACA Connects further agrees with AT&T that emergency funding disbursements should be subject to USAC audit, although such audits should be deferred until after the pandemic ends to conserve limited school and agency resources.<sup>46</sup> In line with other Commission funding programs, violations of program integrity rules may result in disgorgement or suspension of emergency funding.<sup>47</sup> As a further safeguard against potential waste, fraud, and abuse in the emergency program, ACA Connects recommends that the Commission require schools to certify the basis for the amount of funding they request, as well as the basis upon which monthly draws are actually spent.<sup>48</sup> This certification requirement will ensure that funding is targeted for the narrow purpose of providing students lacking in-home broadband access the ability to participate fully in virtual classroom learning during the COVID-19 health emergency.

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<sup>45</sup> AT&T Comments at 9-10. See USTelecom Comments at 13 (stating that the Commission should require schools to maintain records of all invoices for purchases using emergency funding).

<sup>46</sup> AT&T Comments at 9-10. See WISPA Comments at 9 (“[A]ny funds disbursed during this emergency must be subject to audit.”).

<sup>47</sup> See 47 C.F.R. § 54.407(a) (detailing USAC’s audit controls); see also WISPA Comments at 9.

<sup>48</sup> ACA Connects Comments at 15-16. ACA Connects submits that this certification can be easily administered by USAC, with schools providing the following information each month in advance of any funding receipt: (i) monthly forecasted counts of eligible students based on participation in the free/reduced school lunch program; and (ii) monthly forecasted counts of eligible students that are participating in online learning. Following each month, individual schools should certify the basis upon which monthly emergency amounts are actually spent as well as the actual amount spent on each individual student.

## VI. CONCLUSION

In these reply comments, ACA Connects joins other stakeholders in supporting the targeted and limited use of E-Rate funds to address the “classroom gap” caused by pandemic-related school closures, subject to safeguards to ensure the efficient, effective, and equitable distribution of support. By adopting the recommendations proposed herein, the Commission can provide critical broadband connectivity to in-need students allowing them to fully participate in remote learning during the ongoing national health crisis.

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