BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)
	)
Emergency Connectivity Fund for	) WC Docket No. 21-93
Educational Connections and Devices to	)
Address the Homework Gap	)
During the Pandemic	)

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

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COMMENTS OF ACA CONNECTS – AMERICA'S COMMUNICATIONS
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I.   INTRODUCTION AND SUMMARY

ACA Connects – America's Communications Association ("ACA Connects")[1]

hereby submits reply comments in response to the Public Notice issued by the Wireline

Competition Bureau ("WCB") of the Federal Communications Commission

("Commission") to implement the Emergency Connectivity Fund program ("ECF" or the

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[1]   ACA Connects has approximately 600 small- and medium-size members providing video, broadband, and phone services to more than 11 million households and businesses, some of whom have no other means of receiving vital communication services. Many ACA Connects members provide E-Rate supported telecommunications and broadband services to schools and libraries, and many already provide robust, reliable broadband connectivity to students and patrons for remote learning, including through government supported programs or their own initiatives. Just as more than one hundred and fifty ACA Connects members have elected to participate in the Emergency Broadband Benefit program, many are eager to support schools and libraries as they provide remote learning for their students and patrons.

"Program").[2] In our initial comments, ACA Connects emphasized that the ECF is an emergency program designed to provide immediate broadband connectivity and connected devices for students and library patrons so they can engage in remote learning.[3] Moreover, the number of households expected to need connectivity is likely to be significant, but the amount is precisely unknown. Also unknown are the exact locations where this connectivity will be needed. The Program thus is distinct from E-Rate, which seeks to provide connectivity to a much smaller number of known locations over a longer term. Further, the Program's funding, while substantial, is limited and, unless the Commission establishes priorities to achieve the Program's mission, could be quickly used up as schools and libraries across the nation procure connectivity and devices during the COVID emergency. For those reasons, ACA Connects recommended the Commission adopt rules that focus on providing expeditious and cost-effective connectivity and that it direct funding so that in-need and rural students and patrons can engage in remote learning for the duration of the emergency period.[4] Among our recommendations, ACA Connects proposed:

> First, to ensure that consumers can obtain immediate connectivity at competitive rates, the FCC should –
>
> - Rely on existing providers, wireline and wireless, to meet the connectivity and associated device needs for remote learning;

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[2]   *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. 21-91, Public Notice, DA 21-317 (Mar. 16, 2021) ("Public Notice"). American Rescue Plan Act, 2021, H.R. 1319, 117th Congress, tit. VII, § 7402 (2021).

[3]   *See* Comments of America's Communications Association – ACA Connects on the Public Notice, WC Docket 21-93, at 5 (Apr. 5, 2021) ("ACA Connects Comments").

[4]   *See id.*, at 4-5.

- Require that schools and libraries allow all existing providers to participate in the Program; and

- Give existing providers that already connect to in-need households a right of first refusal to provide the qualifying service.

Second, to ensure funds remain available to meet the critical goal of providing connectivity and connected devices for remote learning for the Program's duration, the FCC should –

- Allocate sufficient funding at the Program's outset to meet expected prospective demands for connectivity and connected devices;

- Within the amount allocated for remote learning going forward, prioritize funding for connectivity and devices for in-need and rural students and patrons;

- Allocate sufficient support both for connectivity and connected devices and procure each separately, with a cap on the amount that can be spent on any device; and

- Not provide support where another government Program already fills the need for connectivity and connected devices for remote learning.[5]

In these reply comments, ACA Connects elaborates on our recommendations

and incorporates the concepts and proposals of other stakeholders. Most importantly,

ACA Connects believes the Commission should follow Common Sense's admonition

"that the Emergency Connectivity Fund was established to provide support during a

limited period of emergency… [because] connectivity is vital for slowing the spread of

the virus and keeping students engaged in learning."[6] Thus, the Commission should

adopt measures that, after establishing a reasonable amount for reimbursing broadband

providers for connectivity, rely on existing broadband providers for immediate

connectivity and that prioritize funding for students and patrons that do not subscribe to

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[5]   *See id.*, at 6-17.
[6]   Comments of Common Sense, WC No. 21-93 at 5 (Apr. 5, 2021).

available service going forward. By contrast, the Commission should not focus the ECF on enabling schools and libraries to receive funding for "long term approaches to addressing the digital divide, whether on- or off-campus."[7] While adopting measures to end the digital divide is a worthy objective—and one in which ACA Connects members are eager to play their part—that aim is outside the scope of the ECF's mission of addressing remote learning needs during the emergency.

II. THE COMMISSION IS REQUIRED TO RELY ON EXISTING PROVIDERS FOR BROADBAND CONNECTIVITY FOR THE ECF, AND SUCH AN APPROACH IS WARRANTED BECAUSE, IN VIRTUALLY ALL INSTANCES, EXISTING BROADBAND PROVIDERS ALONE CAN GIVE STUDENTS AND PATRONS IMMEDIATE CONNECTIVITY TO QUALIFYING BROADBAND SERVICES FOR REMOTE LEARNING

Many commenters, not only fixed and mobile broadband providers but those representing educational interests, agreed with ACA Connects—and the Commission's proposal[8]—that the statute does not permit ECF funds to be used for the acquisition or deployment of new network facilities. These commenters also explained that existing providers could best provide immediate connectivity at reasonable rates.[9] By contrast, various schools, their consultants, and providers seeking to access government funding to expand their networks argued that the statute "allows funding to be used in an open-ended manner" and schools should be free to fund network solutions that they believe address their needs.[10] ACA Connects urges the Commission to stay the course on its proposal and not to permit such spending for many reasons.

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[7]   Comments of the Schools, Health & Libraries Broadband (SHLB) Coalition, WC Docket No. 21-93 at 5 (Apr. 5, 2021) ("SHLB Comments").
[8]   Public Notice at 7.
[9]   *See e.g.*, n. 12 *infra.*
[10]   *See e.g.*, SHLB Comments at 5, and at 11 ("Limiting the funding to existing, already deployed services would conflict with the E-rate statutory language, the

First, the statute is clear that eligible advanced telecommunications and information services are only those that can be supported and delivered with eligible equipment. As NTCA and others commented, Congress drew the key statutory terms of "eligible equipment" and "advanced services" narrowly—not including facilities such as fiber, transmission equipment, and antennas—to focus the Program on expediting connectivity for remote learning, as opposed to building long term infrastructure.[11]

ECF statutory language supporting the deployment of hot spots and other technologies, and with the purposes of the legislation."); Comments of Starry, Inc., WC Docket No. 21-93 at 4 (Apr. 5, 2021) ("The emergency period teaches a fundamental lesson that ongoing connectivity gaps abound throughout a variety of urban and rural communities across the country, and the Commission should ensure that limited programs like the ECF provide recipients enough flexibility to choose solutions that most adequately address their connectivity challenges. The Commission should take a technology neutral approach and refrain from explicitly precluding new networks or connections from ECF reimbursements."). ACA Connects believes Starry's "technology neutral" argument confuses that concept with the distinction between use of existing providers regardless of the technology they use and construction of new network facilities, whether wireline or wireless. ACA Connects' approach will permit schools and libraries to use any existing network technology, and as such, is technology neutral. Starry's approach, as indicated by others supporting use of ECF funds for fixed wireless builds, is decidedly not technology neutral. *See also*, Comments of New America's Open Technology Institute, WC No. 21-93, at 6-12 (Apr. 5, 2021) ("Public Interest Organization Comments"), which make a technology neutral argument to Starry's.

[11] *See e.g.*, Comments of NTCA – The Rural Broadband Association, WC Docket No. 21-93, at 7-8 (Apr. 5, 2021) ("NTCA Comments") ("NTCA supports the Public Notice proposal to exclude dark fiber or other network construction (self-provisioning) from the ECF. For one, any other approach would run counter to the American Rescue Plan Act, which defines 'eligible equipment' as Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices… Moreover, the American Rescue Plan Act's reference to providing support for advanced services is similarly narrow and also excludes self-provisioned networks. More specifically, the statute also allows ECF support for the 'purchase during a COVID–19 emergency period of… advanced telecommunications and information services.' Yet again, had Congress wanted to fund the provision of advanced telecommunications and information services by an eligible school or library, it would have done so and not limited the statutory

Second, existing fixed and mobile providers alone are capable of providing immediate connectivity for remote learning in virtually all instances. For its program, which includes many, but still far from all, broadband providers, EducationSuperHighway indicated these providers have service available to approximately 90% of the households with students in K-12.[12]

By contrast, deployment of new facilities is certain to take a significant amount of time for several reasons. To begin with, because any application proposing new network construction or acquisition of dark fiber must include substantial backup information and justification, Universal Service Administrative Company ("USAC") review would take much longer. As Funds for Learning ("FFL") commented, "From

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language to the purchase of such services."); Comments of USTelecom – The Broadband Association, WC Docket No. 21-93 at 6-7 (Apr. 5, 2021) ("USTelecom Comments") ("Excluding support for network construction such as dark fiber and self-provisioning is required by the Act… the sole purpose of this effort is to provide broadband connectivity to children and teachers for educational purposes as quickly as possible, which necessitates the Commission relying on existing services."); Comments of CTIA – The Wireless Association, WC Docket No. 21-93 at 16 (Apr. 5, 2021) ("CTIA Comments") ("CTIA agrees that the statutory text does not support funding the construction of new networks as eligible equipment… There is no provision in the American Rescue Plan Act to fund the construction of network facilities to provide covered 'services.'"); Comments of Verizon, WC Docket No. 21-93 at 7 (Apr. 5, 2021) ("The Commission may not provide support from the ECF for 'dark fiber and the construction of new networks, including the construction of self-provisioned networks…' Self-provisioning is not eligible for ECF support because it does not involve the 'purchase' of an 'advanced telecommunications or information service' and because the equipment required for self-provisioning, e.g., fiber, transmission equipment, or antennas and towers, does not meet the ARP Act's definition of 'eligible equipment.'").

[12] Comments of EducationSuperHighway, WC Docket No. 21-98, at 7 (Apr. 5, 2021) ("EducationSuperHighway Comments"). EducationSuperHighway further noted that during the emergency, sponsored services agreements with existing providers connected "approximately three million K-12 students… to home broadband in just over six months."

funding year 2016 to 2020, FFL estimates that Category One funding requests which included special construction charges took 255% longer to process than the average Category One funding request."[13] Further, once approved by USAC, it will take many months, if not longer, to deploy new network facilities. Every provider constructing new infrastructure has encountered at one time or other government permitting issues, unexpected construction issues, and supply chain delays. Moreover, even after facilities are deployed, networks need to be tested and adjusted to ensure they are working as intended. Thus, new network builds are unable to meet the immediate connectivity required by the ECF.

Third, building new networks to reach students and patrons at disparate locations is less efficient and cost-effective than taking service from existing providers.[14]

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[13]   Comments of Funds for Learning, WC Docket No. 21-93, at 10.

[14]   *See e.g.*, NCTA – The Internet & Television Association, WC Docket No. 21-93, at 3 (Apr. 5, 2021) ("NCTA Comments") ("As explained in NCTA's recent homework gap comments, '[d]eploying new facilities will cost more and take longer than utilizing existing services to connect households that require broadband and should therefore generally not be funded with limited E-rate support.'"); USTelecom Comments at 7 ("The creation of new networks for this purpose is not an efficient use of resources and is not expedient. For example, trenching for new fiber deployments or construction of new towers is costly and a time consuming process that would not allow for immediate access to broadband services by students in need right now."); CTIA Comments at 16 ("From a practical perspective, using the ECF to fund the construction of new networks will not address the American Rescue Plan Act's purpose of responding to remote learning needs 'during a COVID-19 emergency period.'"); Comments of AT&T, WC Docket No. 21-93 at 4 (Apr. 5, 2021) ("construction related initiatives are inherently longer term projects that are not appropriate for the emergency goals of the program. The more appropriate vehicle for funding of construction related initiatives is the traditional E-Rate program, that funds connectivity to the campus."); Comments of ADTRAN at 10 ("Given the temporary nature of the Emergency Connectivity Fund and the need for expedition, ADTRAN expects that self-provisioning will rarely be the best and most efficient solution." ADTRAN adds that "preserving self-provisioning as a potential option also has the benefit

Networks are most efficient when they can offer service to all locations they pass and

when a large percentage subscribe. Yet, any off-campus network build for a school or

library will only serve a fraction of the homes it passes (those with students or patrons)

and of those that could be served, only an even smaller fraction would be eligible for the

Program and are not connected to broadband service today.[15] As such, off-campus

networks should be employed for the Program, assuming it is permitted by the statute,

only in exceptional circumstances to fill the gaps where existing providers cannot make

service available.[16]

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in all cases of putting a measure of additional competitive pressure on current broadband service providers." ACA Connects suggests ADTRAN may want to rethink this statement. Most broadband markets are already competitive, and, in any event, non-market actions only serve to skew competition, not further it.

[15]   *But see*, Public Interest Organization Comments at 13-14 (Apr. 5, 2021) in which a group of public interest organizations contends that it was cost-effective for the city of San Jose and its local school districts to pay "for thousands of mobile hotspot subscriptions for some students, while also expanding the school-sponsored community Wi-Fi network." ACA Connects applauds such efforts where existing providers cannot offer the required service at reasonable rates. But, from the description in the comments, such a project appears to offer rates lower than existing providers only because the city picks up the cost of "siting, electricity and fiber backhaul for Wi-Fi access points." In addition, ACA Connects notes that the public interest organizations claim in their comments that existing private sector providers want to use the ECF to shut out "competitive providers" (at 26) and seek "corporate welfare" (at 27). ACA Connects members include the largest broadband providers that compete with much larger incumbent cable and telecommunications providers. ACA Connects members also are among the smaller broadband providers, offering high performance service in rural communities and less dense areas. Further, over 100 ACA Connects members are municipally-owned providers. During, and even before, the emergency, our members voluntarily are offering low-cost service options for schools and low-income consumers. As such, we dispute these claims by the public interest organizations.

[16]   *See id.* at 15-23. The public interest organizations provide a series of examples of schools building their own networks so students can engage in remote learning. These examples largely indicate that these networks were built to fill in gaps where existing providers cannot offer service. As the CTO of the Dallas

In sum, the ECF should rely on existing networks to provide the immediate connectivity required for remote learning by students and patrons during the emergency. Should there be exceptional circumstances where existing providers cannot meet the Program's needs, the Commission can, assuming it is lawful, then consider whether to approve new construction or the acquisition of dark fiber.

III. THE COMMISSION SHOULD ESTABLISH A REIMBURSEMENT AMOUNT FOR CONNECTIVITY, WHICH MAY VARY TO ENSURE THAT ALL UNCONNECTED AND IN-NEED STUDENTS AND PATRONS CAN ENGAGE IN REMOTE LEARNING AND THEN RELY ON THE EXPERIENCE, CAPABILITIES, AND COVERAGE OF EXISTING BROADBAND PROVIDERS FOR SUCH CONNECTIVITY

ACA Connects agrees that the Commission should follow a competitive procurement process in selecting providers to provide broadband connectivity for remote learning. However, rather than use a traditional "exclusive vendor" competitive procurement process, the ECF would be best served by establishing a reimbursement amount per location served and requiring schools and libraries to permit all existing providers to participate by offering current service plans.

ACA Connects believes the Commission should establish an amount for reimbursing providers for connectivity to each location, which would be set at a rate that both attracts providers to participate in the Program and maximizes use of the Program's limited budget.[17] This amount could be set either directly, akin to the

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Independent School District explained (at 21), "We're willing to step into the neighborhoods that haven't been built or are somehow underserved by the existing providers." ACA Connects recognizes that there are gaps in service and that in these exceptional circumstances schools and libraries may need to construct facilities.

[17] *See e.g.*, Public Interest Organization Comments at 11 ("The Commission can cap the reimbursement on a per-student basis to an amount deemed reasonable for conventional ISP services during the emergency period.").

Emergency Broadband Benefit program, or by capping the per student or patron

reimbursement amount, as is done for instance in the current E-Rate Category Two

budget approach.[18] Both approaches were proposed in the initial comments.[19]

Once the reimbursement rate is established, ACA Connects recommends

schools and libraries should use all qualifying existing providers—and their current

broadband service plans—for connectivity.[20] This approach has many benefits. First,

because each location is likely to be served by multiple existing providers, this approach

will give students and patrons a choice of plans with different capabilities from providers

who can offer immediate connectivity.[21] Second, in the rare instance that multiple

providers cannot serve a location, it is likely to ensure that at least one existing provider

will be able to do so, ensuring widespread coverage. Third, it will permit a provider that

may already serve a location with students or patrons eligible for ECF support to

continue to do so, thus avoiding unnecessary disruption by forcing them to switch to

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[18] *See* 47 C.F.R. § 54.502.

[19] *See e.g.*, EducationSuperHighway Comments at 5 (recommending an amount of $20/per month "estimate of average cost to provide a minimum 25/3 Mbps wired or LTE connection with no data caps and no up-front modem or wireless hotspot cost."); Initial Comments of the State E-Rate Coordinators Alliance, WC Docket No. 21-93, at 5 (Apr. 5, 2021) ("SECA Comments") ("SECA recommends the following budget multipliers: Urban schools and districts: $100 per student; Rural schools and districts: $150 per student; Urban libraries and library systems: $2.00 per square foot; Rural libraries and library systems: $3.00 per square foot").

[20] As discussed below, schools and libraries can enter into bulk purchasing or other arrangements with broadband providers to obtain rates more favorable than provided under current plans. That said, existing plan rates should be considered reasonable because existing providers have set prices to serve locations throughout the community in a competitive environment.

[21] Schools and libraries may choose to supplement the amount of reimbursement to provide to students and patrons with better service.

another provider. Fourth, it will help ease the implementation and compliance burdens on schools and libraries and eliminate uncertainty in the process for all involved, including the Commission staff and USAC. Instead of having to undertake a competitive bidding process in a short amount of time, schools and libraries will know how much money they have to spend per student or patron on connectivity, and broadband providers will know the amount of their reimbursement. Moreover, by lowering implementation barriers, the Commission will expedite the delivery of service to students and patrons

The soundness of ACA Connects' "multiple provider" procurement approach is not only demonstrated by these arguments but is supported by evidence in the record. Numerous local communities, including Chicago, Boston and Washington, D.C.,[22] have already implemented remote learning programs that use the extensive coverage and significant capabilities of multiple existing broadband providers to most effectively and efficiently connect students and patrons for remote learning. As set forth in their comments, a group of large local governments have underway a variety of programs, including those using bulk purchasing and sponsored services arrangements, that contract with multiple existing providers to connect large numbers of students and patrons for remote learning at disparate locations.[23] Further, based on this experience these local governments recommend "that all providers made eligible to receive support

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[22]   *See* Comments of the City of Los Angeles *et al.*, WC Docket No. 21-93, at 7 (Apr. 5, 2021).

[23]   *See id.* at 8 ("Bulk purchasing and sponsored services of broadband connections is the basis for tens, if not hundreds, of thousands of low-income households having broadband today.").

under the Emergency Broadband Benefit Program should also be eligible partners for

the ECF."[24] The recommendation of these local governments are echoed by, among

others, EducationSuperHighway[25] and NCTA.[26] In essence, by entering into

arrangements with multiple providers,[27] these local governments have established a

model competitive procurement process that ensures robust connectivity, extensive

coverage, and reasonable rates.

ACA Connects thus recommends, after establishing the per student or patron

reimbursement amount for connectivity, the Commission require schools and libraries to

engage all qualified existing broadband providers to provide remote learning

connectivity and associated devices required for connectivity. Schools and libraries

then should be given flexibility in selecting a provider for each location—with no provider

having any exclusive rights—so long as the process is reasonable, non-discriminatory,

and technology-neutral[28]—with one exception. As discussed above, to avoid disrupting

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[24]   *Id.* at 9.

[25]   EducationSuperHighway Comments at 8 ("To maximize the number of K-12
        students connected by the Emergency Connectivity Fund, the Commission must
        build on what has been shown to work to connect K-12 students. Specifically,
        the Commission should explicitly allow services purchased under these
        'sponsored service' agreements to qualify for reimbursement… from the
        Emergency Connectivity Fund")

[26]   NCTA Comments at 4 ("NCTA strongly supports the use of bulk purchase
        programs, which provide an effective and efficient way to provide connectivity to
        large numbers of students and are widely used by schools and their service
        provider partners today. The Commission should specifically allow for such
        arrangements in its rules.").

[27]   As an alternative to these arrangements, a school or library could institute a
        voucher program, where the student or patron would choose the broadband
        provider.

[28]   *See* NCTA Comments at 9 ("The Commission should structure the competitive
        bidding process to allow multiple providers to serve the same district, without
        requiring the district or a particular school to work exclusively with a single

service, existing providers that serve an eligible student or patron should have a right of first refusal to continue serving that individual.[29] By adopting this approach, the Commission would be effectively ensuring competitive procurement.[30] This approach also would ensure that smaller qualified providers are not shunted aside because they may not cover the same coverage capabilities as larger providers—a concern raised by NTCA,[31] which ACA Connects shares.

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provider. To give eligible schools choice between the providers and services that best fit their needs, schools should consider a provider's quality of service, its ability to meet ECF requirements, and its ability to deliver a service that students can use to facilitate effective remote learning when choosing between providers of in-home broadband access under the ECF program.").

[29] ACA Connects agrees with NTCA that a school or library should not provide a hotspot where a student or patron is already connected. *See* NTCA Comments at 6 ("It makes little sense to procure, and then deliver to a household and perhaps assist in setting up, a Wi-Fi hotspot when a connection exists at a given location. Nothing in the American Rescue Plan Act indicates an intent to supply and support a hotspot where one is not needed because the household in question already has connectivity (and perhaps multiple options for such connectivity) available to it. It should also be noted that because a 'permanent' connection already available from a broadband provider is often more robust and reliable than a hotspot (particularly in rural areas where access to a robust and reliable mobile wireless network may be lacking), compelling each consumer to take the latter in order to obtain the ECF discount when an existing connection is in place makes little sense at best – and it would be wasteful at worst should the hotspot turn out not to be capable of serving the household's needs given its location.").

[30] ACA Connects notes that EdLiNC proposes the Commission eschew the traditional E-Rate competitive procurement process and instead permit schools and libraries to follow state or local government procurement rules. *See* Comments of Education & Libraries Networks Coalition (EdLiNC), WC Docket No. 21-93 at 10 (Apr. 5, 2021) ("EdLiNC Comments"). However, by not providing ACA Connects' proposed guardrails and relying instead merely on state or local government procurement rules, schools and libraries might forego the significant advantages of using multiple existing providers to meet the immediate connectivity needs of schools and libraries at reasonable rates.

[31] *See* NTCA Comments at 4-5 ("To promote such competition and leverage existing connections, the Commission should ensure that the process by which eligible schools and libraries seek ECF reimbursement does not perpetuate the

IV. TO ENSURE ECF FUNDS LAST FOR THE DURATION OF THE PROGRAM AND THE PROGRAM ACHIEVES ITS OBJECTIVES, THE COMMISSION SHOULD ALLOCATE FUNDING TO MEET ESTIMATED DEMAND GOING FORWARD AND THEN PRIORITIZE FUNDING FOR IN-NEED AND RURAL STUDENTS AND PATRONS AND BY REASONABLY ALLOCATING SUPPORT BETWEEN CONNECTIVITY AND CONNECTED DEVICES

As discussed in our initial comments, the Commission faces many challenges in ensuring the limited funding for the Program is available to provide broadband connectivity and connected devices for students and patrons for remote learning for the duration of the emergency.[32] These concerns are shared by many stakeholders, including Funds for Learning and EducationSuperHighway.[33] These challenges arise in large measure because we lack fundamental information about, for example, the

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‘large buyers equals large sellers’ problem that has long plagued the Schools and Libraries (‘E-rate’) program. As NTCA has previously noted, ‘district-wide’ or consortium bidding… can often leave out smaller providers with robust and competitively priced connections… Avoiding such outcomes is all the more important when one considers that the ultimate beneficiaries here – individual households with students in need of remote learning capabilities – are likely scattered far and wide across communities where no single provider may serve every home across a large school district.”).

[32] *See* ACA Comments at 11.

[33] *See id.* at n. 15, citing the *ex parte* filed by Funds for Learning (“We pointed out that the $7 billion ECF is a modest amount of funding once divided amongst the nation’s many K-12 students and library sites. We estimate that the fund equates to $117 per K-12 student and $23,286 per library branch. Because the ECF allows for 100% reimbursement of expenses, the entire ECF could quickly be depleted.”) and the ex parte from EdLiNC. *See also* Comments of EducationSuperHighway at 5 (“Even allowing for the progress that has been made by school districts and other applicants in providing educational devices to students using other sources of funding and market pricing for minimally sufficient home Internet connections, the math suggests that ECF resources will be insufficient even if used solely to connect students who currently lack homebroadband or educational devices… As seen in the table above, closing the Homework Gap for just one year will require all the resources in the ECF. Consequently, to achieve the ECF’s objectives, the Commission must limit the use of ECF funds to students that applicants certify are lacking these resources.”).

number of students and patrons for which schools and libraries may seek to support, whether these students and patrons need both connectivity and connected devices, and the duration for which support will be required. Yet, the Commission has no choice but to move ahead in the face of these uncertainties. ACA Connects submits that the best course for the Commission is to adopt the following measures to prioritize and allocate ECF funding:

First, the ECF should prioritize funding for either students and patrons that are "in-need" based on criteria similar to that used for the Emergency Broadband Benefit program or those students and patrons that a school or library determines would not have access to a broadband connection or a connected device without government, or some other source of external, support.[34] The Commission can implement and enforce these requirements by requiring certifications from applicants and subsequently auditing their records. Should the Commission find this approach would prove to be administratively burdensome and inordinately time consuming, the Commission should

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[34]   Many comments supported some formulation of this approach. *See e.g.*, Comments of Miami-Dade County Public Schools, WC Docket No. 21-93, at 4 (Apr. 5, 2021) ("Miami-Date Comments") ("Variance should reflect poverty needs. Targeting of funding to higher poverty communities, and not simply less well-connected communities, should continue to be prioritized in the allocation of emergency funds."); EducationSuperHighway Comments at 4 ("the Commission must limit the use of ECF resources to connecting K-12 students who currently lack home broadband connections or educational devices."); NCTA Comments at 3 ("ECF support should be prioritized to connect households that currently do not subscribe to broadband service. ECF is an emergency program that aims to address the critical issue of students who lack access to reliable broadband service and have therefore been disconnected from remote learning. ECF support should target those households and aim to close the homework gap by expanding broadband access to as many homes that currently lack service as possible.").

follow the recommendation of Funds for Learning and use the E-Rate Category Two

budget system, which gives applicants access to funding tied to their discount rate and

the size of their school or library.[35] Use of Category Two approach would have the

added benefit of ensuring schools and libraries in rural areas get the support they

require.

Second, the ECF should prioritize prospective purchases of connectivity and

connected devices—those made after the date of enactment of the American Rescue

Plan Act through the duration of the emergency period—and only fund procurements

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[35]   *See* Comments of Funds for Learning, WC Docket No. 21-93 at 8-9 (Apr. 5,
2021) ("Using a similar mechanism, the ECF's Reasonable Budget Amount for
Reimbursement (RBAR) should be pre-determined using objective criteria to
calculate maximum reimbursement amounts quickly and equitably. Under this
approach, each school and library would be allowed to apply for reimbursement
up to an amount calculated using the RBAR calculation formula."). *See also,
e.g.*, Ex parte letter from Reg Leichty on behalf of the Consortium for School
Networking to Ms. Marlene H. Dortch, Secretary, Federal Communications
Commission, WC Docket No. 21-93, at 3 (Apr. 19, 2021) ("CoSN emphasized
that a per student cap model, weighted and supplemented to provide additional
assistance to low income and rural communities, would provide the most
predictable, efficient, and equitable method for distributing the program's limited
funds. Congress provided a limited amount of funding for the Emergency
Connectivity Fund – rather than establishing an open-ended entitlement – and a
per student cap model provides an understandable and effective way to provide,
as required by the statute, 100% reimbursement (no required match) up to a
defined amount which aligns with the program's overall finite funding. CoSN
emphasized the strong support among its school district members for this
approach based on school districts' longstanding experience with the efficient
and accountable Category 2 element of the E-rate program."); Comments of
Verizon, WC Docket No. 21-93 at 9 ("the Commission could adopt funding caps
to "assist the Commission in targeting the Emergency Connectivity Fund support
to those students, school staff, and library patrons that are most in need.' For
example, the Commission could adopt per-school budgets based on the number
of students eligible for free or reduced-price lunch through the National School
Lunch Program (as an indicator of the number of students in the school who
would lack home broadband in the absence of support), similar to the E-Rate
program's per-school budgets for Category 2 services.").

made before this date and beginning on January 27, 2020 if there are remaining

amounts, if these procurements comply with state and local government statutes, and if

these procurements were not funded by any government program. Prioritizing

prospective reimbursement is especially warranted because providing retroactive

reimbursement at the outset of the ECF would reimburse schools and libraries that had

sufficient means to procure services and equipment—most likely more well-off schools

and libraries—and that had no expectation of being reimbursed.[36]

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[36]   Miami-Dade County Public Schools (Miami-Dade Comments at 4) asks the
Commission to prioritize retroactive reimbursements because purchases "made
to serve schools and students in the immediate wake of the pandemic were
made when there was no assurance of federal reimbursement." But, this is
precisely the reason that Miami-Dade should be at the back of the line for
support. Miami-Dade never had any expectation of being reimbursed, and so will
suffer less harm than schools that need ECF support to connect students for
remote learning going forward. SHLB (SHLB Comments at 13) contends that
schools and libraries that purchased connectivity from the onset of the
emergency would "be punished for acting quickly to ameliorate the harm from the
pandemic." But, it is difficult to see how these schools and libraries would be
"punished" if they had no expectation of being reimbursed. One could flip this
argument and say that schools and libraries that need to make purchases going
forward would be "punished" if there was no funding available because it was
used up on retroactive purchases. ACA Connects believes the Commission
should establish priorities to carry out the mission of the ECF, and most
especially, because it would be unacceptable not to enable remote funding
throughout the remainder of the emergency. This view is shared by many
commenters. *See e.g.,* USTelecom Comments at 9 ("prioritizing retroactive
funding is also bad policy because it favors those school systems that already
had the budget, without federal support, to be able to make purchases for their
schools from the start of the pandemic."); Comments of Qualcomm Incorporated,
WC Docket No. 21-93, at 18 (Apr. 5,2021) ("the FCC should not exercise its
discretion to award retroactive reimbursements. The purpose of the law is to
close the Homework Gap – to provide devices and connectivity to K-12 students
who lack one, the other, or both. Retroactive reimbursement does not help to
close the Homework Gap. It does not provide any devices or connectivity to
anyone. We appreciate the enormous financial crisis that schools have endured.
But the Emergency Connectivity Fund should be awarded and used
prospectively only."); EdLiNC Comments at 9-10 ("EdLiNC is deeply concerned

Third, because students and patrons need both connectivity and connected devices for remote learning and because expenditures on connected devices could quickly use up the budget,[37] the ECF should limit the total amount of funding that could be used to procure connected devices and the amount to be spent on any device.

Fourth, the Commission should adopt its proposal to limit reimbursements from the ECF to those purchases where funding is not also received from other federal programs (including the Emergency Broadband Benefit program, the CARES Act, and

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that allowing reimbursements dating back more than one year could lead to the depletion of this $7.171 billion at a rapid pace, possibly creating a situation where it only pays for equipment and services that have already been purchased and leaving no funds to support students and educators who remain unconnected right now… If the Commission proceeds with its proposal to reimburse all the way back to January of last year, this program may well not move the needle in terms of providing devices and home Internet access to students unconnected and will fail to substantially meet the goal of continuing progress towards the homework gap as it stands today."); NCTA at 6 ("NCTA urges the Commission to focus on prospective purchase to maximize the impact of the ECF. Although purchases made since January 2020 occurred during the COVID-19 emergency period, those purchases were made with other sources of funding, including other federal programs, and not in anticipation of reimbursement through the ECF. Further, if the Commission were to reimburse for retrospective purchases dating back to January 2020, it would be difficult for the Commission to ensure that ECF support was not provided for purchases that were funded under another federal program, such as the CARES Act.").

[37] *See e.g.*, EducationSuperHighway Comments at 5 ("the math suggests that ECF resources will be insufficient even if used solely to connect students who currently lack home broadband or educational devices"); Verizon Comments at 9 ("The Commission could also limit the share of the ECF that may be used for potentially costlier connected devices such as tablets and laptop computers. In the absence of such a limit, reimbursements for connected devices could consume a disproportionate share of the ECF and leave little or no support for connectivity."); USTelecom Comments at 7 ("It appears there is a risk that the entire ECF could be used up solely reimbursing schools for their purchases of mobile computing devices, such as Chromebooks, which would leave no money for the broadband services, modems, and routers that are at the heart of the statute.").

other provisions of the American Rescue Plan Act), from state programs, from other

external sources of funding, or from gifts (including those allowed by the FCC under its

COVID-19 waivers).[38]

In addition to establishing these priorities for allocating support, to limit waste,

fraud, and abuse, ACA Connects agrees with EducationSuperHighway that the

Commission should follow its existing E-rate rules and practices and make all

procurement data related to the emergency connectivity fund transparent and publicly

available.[39]

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[38]   The Commission's proposal was widely supported in the comments. *See e.g.*,
        NCTA Comments at 6 ("NCTA also supports the proposal to limit the program to
        equipment and services that are not already funded by other federal government
        sources, such as the EBB program or the CARES Act."); Comments of State
        Educational Technology Directors Association, WC Docket No. 21-93, at 3 (Apr.
        5, 2021) ("applicants should certify that they will not receive funding for
        equipment already funded through other state or federal programs"); SECA
        Comments at 16 ("First, applicants should be required to certify that the costs of
        the equipment and services on their ECF applications are not being paid for from
        other federal and state COVID-19 relief funds."); Verizon Comments at 10-11
        ("The Commission should adopt its proposal to allow ECF reimbursements only
        for equipment and services for which the school has not received funding from
        other federal programs (i.e., EBB Program, the CARES Act, or other provisions
        of the American Rescue Plan), state programs, other external sources of funding,
        or gifts. Particularly if the Commission decides to permit reimbursement for
        eligible equipment and services purchased since the start of the pandemic, the
        Commission should ensure that those purchases have not already been funded
        by other federal and or state programs.").

[39]   *See* EducationSuperHighway Comments at 9-10 ("Data transparency has a
        similar role to play in closing the Homework Gap. By requiring applicants to
        report what they are buying, from whom, and at what price, the Commission can
        leverage open data to ensure that schools and libraries maximize the cost-
        effectiveness of their home broadband and educational device purchases. In
        addition, by requiring applicants to report the number of students served by home
        broadband and educational device purchases at the line item level, the
        Commission and other stakeholders will be able to track progress in closing the
        Homework Gap and create accountability amongst federal, state, and school
        district leaders to take the actions necessary to finish the job.").

V. CONCLUSION

ACA Connects believes the ECF presents a unique opportunity for the Commission to ensure that students and patrons have connectivity and connected devices for remote learning during the emergency period. In these comments, we provided a series of recommendations that the Commission should incorporate in the Program's rules to achieve that aim, including to rely on existing providers for connectivity and to establish funding priorities to best use the limited support. We look forward to working with the Commission as it adopts rules for the Program.

Respectfully submitted,

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