SECA
STATE E-RATE COORDINATORS' ALLIANCE

April 23, 2021

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

> Re: Emergency Connectivity Fund for Educational Connections and Devices to Address the
> Homework Gap During the Pandemic, WC Docket No. 21-93
> Addressing the Homework Gap through the E-Rate Program, WC Docket No. 21-31
> Notice of *Ex Parte Meeting*

Dear Secretary Dortch:

The following members of the State E-rate Coordinators' Alliance met via an online video conference
with the following members of the Wireline Competition Bureau to discuss the issues raised in Public
Notice DA 21-317 regarding the Emergency Connectivity Fund, WC Docket No. 21-31 and Public Notice
DA 21-98 in the Remote Learning Petition proceeding, WC Docket No. 21-31:

SECA Members:	FCC Personnel:
Anne Perloff, Maine	Lisa Hone
Cathy Benham, California	Sue McNeil
Charlie Jackson, Georgia	Ryan Palmer
Kim Friends, Tennessee	Johnnay Schrieber
Debra Kriete, South Dakota	Gabriela Gross
Joe Polasek, Michigan	Kate Dumouchel
Tom Rolfes, Nebraska	Molly O'Conor
Julie Tritt Schell, Pennsylvania	David Zesiger
Caroline Wolf, Louisiana	Zachary Dileo
	Joseph Schlingbaum

We reviewed the enclosed presentation during our meeting which emphasizes our recommendations for
the rules to govern the ECF program.

We encourage the FCC to adopt the overarching principle of **simplicity** in all aspects of the program to
enable the application and disbursement process to occur promptly and for students, staff and library
patrons to benefit from the program in a manner that is comprehensible and enables their successful
participation:

1. **Applicant Budget Caps for Compensation of Reasonable Expenditures.** We support the establishment of applicant budget caps as the most equitable method of fairly allocating the available funding. The statute specifies that 100% of the reasonable costs of eligible services and equipment shall be compensable. We believe that the primary difference in costs that applicants may experience arise in rural areas where the cost of obtaining internet service is frequently more expensive than in urban areas. We do not believe that reasonable costs vary depending on the relative income or poverty measure of a school, district or library.[1] We therefore recommend a per-student amount of $100 for urban students, and $150 for rural students based on funding availability of $7 billion. Our analysis is set forth in the exhibit to our initial comments.[2] We believe that the statute provides sufficient flexibility to the FCC to adopt a per-funding cap budget approach as a means of ensuring that *all* applicants can benefit from the ECF program without concern of pro-ration. We noted that there is substantial support for funding caps in the initial comments submitted by various stakeholders.[3] While there may be differences in the specific methodology recommended, the concept is supported by many.

2. **Single Filing Window from July 1 through September 30 for All Eligible Purchases through June 30, 2022.** We support the funding of both retrospective and prospective purchases without favoring one over the other, subject to certifications that the purchases submitted for ECF approval are not being funded from any other state or federal COVID relief funds. Given that many school officials may be on vacation during the summer months, it would be ill-advised to open and close the filing period all within the summer months. Further, applicants need a reasonable amount of time to coordinate the funding sources of their technology purchases from either ECF or other COVID-relief funds such as the CARES Act and American Rescue Act ESSER funding. If applicant funding budgets are adopted, applications and reimbursements can

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[1] The ECF statute states that the support is being made available pursuant to the universal service statute (47 U.S.C. §254(h), which mentions affordable, discounted access. The ECF statute specifically focuses on 100% of reasonable costs. We therefore believe that the specific language of the ECF statute should govern, and reimbursements under should not vary depending on the poverty level of the applicant. If, however, the FCC disagrees and decides to rely on the broader principles and statutory authorization under Section 254 (h) in setting up the parameters for defining the "reasonable cost" parameters of reimbursement, then the FCC should likewise consider the language of Section 254 (h) that states that "*access to* advanced services" should be considered when defining the eligible equipment and services for funding under ECF. In other words, reliance on Section 254(h) should not be piecemeal for purposes of setting up the ECF program rules.

[2] https://www.fcc.gov/ecfs/filing/10406167954207

[3] The following commenters support the imposition of applicant funding caps as the best approach for ensuring reimbursement of reasonable costs: Alaska Department of Education and Early Development, Alaska State Library Initial Comments filed April 5, 2021, p. 6; Connected Nation, Inc. Initial Comments filed April 5, 2021, p. 1; Consortium for School Networking Initial Comments filed April 5, 2021, pp 2, 10-11; E-rate Central Initial Comments filed March 26, 2021, pp. 1-2; E-rate Management Professional Association Initial Comments filed April 5, 2021, p. 5; Funds for Learning, LLC Initial Comments filed April 5, 2021, pp. 7-8; State Educational Technology Directors Association Initial Comments filed April 5, 2021, p. 2; and, Schools, Health & Libraries Broadband (SHLB) Coalition Initial Comments filed April 5, 2021, pp. 5-6.

start to be issued as soon as applications are received. There would be no need to await the filing deadline and receive all applications to compute the total funding demand because the applicant budgets would serve this purpose.

Even if the FCC opts not to adopt applicant budgets or limits qualifying costs in the first application window to retroactive purchases, SECA believes that the filing window still must be 90 days from July 1 through September 30, 2021 to provide adequate time for schools and libraries to apply.

Further, should the FCC require proof of purchase to qualify for retroactive reimbursement, SECA urges the Commission to accept documentation of a retroactive purchase as any **order placed** by June 30. During the past year schools have experienced months-long delays in receiving technology equipment. The market has been and will continue to be flooded with purchase orders to use current fiscal year funding and supply shortages and shipping/delivery delays have and will continue to occur. Therefore, when developing the rules or review procedures for documentation, we urge the Commission to not require proof of payment but rather accept evidence that the order was placed, either through a purchase order, online order placement or other similar documentation.

3. **Rely on State and Local Procurement Compliance.** We support the FCC's proposal to forego the requirement of competitive bidding for retroactive purchases, and we further strongly urge the FCC to forego any federal competitive bidding requirement and instead permit schools and libraries to rely on state and local procurement rule compliance for prospective purchases. Many schools already have researched the available service and products that are appropriate to meet their local needs and it would be extremely burdensome for them to have to revisit all those decisions and conduct a new procurement process. Additionally, standardization of connected devices is vital to ensure that the school technology staff can provide adequate support and requiring a competitive bid that may result in a different manufacturer would be burdensome for schools and libraries and may deter their participation in ECF. Further, such a bidding requirement would add an extra layer of complexity to the ECF program for which we do not believe was Congress's intent.

Additionally, SECA recommends the imposition of a cap of $300 per connected device to ensure that the reimbursement of the connected device costs is reasonable. All other service and equipment have a known and competitive range of prices among available options that would yield a reasonable cost without having to impose price ceilings on other eligible service and equipment components. The same rationale underlying the traditional E-rate program's bidding for commercially available business-class Internet applies to the ECF program expenditures There is substantial support of this position among the commenting parties.[4]

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[4] See, e.g., Milwaukee Public Library Initial Comments filed April 5, 2021, p. 3; Wisconsin Department of Public Instruction Initial Comments filed February 16, 2021 in WC Docket No. 21-31 and filed March 17, 2021 in WC

4. **Streamlined Application and Review Process.** We encourage the application for funding to be streamlined and to the extent that proof of purchase/order is required, the EPC system should be modified to allow such documentation to be uploaded with the form. Specifically, if the Form 471 is used as the underlying framework for the ECF application, we believe the current Bulk Upload feature could be modified to allow the upload of documentation with the application. Proof of purchase, if required as a prerequisite for funding approval, may be a purchase order, invoice and proof of payment of invoice, price list of a state master contract, or a price quote. Submission of this documentation as part of the application could reduce the need for pre-funding PIA communications.

Data on the specific service and equipment should focus on the statutory categories of equipment (Wi-Fi hotspots, modems, routers, modem/router combined devices, connected devices, description of the advanced service and/or information service), number of students served, number of staff served, number of library patrons served. Detailed questions such as the make and model number and <u>especially</u> the different features of each connected device such as storage and memory, screen size, processor speed, etc. should not be mandated.

For advanced services and information services, specific bandwidth questions should not be required because they may or may not be applicable or useful metrics. For example, if the Commission determines that video conference subscriptions such as Zoom qualify as an information service, there is no bandwidth metric that governs Zoom. Further, the Commission may be surprised to learn that when a consumer purchases internet service, the advertised *download and upload speeds* are not always readily ascertainable. Applicants in the traditional E-rate program have been found this to be a difficult metric to comprehend and to report. We caution the Commission to ensure that only the data that is necessary to inform the Commission and policy makers how the funds are being used should be requested, such as "do the devices meet the minimum standards of xxx set forth in the ECF Order." Policy makers should be able to rely on the accuracy of the data submitted on the applications without requiring any extensive and burdensome verification process to ensure it is reliable.

One of the most perplexing and difficult parts of E-rate for schools and libraries is trying to find the PIA inquiries in EPC. Even when they find the page, it is not intuitive how to see the actual PIA questions because it requires applicants to know that the only way to "unlock" the inquiry is to click on Respond to Inquiries in the top right corner of the page. Any steps the Commission can take to avoid PIA outreach in the ECF program will greatly reduce applicant confusion and frustration, application processing time, and USAC contractor costs.

Docket No. 21-93, p.2; Miami-Dade County Public Schools Initial Comments filed April 5, 2021, p. 4; Council of Great City Schools Initial Comments filed April 5, 2021; SHLB Coalition Initial Comments filed April 5, 2021, p. 13.

In order to illustrate these suggestions, SECA has developed an ECF Application mock-up using the existing Category 2 Form 471 pages which is included in this Ex Parte, for the FCC's consideration.

Finally, we urge the Commission to ensure that separate staff from the traditional E-rate program administers the ECF program. Both programs deserve to be priorities and one should not be placed ahead of the other. With different governing rules, too, it is appropriate to assign different personnel to the two different programs to ensure that the applicable rules are applied to the correct program.

5. **CIPA Applicability.** In response to the Public Notice questions about the applicability of CIPA, SECA interprets the statute as requiring CIPA compliance on school-owned computers. This is based on the language of 47 U.S.C. §254(h)(5)(a)(i) which refers to "an elementary or secondary school *having computers* with Internet access" and subsections (h)(5)(B)(1) and (h)(5)(C)(1) which refers to certifications with respect to minors that the school "is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to *any of its computers with Internet access*" and certifications with respect to adults that the school is "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*." The use of the word "its" refers to the schools' computers.

    While the statute does not define "computer," we believe that the intent is that when the school provides internet access connectivity to a student or teacher, whether on-campus or off-campus, the internet service should be compliant with CIPA. We believe, therefore, that school-purchased hotspots, modems, routers, combination modems/routers and connected devices must be compliant with CIPA. To the extent that these devices are leased as part of an end-to-end service that the school is paying for, then the end-to-end service must be compliant with CIPA.
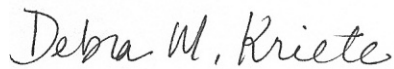
6. **Permissible Use of E-rate Funded Internet for Off-Campus Educational Purposes.** SECA also strongly urges the Commission to waive the E-rate program's current prohibition against using E-rate funded Internet when off-campus. The universal service statute provides that schools and libraries are eligible for funding. At the time the statute was enacted, and the E-rate regulations were issued, school buildings were the primary facilities in which education and instruction took place. More than 20 years later and as demonstrated by the pandemic, learning is taking place at all hours of the day/night, whenever there is a computer and Internet connection.

    Using E-rate-discounted Internet access to serve off-campus students and teachers is a vital, efficient resource for several reasons. First, right now, the rules allow for the use of E-rated Internet as long as the user is situated on the physical campus or property of the school or library. In rural and suburban areas, practically speaking this means the parking lot of the building and sometimes vast campuses of the school. In urban areas, school and library buildings may not

have parking lots or campuses. Why should these applicants be penalized or restricted simply because they do not own the 100 feet of land beside their building? SECA contends that it should not matter whether a student or library patron is using the Internet on or off-campus provided that it is being used for educational purposes. We urge the Commission to take a fresh look at the definitions of educational purpose and eligible location, realizing seismic shift in education delivery that will continue in our post-pandemic world.

Second, we urge the Commission to recognize that the use of E-rate funded Internet is necessary to ensure CIPA compliance when school computers are used off-campus. As an example, in order to implement Internet filtering on school owned connected devices, the devices are configured to access the school's network and its Internet filter.[5] Technically, when the off-campus computer accesses the filter using the school's internet, there is off-campus internet usage occurring. This is essential to be permitted. Unless the off-campus restriction is lifted, schools are required to deduct a portion of the costs of the E-rate funded internet that is used to comply with the statutory requirement of filtering that is a prerequisite to receiving E-rate funding. This is an unfair result and penalizes those schools that have opted to configure their filtering in this manner.

Respectfully Submitted,

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cc: FCC staff in attendance

Enclosures
Ex Parte Presentation
Recommended screen shots for ECF Application

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[5] See, e.g., Tony Thurmond, California's State Superintendent of Instruction, Initial Comments filed April 5, 2021, p. 3.