



PUBLIC NOTICE

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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. 21-93

Comments Due: April 5, 2021

Reply Comments Due: April 23, 2021

The coronavirus (COVID-19) pandemic is a national health emergency with far reaching consequences for all segments of our society. Last spring, to reduce the transmission of coronavirus in their communities, most of our nation's schools and libraries shut their doors and transitioned to virtual learning – and today many schools and libraries remain fully or partially closed. Students who lack home broadband access and were therefore caught in the “Homework Gap” before the pandemic now find themselves at risk of being unable to participate in any remote learning.¹ At the same time, the closure of many libraries means that library patrons who were previously dependent on computer and internet access at their local libraries lost all broadband access.

To help schools and libraries provide devices and connectivity to students, school staff, and library patrons during the pandemic, Congress established a \$7.171 billion Emergency Connectivity Fund as part of the recently enacted American Rescue Plan Act of 2021 (the American Rescue Plan or Act).² Congress directed the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library.³ By this Public

¹ See e.g., Moriah Balingit, ‘A National Crisis’: As coronavirus forces many schools online this fall, millions of disconnected students are being left behind, Washington Post (Aug. 15, 2020), https://www.washingtonpost.com/education/a-national-crisis-as-coronavirus-forces-many-schools-online-this-fall-millions-of-disconnected-students-are-being-left-behind/2020/08/16/458b04e6-d7f8-11ea-9c3b-dfc394c03988_story.html (explaining that disconnected students caught in the “homework gap” are now missing more than just homework, and are missing all of school).

² American Rescue Plan Act, 2021, H.R. 1319, 117th Cong., tit. VII, § 7402 (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill). Section 7402 of the American Rescue Plan, establishing the Emergency Connectivity Fund, is reproduced in its entirety in the attached Appendix. The Act also designates that \$1 million from the Fund be available for use by the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund. *Id.* § 7402(c)(2)(B). Amounts appropriated to the Emergency Connectivity Fund for fiscal year 2021 are appropriated out of any money in the United States Department of Treasury not otherwise appropriated and are to remain available until September 30, 2030. *Id.* § 7402(c)(2). The Emergency Connectivity Fund support will not be provided through contributions under section 254(d) of the Communications Act of 1934. *Id.* § 7402(c)(4).

³ See *id.* § 7402(a)(1)-(2).

Notice, the Wireline Competition Bureau (Bureau) seeks comment on the provision of support from the Emergency Connectivity Fund consistent with section 7402 of the American Rescue Plan.⁴

Emergency Connectivity Fund. Pursuant to the law, the Commission is required to promulgate rules not later than 60 days after the date of enactment that provide for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934, as amended (the Communications Act), to an eligible school or library, for the purchase during a COVID-19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by—

(1) in the case of a school, students and staff of the school at locations that include locations other than the school; and

(2) in the case of a library, patrons of the library at locations that include locations other than the library.⁵

The COVID-19 emergency period is defined in section 7402 of the American Rescue Plan as beginning on January 27, 2020,⁶ and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.⁷ In providing support through the Emergency Connectivity Fund, the American Rescue Plan directs the Commission to reimburse 100% of the costs associated with the purchase of eligible equipment and/or advanced telecommunications and information services, “except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library, is reasonable.”⁸ Section 7402 of the American Rescue Plan defines eligible equipment to mean (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices.⁹ It also provides that the term “advanced telecommunications and information services” means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.¹⁰ Section 7402 of the American Rescue Plan further provides that the Commission and the Universal Service Administrative Company (USAC) are to administer the regulations adopted pursuant to the Act.¹¹

⁴ See *id.* at § 7402 (a)-(c). Earlier this year, the Bureau issued the *Remote Learning Public Notice* seeking comment on several petitions for emergency relief from parties asking the Commission to permit the use of E-Rate funding to support remote learning during the COVID-19 pandemic. *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) (*Remote Learning Public Notice*). In this Notice, we make reference to some of the comments and reply comments filed in response to the *Remote Learning Public Notice* because the issues in that proceeding overlap with the issues raised in this Public Notice. Because the two proceedings are separate proceedings, we also strongly encourage parties that filed other comments or reply comments in response to the *Remote Learning Public Notice* to consider filing comments in response to this Notice.

⁵ H.R. 1319, tit. VII, § 7402(a)(1)-(2); see also 47 U.S.C. § 254(h)(1)(B), (h)(2).

⁶ See H.R. 1319, tit. VII, § 7402(d)(5)(A). January 27, 2020 is the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

⁷ H.R. 1319, tit. VII, § 7402(d)(5)(B); see also 47 U.S.C. § 247d.

⁸ H.R. 1319, tit. VII, § 7402(b).

⁹ *Id.* § 7402(d)(6).

¹⁰ *Id.* § 7402(d)(1).

¹¹ *Id.* § 7402(c)(2)(A)(ii).

Administration of the Emergency Connectivity Fund. USAC is the administrator of the Commission's Universal Service support programs, including the E-Rate program.¹² The Commission created the E-Rate program, pursuant to section 254(h) of the Communications Act to, among other things, enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary schools and libraries.¹³ With limited exceptions, the E-Rate program currently provides support to eligible schools and libraries for broadband connectivity to and within schools and libraries.¹⁴ Based on its experience administering the E-Rate program, USAC is well positioned to administer the Emergency Connectivity Fund. Therefore, consistent with the American Rescue Plan's direction, the Commission will use USAC's services to administer the Emergency Connectivity Fund, as described in detail below. We seek comment on what rules the Commission should adopt to most efficiently and effectively distribute funding, mindful of the Commission's obligation to protect against waste, fraud, and abuse in seeking to meet the connectivity needs of our nation's students, school staff, and library patrons.

Section 7402(c)(3) of the American Rescue Plan specifies that not more than two percent of the \$7.171 billion made available for the provision of support to eligible schools and libraries may be used for the purposes of the Commission adopting, and USAC administering, the rules required by the Act.¹⁵ We seek comment on ways to ensure that the Commission and USAC efficiently and effectively oversee and administer the Emergency Connectivity Fund.

We also seek comment on how to best measure the Commission's and USAC's performance in efficiently and effectively administering this Fund. Should the Commission adopt specific broadband adoption goals for students, school staff, and library patrons? If so, what should those goals be? Should the Commission adopt specific goals for ensuring students, school staff, and library patrons have end user devices for connecting to the internet? If so, what should those goals be? What data is available that could help establish a baseline against which the Commission can measure the impact of the Emergency Connectivity Fund? Do schools and libraries conduct assessments of their students', school staffs', and library patrons' need for eligible equipment and services? If so, how have those assessments informed schools' and libraries' purchasing decisions during the pandemic? What information should the Commission direct USAC to collect to enable the Commission to evaluate progress towards meeting its goals? Should the Commission adopt specific performance goals and measures with respect to the administration of the Fund as it has done for the E-Rate program?¹⁶ If so, what should those performance goals be?

¹² See 47 CFR § 54.701 *et seq.* (appointing USAC as permanent administrator of the Universal Service Fund Programs and describing USAC's structure). E-Rate is more formally known as the schools and libraries universal service support mechanism.

¹³ 47 U.S.C. § 254(h)(2)(A); *see also* 47 CFR § 54.500 *et seq.*

¹⁴ 47 CFR § 54.502; *see, e.g., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-09, para. 19 & n.28 (2003) (*Schools and Libraries Second Report and Order*) (listing the following examples of off-site activities that the Commission determined are permissible: "a school bus driver's use of wireless telecommunications services while delivering children to and from school, a library staff's person's use of wireless telecommunications services on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications services while accompanying students on a field trip or sporting event").

¹⁵ H.R. 1319, tit. VII, § 7402(c)(3).

¹⁶ *See, e.g., Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8891-94, paras. 55-62 (2014) (*2014 First E-Rate Order*) (adopting as one of the goals of the E-Rate program, "making the E-Rate application process and other processes fast, simple and efficient" and as one measure of success directing USAC to target September 1 of each funding year as the date by which USAC will have issued funding commitments or denials for all "workable" E-Rate applications).

Eligible Schools and Libraries. Section 7402(d)(7) of the American Rescue Plan defines an “eligible school or library” as “an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library)” eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act.¹⁷ Consistent with this definition, we first propose that schools, libraries, and consortia of schools and libraries eligible for support under the E-Rate program be eligible to receive funding from the Emergency Connectivity Fund.¹⁸ We seek comment on that proposal. We also seek comment on whether there are other entities, not already eligible under the E-Rate program, that the Commission should make eligible for support through the Emergency Connectivity Fund.

We recognize that section 7402(d)(7) of the American Rescue Plan specifies that Tribal schools and libraries are eligible for funding from the Emergency Connectivity Fund.¹⁹ Of course, elementary and secondary Tribal schools, including those operated by the Bureau of Indian Affairs and by Tribal governments, have traditionally received E-Rate support and, pursuant to our proposed approach, would be eligible for support through the Emergency Connectivity Fund.²⁰ We seek comment on whether there are any changes the Commission should make to the definitions of elementary and secondary schools to ensure that all Tribal schools are eligible for funding. Some Tribal libraries have also received E-Rate support, but historically Tribal libraries have been underrepresented among E-Rate applicants.²¹ In order to be eligible for E-Rate funding under the Commission’s existing rules, a library must be eligible for funding from a state library agency under the Library Services and Technology Act (LSTA), which was amended in 2018 to make clear that Tribal libraries are eligible for support from a state library agency

¹⁷ H.R. 1319, tit. VII, § 7402(d)(7); *see also* 47 U.S.C. § 254(h)(1)(B) (“Educational providers and libraries. All telecommunications carriers serving a geographic area shall, upon a bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties.”), (h)(2) (“Advanced services. The Commission shall establish competitively neutral rules—(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries; and (B) to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users.”).

¹⁸ 47 CFR §§ 54.500-54.501. Under the E-Rate program rules, an elementary school is defined as “an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school that provides elementary education, as determined under state law.” A secondary school is defined as “a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12. A library includes “(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.” Additionally, a library may also refer to a library consortium, which is defined as “any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving services to the clientele of such libraries.” For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. We expect school districts would apply on behalf of eligible schools in their districts, as they currently do in the E-Rate program.

¹⁹ H.R. 1319, tit. VII, § 7402(d)(7).

²⁰ *See, e.g.*, 47 CFR § 54.505(f)(2)-(3) (providing that Tribal schools operated by the Bureau of Indian Affairs or by a Tribal Nation, and Tribal libraries operated by a Tribal government, are eligible to receive E-Rate matching funds when provided funding for special construction for broadband connection by a State government, Tribal government or federal agency).

²¹ *2014 First E-Rate Order*, 29 FCC Rcd at 8969-70, para. 247 (explaining that although Tribal libraries frequently serve as the sole source of free internet access in their communities, few benefit from the E-Rate program).

under LSTA.²² The E-Rate rules have not yet been revised to reflect that change to the LSTA. Consistent with the 2018 revisions to LSTA, we seek comment on whether the Commission should clarify that Tribal libraries are eligible for support under LSTA and are, therefore, eligible for funding from the Emergency Connectivity Fund. We also seek comment on whether there are other measures the Commission can take to ensure Tribal schools and libraries have access to the Emergency Connectivity Fund.

Eligible Equipment and Services. The American Rescue Plan requires that support provided to eligible schools and libraries through the Emergency Connectivity Fund be used for the purchase during the COVID-19 emergency period of (i) eligible equipment and/or (ii) “advanced telecommunications and information services” as the term is used in section 254(h) of the Communications Act for use by students, school staff, and library patrons at locations that include locations other than schools or libraries.²³ In defining the terms “eligible equipment” and “advanced telecommunications and information services” for purposes of the rules the Commission adopts to distribute funding from the Emergency Connectivity Fund, we propose that the Commission provide funding only for equipment and services that are needed to provide the connectivity required to enable and support remote learning for students, school staff, and library patrons. We seek comment on that approach, as well as comment on the specific equipment and services commenters consider necessary to support and facilitate the connectivity required for remote learning during the defined emergency period. In this respect, we invite comment from educators, school and library technology professionals, network engineers, librarians, and parents about the specific equipment and services that are necessary to facilitate and support the connectivity required to meet students, school staff, and library patrons’ remote learning needs.

Section 7402(d)(6) of the American Rescue Plan defines eligible equipment as (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices. Wi-Fi hotspot is defined as “a device that is capable of—(A) receiving advanced telecommunications and information services; and (B) sharing such services with another connected device through the use of Wi-Fi.”²⁴ Connected devices are defined as laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services.²⁵ We propose to use the same definitions for eligible equipment in the Commission’s rules implementing section 7402 of the American Rescue Plan, and seek comment on doing so. Is more specificity required? For example, should we clarify that modems include wireless modems, such as air cards? Should the Commission provide any further guidance regarding what sorts of connected devices are eligible for reimbursement through the Emergency Connectivity Fund? Is there a commonly understood definition of a tablet computer that we should use to ensure that the available funds are directed toward their intended purpose? Although not specifically identified, should desktop computers be eligible for funding as “similar end-user devices” that are capable of connecting to “advanced telecommunications and information services”? We seek comment on these questions and whether greater specificity or clarification is required with regard to eligible equipment.

Recognizing that participating in remote learning requires a device that can support an array of learning technologies, including video conferencing platforms, we propose that a connected device supported through the Emergency Connectivity Fund be able to support video conferencing platforms and

²² Museum and Library Services Act of 2018, Pub. L. 115-410, 132 Stat. 5416 (2018) (amending the definition of library in 22 U.S.C. § 9122 to include Tribal libraries).

²³ H.R. 1319, tit. VII, § 7402(a)(1)-(2), (d)(1); *see also* 47 U.S.C. § 254(h)(2)(A) (“The Commission shall establish competitively neutral rules—(A) to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”).

²⁴ H.R. 1319, tit. VII, § 7402(d)(11). Section 7402 of the American Rescue Plan defines “Wi-Fi” as “a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).” *Id.* at § 7402(d)(10).

²⁵ *Id.* § 7402(d)(3).

other software necessary to ensure full participation in remote learning activities.²⁶ In this regard, we specifically propose not to include mobile phones (i.e., smartphones) as eligible connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities and thus do not qualify as “similar” devices under American Rescue Plan.²⁷ We seek comment on this proposal and our underlying reasoning. We also seek comment on whether the Commission should impose minimum system requirements for connected devices supported by the Emergency Connectivity Fund and, if so, what those system requirements should be. In addition, as it did with respect to connected devices supported under the Emergency Broadband Benefit Program, should the Commission require that connected devices be Wi-Fi enabled and have video and camera functions to enable remote learning?²⁸

We recognize that people with disabilities have faced additional challenges as a result of the pandemic-necessitated transition to remote learning.²⁹ For that reason, in the *Emergency Broadband Benefit Program Order*, the Commission established an expectation that connected devices supported by the Emergency Broadband Benefit Program be “accessible to and usable by people with disabilities.”³⁰ Are there rules that the Commission should adopt to ensure that “connected devices” eligible for support from the Emergency Connectivity Fund are accessible to and usable by people with different types of disabilities, including people who are deaf or hard of hearing; blind or with low vision; deaf and blind; and those with physical disabilities?³¹ What other issues should the Commission consider when adopting requirements for connected devices to ensure that all students, school staff, and library patrons will be able to fully engage in remote learning?

²⁶ Bentley, Kipp, *Schools Need an Education-Specific Video Conferencing Tool*, Government Technology (Oct. 25, 2020), <https://www.govtech.com/education/k-12/schools-need-an-education-specific-video-conferencing-tool.html> (recognizing the critical role video conferencing platforms are serving in remote learning for students during the pandemic).

²⁷ In the recently adopted *Emergency Broadband Benefit Program Order*, which established the Emergency Broadband Benefit Program pursuant to a Congressional appropriation, the Commission concluded that Congress explicitly declined to include mobile phones in its definition of a “tablet” and thus, the Commission could not include such devices as eligible under the program. *Emergency Broadband Benefit Program*, WC Docket No. 20-445, Report and Order, FCC 21-29, at 40-41, paras. 79-80 (Feb. 25, 2021) (*Emergency Broadband Benefit Program Order*).

²⁸ *Id.* at 42, para. 82 (reporting that the record overwhelming supported that, at a minimum, connected devices be able to support video conferencing and camera functionality and online learning software).

²⁹ *See, e.g.*, American Foundation for the Blind Comments, WC Docket No. 21-31, at 1 (rec. Feb. 16, 2021) (AFB Comments) (explaining that “52% of professionals serving blind and low vision children could not reach at least one family” after the shift to remote learning, likely because of “limited or no access to the home internet services needed to facilitate remote education”).

³⁰ *Emergency Broadband Benefit Program Order*, at 42, para. 82; 47 U.S.C. §§ 255 (requiring telecommunications services and equipment to be accessible to and usable by individuals with disabilities), 617 (requiring advanced communications services and equipment to be accessible to and usable by individuals with disabilities).

³¹ *See, e.g.*, 47 CFR §§ 6.11 (defining accessible information requirements for telecommunications service providers and equipment manufacturers), 14.20(d) (defining accessible information requirements for advanced communications service providers and equipment manufacturers). Guidance on measures that can help to ensure usability are found in the Commission’s rules governing the “usability” obligations of providers of telecommunications and advanced communication services. *Id.* For example, section 14.20(d) requires that “[m]anufacturers and service providers must ensure that the information and documentation that they provide to customers is accessible, if achievable. Such information and documentation includes, but is not limited to, user guides, bills, installation guides for end user devices, and product support communications. The requirement to ensure the information is accessible also includes ensuring that individuals with disabilities can access, at no extra cost, call centers and customer support regarding both the product generally and the accessibility features of the product.” 47 CFR § 14.20(d).

We also seek comment on how to define “advanced telecommunications and information services” for purposes of the Emergency Connectivity Fund. The E-Rate program provides support for what are called “category one” services (which provide connectivity *to* schools and libraries) and “category two” services (which provide connectivity *within* schools and libraries).³² Category one services generally include data transmission and internet access services, while category two services include internal connections (e.g., Wi-Fi), managed internal broadband services (e.g., managed Wi-Fi), and basic maintenance of internal connections.³³ We propose to treat a subset of the services currently available for category one E-Rate support as eligible “advanced telecommunications and information services” for purposes of the Emergency Connectivity Fund. In considering the specific category one services the Commission should make eligible for purposes of the Emergency Connectivity Fund, we propose that such services be limited to those that can be supported by and delivered with eligible equipment as defined in the American Rescue Plan (i.e., Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices). As such, we seek comment on excluding from funding dark fiber and the construction of new networks, including the construction of self-provisioned networks. We seek comment on these proposals and the underlying assumption that the construction of new networks is not supported by the statutory text enumerating eligible equipment in section 7402 of the American Rescue Plan. Are there any other specific services currently eligible as category one services in the existing E-Rate program that the Commission should consider ineligible for the purposes of the Emergency Connectivity Fund?

Additionally, although section 7402 of the American Rescue Plan limits the specific equipment eligible for funding through the Emergency Connectivity Fund, should the Commission interpret “advanced telecommunications and information services” to include the equipment necessary to deliver these services to connected devices as eligible?³⁴ Should installation costs, taxes, and fees be included as an allowable cost?³⁵ In interpreting “advanced telecommunications and information services” eligible for support, are there equipment or services that would be particularly helpful to people with different types of disabilities?

We also seek comment on whether the Commission should impose minimum service standards and data thresholds with respect to those services in order to consider them to be eligible advanced telecommunications and information services.³⁶ If so, what should they be? In that regard, we seek comment on what standards are needed to enable and facilitate robust remote learning. In response to the *Remote Learning Public Notice*, commenters disagreed about whether the Commission’s current benchmark of 25 Mbps downstream and 3 Mbps upstream is sufficient to adequately support remote

³² 47 CFR § 54.502(a)(1)-(2).

³³ 47 CFR §§ 54.501, 54.502.

³⁴ See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 30 FCC Rcd 9923, 9927-28, para. 13 (WCB 2015) (*FY2016 ESL Order*) (finding that equipment is eligible for Category One support if it is “necessary to make a Category One broadband service functional); see also, e.g., 1998 Schools and Libraries Eligibility List, available at https://www.usac.org/wp-content/uploads/e-rate/documents/ESL_archive/EligibleServicesList_032898.pdf (making satellite dishes conditionally eligible in the first E-Rate program eligible services list released in 1998 if they were leased as part of the telecommunications services).

³⁵ These costs are currently allowable in the E-Rate program. See 47 CFR § 54.502(a) (“The services in this subpart will be supported in addition to all reasonable charges incurred by taking such services, such as state and federal taxes.”).

³⁶ See *Emergency Broadband Benefit Program Order*, at 36, para. 72 (finding that data caps “would be contrary to the law’s purpose of supporting robust modern broadband service during an unprecedented pandemic”). With regard to the Emergency Broadband Benefit Program, public interest groups argued that unlimited data may ensure accessibility for those who rely on the use of American Sign Language through video communications technology. See, e.g., *Telecommunications for the Deaf and Hard of Hearing, Inc. et al. Comments*, WC Docket No. 20-445, at 3-4 (rec. Jan. 25, 2021).

learning needs.³⁷ We seek comment on whether applying the Commission’s current speed benchmark as a minimum standard here would be appropriate for these purposes. If that benchmark is not sufficient, what should the downstream and upstream targets be? Recognizing that some households have more than one student, school staff member, or library patron, and that video conferencing applications commonly used for remote learning place heavy demands on speed and use large amounts of data, what level of service and data thresholds are needed to accommodate multiple users? Additionally, we invite comment on what speeds are necessary for people with disabilities to use Telecommunications Relay Services and, in particular, Video Relay Services. We encourage commenters to provide alternative recommendations for minimum service levels. Given that many schools and libraries have already purchased advanced telecommunications and information services to meet the needs of their students, school staff, and library patrons, should the Commission impose minimum service standards on a going-forward basis only, if at all?

Service Locations. We expect that most students, school staff, and library patrons are engaged in remote learning from their homes during the pandemic and thus need connectivity at home. However, we recognize that some students, school staff, and library patrons are unhoused or otherwise unable to engage in remote learning from home. The American Rescue Plan does not define the specific locations where students, school staff, and library patrons can use eligible equipment and services. Instead, it specifies that in the case of a school, eligible equipment and/or services must be used in “locations that include locations other than the school” and, in the case of a library, “locations that include locations other than the library.”³⁸ Wi-Fi hotspots can be easily moved and used in different locations, but fixed broadband connections are delivered to a specific location. To ensure that the Commission maximizes the use of limited funds, should the Commission impose restrictions on what locations can receive wireline and fixed wireless services supported by this Fund for remote learning? Should the Commission limit one connection per location for fixed broadband services? Should the Commission impose any per-location limitation on Wi-Fi hotspots? What authority does the Commission have to impose such restrictions on locations and what should these restrictions be?

Recent studies suggest that between \$6 to \$12 billion in funding is needed to provide connectivity and connected devices to all students and teachers who currently lack sufficient broadband access and/or devices to fully engage in remote learning.³⁹ To maximize available funds, we propose that the Commission require that schools document the student(s) and staff member served at each supported location and prohibit schools from providing more than one supported connection and more than one connected device to each student or staff member. Likewise, we propose that the Commission require libraries to document the patron or patrons served at each supported location and prohibit libraries from providing more than one supported connection and one connected device to any one patron at a given time. In proposing this approach to limit one device per student, school staff member, or library patron, we seek to avoid unnecessarily providing funding for multiple connected devices to individual students,

³⁷ Compare Los Angeles Unified School District Comments, WC Docket No. 21-31, at 3 (rec. Feb. 12, 2021) (LAUSD Comments) (finding the current minimum standard inadequate for remote learning), with INCOMPAS Reply Comments, WC Docket No. 21-31, at 5 (rec. Feb. 23, 2021) (INCOMPAS Reply) (recommending 25/3 Mbps as the minimum service standard). See also Federal Communications Commission, *Broadband Speed Guide*, <https://www.fcc.gov/consumers/guides/broadband-speed-guide> (last visited Mar. 11, 2021) (reporting the recommended broadband speed for general student use and video conferencing).

³⁸ H.R. 1319, tit. VII, § 7402(a)(1)-(2).

³⁹ See, e.g., Common Sense Media, *Closing the Digital Divide in the Age of Distance Learning* (2020) https://www.common Sense Media.org/sites/default/files/uploads/pdfs/common_sense_media_report_final_7_1_3pm_web.pdf (estimating the cost to connect students and teachers between \$6 billion and \$12 billion including connectivity and devices for the first 12 months); John B. Horrigan, *Students of Color Caught in the Homework Gap*, Alliance for Excellent Education, National Indian Education Association, National Urban League, and UnidosUS (2020), https://futureready.org/wpcontent/uploads/2020/08/HomeworkGap_FINAL8.06.2020.pdf (estimating the cost to connect students and provide them with devices at \$6.8 billion for one year).

school staff, and library patrons. We recognize that in some cases, schools or libraries may purchase Wi-Fi hotspots to provide cost-effective access to multiple students, school staff, or library patrons at the same time. For example, some schools have installed Wi-Fi hotspots on buses to provide broadband service to students and school staff located in the areas where the buses are deployed.⁴⁰ We propose that the Commission adopt rules to allow schools to use Wi-Fi hotspots on buses to provide broadband services to students and school staff who currently lack sufficient broadband access to fully engage in remote learning. We also propose that the Commission adopt rules to allow libraries to use Wi-Fi hotspots in bookmobiles to serve library patrons who currently lack sufficient broadband access.⁴¹ Are there other places schools and libraries should be able to place Wi-Fi hotspots to provide broadband to students, school staff, and library patrons who currently lack broadband access? Are there other approaches to funding broadband access to multiple students that the Commission should incorporate into its rules implementing the Emergency Connectivity Fund? For example, some school districts have bulk purchase programs to provide free broadband service to students and their families.⁴² Would this proposed approach allow other school districts to establish similar programs?

While seeking to ensure that schools and libraries do not seek funding for more equipment and services than they need, we also recognize that connected devices and other eligible equipment can break. We therefore seek comment on what, if any, allowances or controls may be necessary to allow schools and libraries to remediate such issues and how the Commission can prevent warehousing of unnecessary equipment and connected devices?

Eligible Uses. We seek comment on whether the Commission should require that equipment and services purchased with funding from the Emergency Connectivity Fund be primarily for educational purposes. Although the text of the American Rescue Plan is silent on permitted uses of eligible equipment and services, section 7402 of the Act is entitled “Funding for E-Rate Support for Emergency Educational Connections and Devices.”⁴³ It also provides that the Commission should promulgate rules for the provision of funding from the Emergency Connectivity Fund consistent with sections 254(h)(1)(B) and (2) of the Communications Act.⁴⁴ Section 254(h)(1)(B) of the Communications Act requires telecommunications carriers to provide services to schools and libraries for “educational purposes.”⁴⁵ Consistent with this section of the Communications Act, the Commission requires schools and libraries participating in the E-Rate program to use E-Rate supported services “primarily for educational purposes” and has established a presumption that activities that occur on a school campus or in a library building serve an educational purpose, and therefore, are eligible for E-Rate funding.⁴⁶ Specifically, in the case of

⁴⁰ See, e.g., E-Rate Management Professionals Association Comments, WC Docket No. 21-31, at 9-10 (rec. Feb. 16, 2021) (E-mpa Comments) (discussing a school district that created 20 “Smart Buses” to park in neighborhoods with limited or no broadband access to provide access to the students who lacked such access during the COVID-19 pandemic).

⁴¹ See Petition for Emergency Waiver filed by the Navajo Nation, CC Docket No. 02-6, at 9-10 (filed Apr. 30, 2020), <https://www.fcc.gov/ecfs/filing/10501013173531> (Navajo Nation Petition) (seeking to deploy Wi-Fi on library bookmobiles as an option for providing access to remote locations); Internet Society Reply Comments, WC Docket No. 21-31, at 11 (rec. Feb. 23, 2021) (urging the Commission to allow libraries to extend access through different solutions, including hotspots and kiosks).

⁴² See City of Chicago et al. Comments, WC Docket 21-31, at 6-9 (rec. Feb. 16, 2021).

⁴³ H.R. 1319, tit. VII, § 7402 (emphasis added).

⁴⁴ H.R. 1319, tit. VII, § 7402(a).

⁴⁵ 47 U.S.C. § 254(h)(1)(B).

⁴⁶ *Schools and Libraries Universal Service Support Mechanism et al.*, Sixth Report and Order, WC Docket No. 02-6, 25 FCC Rcd 18762, 18774, para. 22 (2010) (*Schools and Libraries Sixth Report and Order*) (amending the rules to require that services be used *primarily* for educational purposes and explaining that “[t]o primarily use services supported by E-rate, E-rate recipients must ensure that students always get first priority in use of the schools’ resources”).

schools, the Commission has defined “educational purposes” as “activities that are integral, immediate, and proximate to the education of students.”⁴⁷ In the case of libraries, it has defined “educational purposes” as activities that are “integral, immediate, and proximate to the provision of library services to library patrons.”⁴⁸

If the Commission adopts this approach, what guidance should the Commission provide schools and libraries about how eligible equipment and services can be used? What safeguards should the Commission impose to ensure that schools and libraries are reimbursed only for the purchase of equipment and services used primarily for educational purposes? Should, for example, schools and libraries be required to restrict access to eligible equipment and services to those students, school staff, and patrons with appropriate credentials? Would such an approach allow support for bulk programs that serve a large number of students and their families?

Reasonable Support Amount. Section 7402(b) of the American Rescue Plan specifies that in providing support under the regulations it adopts, the Commission shall reimburse 100% of the costs associated with eligible equipment and services, “except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for reimbursement, is reasonable.”⁴⁹ Section 254(h)(2)(A) of the Communications Act requires the Commission provide access to advanced telecommunications and information services to the “extent technically feasible and economically reasonable.”⁵⁰

As an initial matter, we seek comment on whether the Commission should reimburse for purchases of eligible equipment and services made by eligible schools and libraries since January 27, 2020. Do commenters interpret the American Rescue Plan as requiring the Commission to do so, subject to the Commission’s authority to determine reasonable costs for eligible equipment and services? If the Commission has the authority to set a different date, what date should it choose and why?⁵¹

The E-Rate specific competitive bidding rules are a crucial driver of cost-effective purchasing and protecting limited E-Rate funds from waste, fraud, and abuse. However, we recognize that many schools and libraries have already entered into contracts to purchase eligible equipment and services to meet the remote learning needs of their students, school staff, and patrons. We therefore propose to allow eligible schools and libraries to seek reimbursement for the cost of eligible equipment and services purchased without having conducted a Commission-mandated competitive bidding process for purposes of the Emergency Connectivity Fund. Instead, we propose that the Commission require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable state, Tribal, or local procurement requirements with respect to the contracts they used to purchase eligible equipment and services.⁵² Can the Commission reasonably assume that schools and libraries that complied with applicable state, local and Tribal procurement requirements purchased

⁴⁷ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17 (clarifying the meaning of educational purposes); 47 CFR § 54.500 (defining “educational purposes”).

⁴⁸ *Id.*

⁴⁹ H.R. 1319, tit. VII, § 7402(b).

⁵⁰ 47 U.S.C. § 254(h)(2)(A).

⁵¹ Some commenters to the *Remote Learning Public Notice* argue that purchases since March 2020, when most schools and libraries switched to remote learning, should be eligible. *See, e.g.*, New York City Department of Education Comments, WC Docket No. 21-31, at 2 (rec. Feb. 16, 2021) (NYCDE Comments). Other commenters support a July 1, 2020 start date to coincide with the beginning of the E-Rate funding year. *See, e.g.*, Wisconsin Department of Public Instruction Comments, WC Docket No. 21-31, at 3 (rec. Feb. 16, 2021) (WIDPI Comments).

⁵² *See* American Library Association Comments, WC Docket No. 21-31, at 6-7 (rec. Feb. 16, 2021) (pointing out that many libraries face state and local competitive bidding requirements); Kellogg & Sovereign Consulting, LLC Comments, WC Docket Nos. 13-184, 21-31, at 9-10 (rec. Feb. 16, 2021) (KSLLC Comments).

eligible equipment and services at reasonable prices? We recognize that there are some eligible schools and libraries, those that are operated by non-profit entities, that do not have state, Tribal, or local procurement requirements. We seek comment on how to ensure that the costs of their purchases are reasonable.

We also seek comment on whether the Commission should adopt a streamlined competitive bidding process to be used by eligible schools and libraries that have not yet purchased or entered into contracts to purchase eligible equipment and/or services. In adopting such a process, should the Commission reduce to 14 days the time that an applicant must wait to enter into a contract with a service provider after posting a request for bids? Are there other ways the Commission could streamline the competitive bidding process? For example, should the Commission adopt the modified competitive bidding rules adopted in the *2017 Hurricanes Order*?⁵³ Are there other exemptions the Commission should consider for the competitive bidding requirements? For example, are there state master contracts that schools and libraries should be allowed to use for purchases that are reimbursed through the Emergency Connectivity Fund without having to conduct a competitive bidding process?⁵⁴ We seek comment on these issues and request examples of such contracts be provided.

In deciding what amount is reasonable to reimburse applicants for previous purchases or pay for new purchases, we also seek comment on whether the Commission should establish a range of costs that are reasonable for each category of equipment and service eligible for funding through the Emergency Connectivity Fund (i.e., Wi-Fi hotspots; modems; routers; devices that combine a modem and router; connected devices; and advanced telecommunications and information services). How should the Commission determine the reasonableness of the costs associated with each category of eligible equipment and service? Should the Commission rely on costs for eligible equipment and services identified in response to this Public Notice, the *Remote Learning Public Notice*, or used in the Emergency Broadband Benefit Program and/or the existing E-Rate program to determine what is reasonable?

For example, in response to the *Remote Learning Public Notice*, commenters reported purchasing hotspots for as low as \$0 (with a one-year commitment) to up to \$144.99 per device, plus an additional \$10.00 to \$40.00 per month for service.⁵⁵ With regards to connected devices, the price of Chromebooks reportedly ranged from \$160.00 to \$650.00 per device.⁵⁶ And in the Emergency Broadband Benefit Program, an eligible household may receive a single reimbursement of up to \$100 for a connected device, if the charge to the eligible household for that device is more than \$10 but less than \$50.⁵⁷ Should the Commission consider any of these price ranges or other cost ranges when determining what is reasonable for Wi-Fi hotspots and/or connected devices supported by the Emergency Connectivity Fund? Similarly, in response to the *Remote Learning Public Notice*, commenters provided examples of the monthly rates associated with students' home internet access that ranged from \$9.95 to \$50.00 per month.⁵⁸ And in the Emergency Broadband Benefit Program, eligible households may receive a monthly discount on the rate for an internet service offering and associated equipment, of up to \$50.00 per month, and on Tribal lands,

⁵³ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9546, paras. 15-16 (2017) (*2017 Hurricanes Order*) (allowing certain E-Rate applicants to submit applications without initiating a new competitive bidding process if the applicant already sought bids for the requested services, and to shorten the 28-day waiting period to 14 days).

⁵⁴ See Wisconsin Department of Public Instruction Comments at 2-3 (explaining that Wisconsin schools purchasing from statewide program are subject to state competitive bidding requirements).

⁵⁵ Andrew Moore, Dave Landy, Rob Anderson and Dwight Jones Comments, WC Docket No. 21-31, at 2 (rec. Feb. 16, 2021) (filed on behalf of Boulder Valley School District and Denver Public Schools) (BVSD & DPS Comments); KSLLC Comments at 5-6.

⁵⁶ E-mpa Comments at 8.

⁵⁷ *Emergency Broadband Benefit Program Order*, at 3, 41, paras. 5, 81.

⁵⁸ BVSD & DPS Comments at 2; KSLLC Comments at 5-6.

of up to \$75.00 per month.⁵⁹ Should the Commission consider any of these rates or caps when determining what is reasonable for monthly broadband services to the home? We seek comment on the reasonableness of these costs and invite commenters to provide specific costs associated with each of these categories of eligible equipment and services.

Alternatively, should the amount the Commission considers reasonable for each category of eligible equipment and service vary depending on location (i.e., whether the student, school staff member, or library patron is in an urban or rural area)? Rather than a range of reasonable costs, should the Commission adopt maximum amounts it deems is reasonable to reimburse for each type of eligible equipment and service, and if so, what should those maximum prices be? For eligible equipment, such as laptops and tablets, should the maximum price be higher for equipment provided to students, school staff, and library patrons with disabilities? For advanced telecommunications and information services, should the maximum cost be higher for rural areas or on Tribal lands?

We further seek comment on whether the Commission should establish one or more funding caps and, if so, what such caps should be? For example, should there be a funding cap on any type of eligible equipment or service?⁶⁰ If the Commission were to establish any funding cap, we seek comment on whether and how a cap could assist the Commission in targeting the Emergency Connectivity Fund support to those students, school staff, and library patrons that are most in need and how to determine which students, school staff, and library patrons have the greatest need.

The E-Rate program provides greater discounts to schools and libraries that serve lower-income and rural populations. Should the Commission consider accounting for other factors such as poverty, rurality, and/or broadband availability in the Emergency Connectivity Fund? Recognizing the trust relationship between Tribal governments and the federal government, should the Commission allocate a portion of the Emergency Connectivity Fund for Tribal schools and libraries to ensure Tribal students, school staff and library patrons benefit from the Emergency Connectivity Fund? If so, what portion of the fund should the Commission set aside for Tribal schools and libraries?

Application Process. We propose that the Commission direct USAC to open a 30-day Emergency Connectivity Fund filing window to allow eligible schools and libraries to apply for funding for eligible equipment and services purchases made or to be made between January 27, 2020 and June 30, 2021, which is the period between the start of the COVID-19 emergency period and the end of E-Rate funding year 2021. Each E-Rate funding year runs from July 1st of one year through June 30th of the following year.

The current E-Rate application filing window for funding year 2021 closes March 25, 2021, so opening an Emergency Connectivity Fund filing window after that date will not interfere with the regular E-Rate application filing window. We seek comment on this proposal. Is 30 days an appropriate filing window length? Although we expect demand will be high for the first funding window, if demand does not exceed available funds for the first application period, we also propose that the Commission direct USAC to open a filing window for the Emergency Connectivity Fund in the second quarter of every year (i.e., between April and June) for each of the following funding years, until the funds are exhausted or the emergency period ends, whichever is earlier. We seek comment on this proposal. Should we require applicants to conduct an assessment of their need for eligible equipment and services and to align the funding requests that they file during the second and subsequent filing windows with their needs assessments? Should future filing windows be limited to prospective funding requests? We also seek comment on whether more than one filing window(s) a year should be open during the emergency period.

⁵⁹ *Emergency Broadband Benefit Program Order*, at 3, 35-36, paras. 4, 70-72.

⁶⁰ See, e.g., New Mexico Public School Facilities Authority Comments, WC Docket No. 21-31, at 8 (rec. Feb. 16, 2021); ACA Connects - America's Communications Association Comments, WC Docket No. 21-31, at 11-12 (rec. Feb. 16, 2021) (ACA Connects Comments); E-Rate Central Comments, WC Docket No. 21-31, at 4 (rec. Feb. 16, 2021) (E-Rate Central Comments); WIDPI Comments at 3.

With respect to the applications themselves, we propose and seek comment on leveraging the current E-Rate forms to apply for support from the Emergency Connectivity Fund. We believe that using modified versions of the current forms, with which applicants are already familiar, will provide the simplest process for applying for and receiving funding through the Emergency Connectivity Fund. Do commenters agree or have any concerns about this approach? In addition, we seek comment on what other aspects of the application process the Commission should borrow from the existing E-Rate program (e.g., FCC Form 471, certifications, Program Integrity Assurance review, E-Rate Productivity Center). We also seek comment on what other E-Rate program rules and requirements are necessary and should be adopted for the Emergency Connectivity Fund.

Prioritization of Funding. We propose that the Commission adopt rules applying the discount methodology used in the existing E-Rate program to prioritize funding requests, in the event that demand exceeds available funding.⁶¹ Under this approach, once an application filing window closes, USAC will calculate whether demand exceeds the available funds. If demand exceeds available funds at the close of an application filing window, USAC would issue funding decision letters starting with the schools and libraries eligible for the highest discount percentage established under the Commission's E-Rate program rules and stop issuing decision letters when sufficient funds are no longer available to meet the demand at a particular discount level.⁶² We seek comment on whether this is the best approach for prioritizing funding requests, as well as whether we should consider any alternative methods for prioritizing such requests to help ensure that limited funds are fairly and efficiently distributed to eligible schools and libraries.

For example, recognizing that our proposed prioritization scheme based on the existing discount methodology may not adequately address the needs of all students, school staff, and library patrons, particularly for those students enrolled in schools that qualify for a lower discount but still lack a broadband connection or connected device at home, should the Commission instead prioritize funding requests to target the needs of those students, school staff, and library patrons without adequate broadband access at home and/or that lack a connected device? If so, how would eligible schools and libraries identify this population in advance of a filing window? Should the Commission prioritize funding for future purchases rather than reimbursements for already purchased equipment and services, and would doing so target funds to those students, school staff, and library patrons who remain unconnected? Miami-Dade County Public Schools suggests retroactive reimbursement for device purchases but only prospective funding for services.⁶³ Would doing so target funds to unconnected students? Would it unreasonably penalize schools and libraries that have allocated limited resources to getting students, school staff, and library patrons broadband services? Should the Commission require eligible schools and libraries to certify that they will make best efforts to prioritize these students, school staff, and library patrons? Or, should the Commission establish formal rules requiring a written policy or plan for distribution? In the event of a certification, rules, or other reporting requirements, are audits the best manner to ensure compliance with this prioritization? Alternatively, should the Commission prioritize funding requests for prior purchases over requests submitted for new purchases?

Reimbursement Process. We also seek comment on the reimbursement process and on how the Commission can structure the process to provide funds to schools and libraries as quickly as possible to assist with the challenges presented by the pandemic. We seek to reduce the burdens on applicants during this challenging time, while also ensuring that funds are used for eligible equipment and services and primarily for an educational purpose, and otherwise minimize the risk of waste, fraud, and abuse. We propose requiring applicants (rather than service providers) to submit invoices detailing the items

⁶¹ See 47 CFR § 54.507(f).

⁶² 47 CFR § 54.505. Discounts in the E-Rate program range from 20% to 90% of the pre-discount price of eligible services and are based on indicators of need, including, for example, the percentage of students eligible for free or reduced-price lunch through the National School Lunch Program (NSLP). *Id.*

⁶³ Miami-Dade County Public Schools Comments, WC Docket No. 21-31, at 6 (rec. Feb. 16, 2021).

purchased to receive reimbursement. We seek comment on this proposal. What documentation should be included with the reimbursement request? Is having schools and libraries submit invoices and documentation an effective safeguard against the misuse of funds given that reimbursement is for 100% of the costs? Or, in the alternative, could a streamlined invoicing form or other invoice mechanism simplify review and be an effective safeguard against waste, fraud, and abuse of the Emergency Connectivity Fund? In order to ensure efficient administration of the Emergency Connectivity Fund and allow the Commission to de-obligate committed funds for use by other schools and libraries, we also propose establishing a short window for schools and libraries to file invoices and reimbursement requests. What would be the shortest possible invoice filing deadline period that would not impose undue burden on applicants? What other aspects of the invoicing and reimbursement process should the Commission use from the existing E-Rate program (e.g., FCC Form 472, certifications, etc.) for the Emergency Connectivity Fund? We seek comment on these issues and on any other issues related to reimbursement for eligible equipment and services purchased through the Emergency Connectivity Fund.

Treatment of Eligible Equipment during and after the COVID-19 Emergency Period. We seek comment on the treatment of equipment purchased through the Emergency Connectivity Fund during and after the COVID-19 emergency period. Should, for example, schools and libraries be permitted to use eligible equipment for any purpose that the school or library considers appropriate after the emergency period? Or, should the use of eligible equipment after the emergency period continue to be restricted to primarily educational purposes as defined by the Commission? Similarly, should the Commission prohibit the sale, resale, or transfer of the purchased equipment for anything of value consistent with the current E-Rate program rules during and after the emergency period?⁶⁴ Or, recognizing the relatively short lifespan of most computers and communications equipment, should schools and libraries have flexibility about how to dispose of equipment after the emergency period? Are there any other restrictions the Commission should impose on the use of eligible equipment both during and after the emergency period ends?

The Children's Internet Protection Act (CIPA). We seek comment regarding the applicability of CIPA to the devices and services funded through the Emergency Connectivity Fund. CIPA prohibits schools and libraries participating in the E-Rate program from receiving E-Rate funding under section 254(h)(1)(b) for internet access services, or internal connections, unless they comply with, and certify their compliance with, specific Internet safety requirements, including the operation of a technology protection measure.⁶⁵ Schools, but not libraries, must also provide education about appropriate online behavior, including warnings against cyberbullying.⁶⁶ Section 254 of the Communications Act specifies

⁶⁴ 47 U.S.C. § 254(h)(3) (“Telecommunications services and network capacity provided to a public institutional telecommunications user under this subsection may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value.”); *see also* 47 CFR § 54.513 (codifying the requirement for E-Rate eligible services).

⁶⁵ CIPA is codified at section 254(h)(5)-(6), and section 254(l) of the Communications Act of 1934, as amended. 47 U.S.C. § 254(h)(5)-(6), (l). CIPA requires each covered school and library to certify that the school or library is: (1) “enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access [by both adults and minors] through such computers” to visual depictions that are (i) obscene; (ii) child pornography; or, (iii) with respect to use of the computers by minors, harmful to minors; and (2) “enforcing the operation of such technology protection measure during any use of such computers” by minors and adults. 47 U.S.C. § 254(h)(5)(B)(i),(ii) and (C)(i),(ii), (h)(6)(B)(i)(ii) and (C)(i)(ii), and (l); 47 CFR § 54.520(c)(1)(i), (c)(2)(i); *see also Federal-State Joint Board on Universal Service; Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8184, n.5 (2001); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Report and Order, 26 FCC Rcd 11819, 11829, para. 23 (2011) (*2011 CIPA Order*).

⁶⁶ *2011 CIPA Order*, 26 FCC Rcd at 11821, para. 5.

that CIPA applies to schools and libraries “having computers with Internet access,”⁶⁷ and also requires each such school or library to certify that it is enforcing a policy of Internet safety that includes the operation of a technology protection measure “with respect to any of its computers with Internet access.”⁶⁸ We seek comment on whether the CIPA requirements extend to all school or library devices supported by funding through the Emergency Connectivity Fund that are used off-campus and outside the traditional E-Rate-supported networks. If so, we also seek comment on whether the Commission should modify any of the existing CIPA-related rules or procedures to cover this situation. For example, should a CIPA certification be included on the application for funding, rather than on a separate form? Should a CIPA certification made in the traditional E-Rate program suffice for compliance to receive support from the Emergency Connectivity Fund?

Other Federal and State Funding for Remote Learning. To avoid duplicate funding and to stretch the limited Emergency Connectivity Fund, we propose limiting reimbursements out of the Emergency Connectivity Fund to those made for eligible equipment and services for which schools and libraries have not received funding through other federal programs (i.e., Emergency Broadband Benefit Program, the CARES Act, or other provisions of the American Rescue Plan); state programs specifically targeted at providing funding for eligible equipment and services; other external sources of funding; or gifts. We further propose that schools and libraries must certify that they have not received and will not seek funding for the funded equipment and/or services from other federal or targeted state programs when seeking funding or reimbursement through the Emergency Connectivity Fund. We seek comment on this proposal and whether there should be additional safeguards to prevent duplicate funding for the same equipment and services across the federal universal service programs and other federal or targeted state funding programs, as well as avoiding reimbursement for items that were provided as a gift.

We recognize that some state entities apply for E-Rate program funding as a consortium on behalf of the eligible schools and libraries located within the state. We seek comment on whether these applicants should be allowed to seek reimbursement for eligible equipment and services through the Emergency Connectivity Fund when state funding was used to purchase equipment and services necessary for the state’s students to engage in remote learning during the emergency period. Would the Commission maximize the Emergency Connectivity Fund by prohibiting reimbursement for eligible equipment and services that were purchased with state funding? Would the Commission harm these applicants by prohibiting reimbursement of eligible equipment and services when state funding was used? We seek comment on these issues and other ways to prevent duplicative funding between the Emergency Connectivity Fund and other funding programs.

Other Protections Against Waste, Fraud, and Abuse. We are committed to ensuring the integrity and fiscal responsibility of the Emergency Connectivity Fund and protecting the funds against waste, fraud, and abuse. To help the Commission protect the Emergency Connectivity Fund from potential waste, fraud, and abuse, and consistent with current E-Rate program rules,⁶⁹ we propose that the Commission require Emergency Connectivity Fund participants to retain records related to their participation in the Fund sufficient to demonstrate their compliance with the rules adopted by the Commission for at least 10 years from the last date of service or delivery of equipment. We also propose that the Commission require participants to present that information upon request to the Commission and its delegates, including USAC, and to the staff of the Commission’s Office of Inspector General.⁷⁰ We seek comment on these proposals.

⁶⁷ 47 U.S.C. § 254(h)(5)(A)(i), (h)(6)(A)(i).

⁶⁸ 47 U.S.C. § 254(h)(5)(B)(i) and (C)(i), (h)(6)(B)(i) and (C)(i).

⁶⁹ 47 CFR § 54.516(a).

⁷⁰ Section 7402 of the American Rescue Plan specifically contemplates an oversight role for the Office of Inspector General and provides \$1 million dollars in funding for such oversight. See H.R. 1319, tit. VII, § 7402(c)(2)(B).

As part of the documentation related to their compliance with the rules adopted by the Commission, we propose that Emergency Connectivity Fund participants be required to maintain an asset inventory of devices purchased with these funds and record at a minimum: (1) device type (i.e., laptop, tablet, mobile hotspot, modem gateway/router); (2) device make/model and equipment serial number; (3) the individual to whom the device was provided; and (4) the dates the device was provided to and returned by the individual. Similarly, we propose requiring Emergency Connectivity Fund participants to maintain a record of the services purchased with these funds, recording at a minimum: (1) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (2) broadband plan details, including: upload and download speeds and the monthly data cap; and (3) the individual(s) to whom the service was provided. For fixed broadband service, we also propose to require applicants to maintain a record of the service address for the broadband service and the actual installation date of service. We seek comment on these proposals.

Given the limited financial support that is available through the Emergency Connectivity Fund, we believe that if students, school staff, and library patrons are not using the funded services, the Fund should not be paying for these services. To protect the Emergency Connectivity Fund from waste, fraud, and abuse, we seek comment on requiring service providers providing monthly services reimbursed through this Fund to report and validate usage of the supported services provided after adoption of new rules. In the event there is non-usage during a service month, we seek comment on requiring the service provider to notify the school or library regarding the non-usage and to remove the cost for any non-used service from the invoice provided to the school or library. In the Emergency Broadband Benefit Program, service providers are required to certify that every subscriber claimed has used their supported service, as defined by section 54.407(c)(2) of our rules, at least once during the service month being claimed to be able to claim that subscriber for reimbursement in that month.⁷¹ What are the costs and benefits of such an approach? We seek comment on whether existing contracts negotiated to purchase eligible equipment and services include provisions on non-usage and if not, what are the implications for addressing and preventing non-usage on a going-forward basis? We further seek comment on other ways to ensure devices and services supported through the Emergency Connectivity Fund are being used and to limit any non-usage of these services and devices.

To ensure the integrity of whatever procurement process requirements the Commission decides to adopt for purposes of the Emergency Connectivity Fund, we seek comment on whether the Commission should apply the gift rule applicable to the E-Rate program, or some version of the rule, here. The E-Rate program's gift rule prohibits E-Rate applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the program, and similarly, prohibits service providers from offering or providing any gift or other thing of value to those personnel of eligible entities.⁷² In response to the pandemic, and in light of the urgent and increased need for connectivity and

⁷¹ See *Emergency Broadband Benefit Program Order*, at 47-48, 69, paras. 92 and 145 (discussing the non-usage certification requirement); see also 47 CFR § 54.407(c)(2), which provides that “After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days...” Any of these activities, if undertaken by the subscriber, will establish “usage” of the Lifeline service: (i) completion of an outbound call or usage of data; (ii) purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan; (iii) answering an incoming call from a party other than the eligible communications carrier or the eligible telecommunications carrier's agent or representative; (iv) responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline services; and (v) sending a text message. *Id.*

⁷² 47 CFR § 54.503(d) (“[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein.”); *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18801, para. 88 (2010) (*Schools and*

(continued....)

connected devices, in March 2020, the Bureau temporarily waived this rule, and subsequently extended the waiver, to help schools and libraries work with service providers as they transitioned to remote learning.⁷³ We seek comment on whether it would be appropriate for the Commission to adopt the same or similar restrictions on gifts for purposes of the Emergency Connectivity Fund. If the Commission adopts gift restrictions for the Emergency Connectivity Fund, should it do so on a going-forward basis only, recognizing that many schools and libraries may have taken advantage of free or discounted connections and devices offered by service providers when they made their purchases? We also seek comment on whether gift restrictions should not be adopted for the Emergency Connectivity Fund because of the ongoing COVID-19 pandemic.

We further propose that Emergency Connectivity Fund participants be subject to compliance audits to ensure compliance with the rules and requirements for the Emergency Connectivity Fund and must provide documentation related to their participation in the Emergency Connectivity Fund in connection with any such audit. We propose that the Commission authorize USAC to conduct audits and establish procedures to verify support amounts provided through the Emergency Connectivity Fund.⁷⁴ We seek comment on this proposal.

We seek comment on what other compliance mechanisms and safeguards should be implemented to protect the Emergency Connectivity Fund from waste, fraud, and abuse and to ensure the funds are being used to provide eligible equipment and advanced telecommunications services and information services necessary for students, school staff, and library patrons to fully engage in remote learning. In addition, other than the certifications for which we already seek comment, should the Commission require Emergency Connectivity Fund participants (i.e., schools, libraries and service providers) to certify to any other specific rules or requirements? Are there any other rules or requirements the Commission should consider adopting for the Emergency Connectivity Fund?

Enforcement. We seek comment on the ability of the Commission to impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements. We propose to use the Commission's existing, statutorily permitted enforcement powers to, for example, initiate investigations and impose administrative forfeitures. We also propose to withhold program funds from participants found to be in violation of the Emergency Connectivity Fund program rules. We seek comment on these proposals. Should we also withhold program funding from participants found to be in violation of other Commission rules, particularly those Commission rules pertaining to the Commission's universal service fund programs? We also propose to apply the

Libraries Sixth Report and Order). Consistent with the gift rules applicable to federal agencies, certain *de minimis* gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

⁷³ See *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 2741 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Order*) (waiving the E-Rate and RHC programs gift rules through September 30, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 9416 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Extension Order*) (extending the waiver of each program's gift rule through the end of the year); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd 14544 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Second Extension Order*) (extending the waiver of each program's gift rule through June 30, 2021).

⁷⁴ The Administrator is currently authorized to conduct audits and establish procedures to verify discounts, offsets, and support amounts provided through the universal service support mechanisms, including the E-Rate program. See 47 CFR §§ 54.707 (authorizing USAC to establish audit controls) and 54.516 (authorizing USAC to conduct audits and inspections for the E-Rate program).

Commission's existing suspension and debarment rules⁷⁵ to program participants and seek comment on this proposal.

Costs and Benefits. We seek comment on the costs and benefits of the approaches we have proposed for oversight and administration of the Emergency Connectivity Fund. We also encourage commenters to explain the costs and benefits of any recommendations they make in the record of this proceeding. In both cases, we recognize the American Rescue Plan requires the Commission to take a range of actions, and thus a conventional cost benefit analysis, which would seek to determine whether the costs of the required actions exceed their benefits, is not directly called for. Instead, as laid out in Office of Management and Budget (OMB) guidelines, we propose to determine whether the Commission's proposed actions are the most cost-effective means to implement this legislation,⁷⁶ recognizing that these actions are designed to mitigate a crisis and that the effectiveness of the Commission's actions in mitigating that crisis is likely to be sharply reduced by delay. We seek comment on this proposal.

Paperwork Reduction Act Analysis. This document contains proposed new or modified information collection requirements. As part of the Commission's continuing effort to reduce paperwork burdens, we invite the general public and OMB to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Filing Requirements. Interested parties may file comments on or before **April 5, 2021** and reply comments on or before **April 23, 2021**.⁷⁷ All filings should refer to **WC Docket No. 21-93**. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically using the internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. Filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.

⁷⁵ *See* 47 CFR § 54.8 (setting forth the Commission's rules regarding suspension and debarment).

⁷⁶ Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular A-94, Guidelines and Discounts for Cost-Benefit Analysis of Federal Programs, at 4 (1992) (explaining that a "cost-effectiveness analysis . . . can be appropriate when the benefits from competing alternatives are the same or where a policy decision has been made that the benefits must be provided").

⁷⁷ *See* 47 CFR § 1.4(j) (filing dates that would otherwise fall on a holiday shall be filed on the next business day).

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁷⁸

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530.

Ex Parte Rules. Proceedings in this Notice shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁹ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission’s *ex parte* rules.

For further information, please contact Molly M. O’Conor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-0578 or by email at Molly.OConor@fcc.gov.

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⁷⁸ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Filing*, Public Notice, 35 FCC Rcd 2788 (2020). In response to the COVID-19 pandemic, the FCC has closed its current hand-delivery filing location at FCC Headquarters. We encourage outside parties to take full advantage of the Commission’s electronic filing system. Any party that is unable to meet the filing deadline due to the building closure may request a waiver of the comment or reply comment deadline, to the extent permitted by law.

⁷⁹ See 47 CFR §§ 1.1200(a), 1.1206.

APPENDIX A
AMERICAN RESCUE PLAN ACT, 2021

SEC. 7402. FUNDING FOR E-RATE SUPPORT FOR EMERGENCY EDUCATIONAL CONNECTIONS AND DEVICES.

(a) **REGULATIONS REQUIRED.**—Not later than 60 days after the date of the enactment of this Act, the Commission shall promulgate regulations providing for the provision, from amounts made available from the Emergency Connectivity Fund, of support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) to an eligible school or library, for the purchase during a COVID–19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by—

(1) in the case of a school, students and staff of the school at locations that include locations other than the school; and

(2) in the case of a library, patrons of the library at locations that include locations other than the library.

(b) **SUPPORT AMOUNT.**—In providing support under the covered regulations, the Commission shall reimburse 100 percent of the costs associated with the eligible equipment, advanced telecommunications and information services, or eligible equipment and advanced telecommunications and information services, except that any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for the reimbursement, is reasonable.

(c) **EMERGENCY CONNECTIVITY FUND.**—

(1) **ESTABLISHMENT.**—There is established in the Treasury of the United States a fund to be known as the “Emergency Connectivity Fund”.

(2) **APPROPRIATION.**—In addition to amounts otherwise available, there is appropriated to the Emergency Connectivity Fund for fiscal year 2021, out of any money in the Treasury not otherwise appropriated—

(A) \$7,171,000,000, to remain available until September 30, 2030, for— (i) the provision of support under the covered regulations; and (ii) the Commission to adopt, and the Commission and the Universal Service Administrative Company to administer, the covered regulations; and

(B) \$1,000,000, to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided under the covered regulations.

(3) **LIMITATION.**—Not more than 2 percent of the amount made available under paragraph (2)(A) may be used for the purposes described in clause (ii) of such paragraph.

(4) **RELATIONSHIP TO UNIVERSAL SERVICE CONTRIBUTIONS.**—Support provided under the covered regulations shall be provided from amounts made available from the Emergency Connectivity Fund and not from contributions under section 254(d) of the Communications Act of 1934 (47 U.S.C. 254(d)).

(d) **DEFINITIONS.**—In this section:

(1) **ADVANCED TELECOMMUNICATIONS AND INFORMATION SERVICES.**—The term “advanced telecommunications and information services” means advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)).

(2) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.

(3) **CONNECTED DEVICE.**—The term “connected device” means a laptop computer, tablet computer, or similar end-user device that is capable of connecting to advanced telecommunications and information

services.

(4) COVERED REGULATIONS.—The term “covered regulations” means the regulations promulgated under subsection (a).

(5) COVID–19 EMERGENCY PERIOD.—The term “COVID–19 emergency period” means a period that— (A) begins on the date of a determination by the Secretary of Health and Human Services pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) that a public health emergency exists as a result of COVID–19; and (B) ends on the June 30 that first occurs after the date that is 1 year after the date on which such determination (including any renewal thereof) terminates.

(6) ELIGIBLE EQUIPMENT.—The term “eligible equipment” means the following:

(A) Wi-Fi hotspots.

(B) Modems.

(C) Routers.

(D) Devices that combine a modem and router.

(E) Connected devices.

(7) ELIGIBLE SCHOOL OR LIBRARY.—The term “eligible school or library” means an elementary school, secondary school, or library (including a Tribal elementary school, Tribal secondary school, or Tribal library) eligible for support under paragraphs (1)(B) and (2) of section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)).

(8) EMERGENCY CONNECTIVITY FUND.—The term “Emergency Connectivity Fund” means the fund established under subsection (c)(1).

(9) LIBRARY.—The term “library” includes a library consortium.

(10) WI-FI.—The term “Wi-Fi” means a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11 (or any successor standard).

(11) WI-FI HOTSPOT.—The term “Wi-Fi hotspot” means a device that is capable of— (A) receiving advanced telecommunications and information services; and (B) sharing such services with a connected device through the use of Wi-Fi.