## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 54**

**[WC Docket No. 21–93; FCC 21–58; FR ID 27313]**

## Establishing Emergency Connectivity Fund To Close the Homework Gap

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) establishes the Emergency Connectivity Fund Program (Program) to provide funding for schools and libraries for the purchase, during the coronavirus (COVID–19) pandemic, of connected devices and broadband connections for use by students, school staff, and library patrons.

**DATES:** Effective May 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** Johnnay Schrieber, Wireline Competition Bureau, (202) 418–7400 or by email at *Johnnay.Schrieber@fcc.gov.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order in WC Docket No. 21–93; FCC 21–58, adopted May 10, 2021 and released May 11,2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-launch-717-billion-connectivity-fund-program-0.* See also the notification titled ''Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices To Address the Homework Gap During the Pandemic,'' published at 86 FR 15172 (March 22, 2021).

### I. Introduction

1. In this Report and Order, the Commission establishes the Emergency Connectivity Fund Program (Program) to provide funding for schools and libraries for the purchase, during the coronavirus (COVID–19) pandemic, of connected devices and broadband connections for use by students, school staff, and library patrons. Before the pandemic, millions of students who lacked home broadband connections and access to computers were caught in the ''Homework Gap.'' One study estimates that last spring, more than 15 million public school students did not have home access to either an internet connection or a device adequate for distance learning, and approximately nine million of those students lived in households with neither an adequate connection nor an adequate device for distance learning. The pandemic has only exacerbated the inequities between students who have a broadband connection and those who do not. This action addresses those inequities, helping to provide all students, school staff, and library patrons with the basic tools they need to engage in online learning and in so many other vital aspects of our increasingly digital lives.

2. Today, even as there are hopeful signs that the pandemic is receding in this country, many schools and libraries continue to rely on remote learning and virtual library services as they adapt to changing circumstances. Schools, with assistance from a wide array of Federal, state, and local government resources, public interest groups, and internet service providers, have worked to equip millions of students with tablet and laptop computers, Wi-Fi hotspots, and other forms of broadband connections. Yet millions of students have remained unconnected to the internet. 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 their primary source of broadband access. Just as schools have attempted to help meet their students' and staffs' connectivity needs, libraries across the country also have attempted to assist patrons in meeting their connectivity needs during the pandemic.

3. To provide relief from the pandemic, on March 11, 2021, the American Rescue Plan Act of 2021 (the American Rescue Plan or Act) was signed into law. This Report and Order implements section 7402 of the Act, which established a $7.171 billion Emergency Connectivity Fund in the Treasury of the United States. Section 7402 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/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations other than a school or library.

4. Pursuant to section 7402 of the American Rescue Plan, the Commission now establishes the Emergency Connectivity Fund Program. The support provided through this Program will first allow eligible schools and libraries to seek funding for upcoming purchases of eligible equipment, including Wi-Fi hotspots, modems, routers, and connected devices, as well as advanced telecommunications and information services, to meet the remote learning needs of students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning during the upcoming school year. If additional funding remains available after the provision of support to eligible schools and libraries for future purchases of eligible equipment and services, the Commission will provide schools and libraries an opportunity to apply for reimbursement of the reasonable costs they have already incurred in purchasing eligible equipment and services to meet the unmet needs of their students, school staff, and library patrons who otherwise lacked access to equipment or internet access services sufficient to engage in remote learning during the COVID–19 pandemic.

5. The Emergency Connectivity Fund Program is separate from the E-Rate Program, which has long provided funding for broadband services delivered to and within schools and libraries. In the interest of efficiency and simplicity, however, the goals and measures, rules, and processes the Commission adopts in this document for the Emergency Connectivity Fund Program leverage its experience with the E-Rate Program.

### II. Discussion

6. In adopting rules to govern the Emergency Connectivity Fund Program, the Commission recognizes that Congress has directed it to act with haste, conducting a rulemaking within 60 days of the date of enactment of the American Rescue Plan. At the same time, the Commission is mindful of the latitude Congress has granted it to determine what costs are reasonable to reimburse, as well as the purpose of the Fund to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services during the pandemic. Pursuant to that authority, and consistent with Congress' intent, in this Report and Order, the Commission moves quickly to open an application process that allows eligible schools and libraries to first seek funding for purchases during the coming school year of eligible equipment and advanced

telecommunications and information services to meet the needs of students, school staff, and library patrons who would otherwise lack access to basic educational opportunities and library services. If the demand for these future purchases does not exceed available funds, the Commission will open an additional application window to allow schools and libraries to seek funding for eligible equipment and broadband internet access services that they purchased earlier in the pandemic to address the needs of students, school staff, and library patrons who would otherwise have lacked access to devices and services sufficient to meet their remote learning needs.

7. Based on its experience with the E-Rate Program, the Commission also draws on the existing E-Rate rules and processes to provide clear rules and establish quick and easy to understand processes for requesting and receiving support from the Emergency Connectivity Fund Program, along with appropriate safeguards to protect the Program from waste, fraud, and abuse. In this way, the Commission seeks to maximize the efficiency and effectiveness of the Emergency Connectivity Fund Program and focus limited funding to target the needs of those students, school staff, and library patrons who would otherwise lack access to connected devices and broadband connections sufficient to engage in remote learning and virtual library services during the COVID–19 emergency period.

*A. Performance Goals and Measures*

8. The Emergency Connectivity Fund Program will provide funding for schools and libraries to meet the otherwise unmet connectivity needs of students, school staff, and library patrons during the COVID–19 pandemic. Based on the record in this proceeding and its obligations under the American Rescue Plan, the Commission establishes three goals for the Emergency Connectivity Fund Program: (1) Connecting and facilitating remote learning for students, school staff, and library patrons who would otherwise lack adequate access to connected devices and broadband internet access connectivity during the pandemic; (2) ensuring that the Universal Service Administrative Company (USAC) efficiently and effectively administers the Emergency Connectivity Fund Program; and (3) providing pricing transparency for eligible equipment and services to inform future policy and purchasing decisions. The Commission also adopts associated performance measures and targets to determine whether the Emergency Connectivity Fund Program is successfully achieving these goals. Setting clear goals for the Program, with performance measures and targets to determine success, will help focus its efforts as the Commission oversees use of the Emergency Connectivity Fund to connect and support students, school staff, and library patrons during the COVID–19 pandemic.

1. Connecting Students, School Staff, and Library Patrons During the Pandemic

9. The Commission adopts as its first goal for the Emergency Connectivity Fund Program helping to meet the need for connected devices and broadband internet access services to facilitate remote learning during the COVID–19 pandemic for students, school staff, and library patrons. The pandemic has caused students, school staff, and library patrons nationwide to shift from in-person instruction to remote learning. For some students and school staff (and many library patrons), this shift was relatively seamless, and education was able to continue remotely with minimal disruption. For millions of others, however, those who lacked (many of whom continue to lack) necessary connected devices and broadband services, the transition to remote learning has been filled with barriers. Many school districts have spent scarce resources purchasing devices and internet connections for students and staff to help bridge the gap. And, libraries have done the same for library patrons. Despite these best efforts, many schools and libraries nationwide lack adequate funding to ensure that all students, school staff, and library patrons are connected and able to fully participate in remote learning opportunities.

10. The Commission will use two metrics to measure the success of the Emergency Connectivity Fund Program in addressing students', school staffs', and library patrons' otherwise unmet need for connected devices and broadband connectivity: (1) The number of connected devices funded with Emergency Connectivity Fund support that are provided to students, school staff, and library patrons who would otherwise lack access to a device sufficient to enable them to engage in remote learning; and (2) the number of broadband internet access connections (including through use of Wi-Fi hotspots) funded with Emergency Connectivity Fund Program support that are provided to students, school staff, and library patrons who would otherwise lack access to internet connectivity sufficient to engage in remote learning. To measure success in meeting this goal, the Commission agrees with commenters that recommend the Commission collects information about the number of connected devices and broadband connections that are used to connect students, school staff, and library patrons through the Emergency Connectivity Fund Program and release this data publicly. The Commission directs USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

11. The Commission also appreciates the opportunity the Emergency Connectivity Fund Program presents to gather better, more accurate information about the number of students without connected devices and broadband services sufficient to engage in remote learning and the progress made towards closing that Homework Gap. At the same time, the Commission recognizes that during the pandemic school districts have been trying to meet the needs of their students and staff and therefore, they have not collected uniform data sets about their students' connectivity requirements. As part of the application process, the Commission will, therefore, collect schools' and school districts' best estimates about the number of students in their school or school district who did not have access to adequate connected devices, broadband connections, or both when the pandemic began; the number of students who do not currently have access to adequate connected devices, broadband internet access connections, or both; and how they expect those numbers to change with receipt of requested Emergency Connectivity Fund Program support. Given the pressing demands on schools, the Commission will not dictate specific data collection requirements, but instead will ask each school or school district to describe how and when they collected the information that they use for the estimates provided in their responses. The Commission directs USAC to release this data as part of its Open Data project for the Emergency Connectivity Fund Program.

2. Efficiently and Effectively Administer Funding

12. The Commission adopts as its second goal to ensure that the Commission and USAC efficiently and effectively commit funding and distribute support from the Emergency Connectivity Fund. The $7.17 billion Emergency Connectivity Fund must be quickly made available to meet the immediate connectivity needs of

students, school staff, and library patrons nationwide. To make that happen, the Commission and USAC must make the application and reimbursement processes simple and efficient. The Commission will measure success towards this goal in two main ways: (1) Speed and ease of the application process and (2) speed and ease of the reimbursement process.

13. *Speed and Ease of Application Process.* In the first instance, the application process should be easy for applicants to navigate and to use in requesting funding for eligible equipment and services. The Commission can measure success in terms of how quickly Emergency Connectivity Fund Program applications are reviewed, and funds are committed following the close of the filing window. Consistent with the suggestions of some commenters, the Commission sets targets for how quickly USAC is able to review applications and release funding commitment decision letters after the filing window closes. Some commenters have suggested that the Commission adopts performance metrics that require USAC to complete its review of applications within 30 days of filing date, or within 30 days of receiving additional information from the applicant. While it is important that USAC act expeditiously, the Commission also wants to give USAC sufficient time to do an appropriate review of each application. The Commission therefore set its targets having USAC issue funding decision commitment letters for 50% of the workable applications within 60 days of the close of the first application window and 70% of the workable applications within 100 days of the close of the first application filing window. Based on experience with USAC's issuance of funding commitment decision letters in the E-Rate Program, the Commission finds that these targets will further the goal of quickly having applications reviewed and funding committed, while allowing it to also track USAC's performance.

14. *Speed and Ease of Reimbursement Process.* Consistent with suggestions in the record, the Commission will also measure the ease of the reimbursement process and USAC's speed in providing an invoice submission process for Program participants and in reviewing invoices that have been submitted. The Commission appreciates the suggestion of several commenters that the Commission set a target for USAC of reviewing invoices within 30 days of submission, but in light of the very short time frame under which the Commission is adopting rules for this new Program, the Commission does not yet have enough information to set specific invoice review targets. Instead, the Commission directs the Bureau in consultation with the Office of the Managing Director to work closely with USAC on the creation of an invoicing system for the Emergency Connectivity Fund Program that allows Program participants to easily submit invoices and USAC to promptly review those invoices.

3. Inform Future Purchasing and Policy Decisions Through Pricing Transparency for Eligible Equipment and Services

15. The Commission adopts its third goal informing future purchasing and policy decisions through pricing transparency for eligible equipment and services. The Commission's experience administering and collecting data on the Emergency Connectivity Fund Program will provide valuable information for future purchasing decisions for schools and libraries. The Commission therefore agrees with commenters that argue one crucial aspect of the Emergency Connectivity Fund Program is pricing transparency. The Commission thus requires USAC to make the pricing data from the Emergency Connectivity Fund Program publicly available through its Open Data platform. The publication of this pricing data will allow applicants to review past prices paid by schools and libraries across the country for same and similar eligible equipment and services. Doing so will put them in a better bargaining position when making such purchases in the future. The Commission directs USAC to make the Emergency Connectivity Fund Program application and pricing data publicly available within 160 days after the first Emergency Connectivity Fund Program application filing window closes.

16. To measure progress towards this goal, USAC, subject to oversight by the Bureau and the Office of Economics and Analytics, should conduct or commission at least one survey of participating schools and libraries to determine whether the data transparency measures built into the Emergency Connectivity Fund Program are enabling program participants to make more cost-effective purchasing decisions in the future. The Commission will share the results of the survey with interested stakeholders and other policy makers, so that it can inform future policy decisions.

*B. Eligible Schools and Libraries*

17. Consistent with Congressional direction in section 7402, the Commission adopts rules providing that all of the schools, libraries, and consortia of schools and libraries that are eligible for support under the E-Rate Program are also eligible to request and receive support through the Emergency Connectivity Fund Program. In so doing, the Commission also adopts for purposes of the Emergency Connectivity Fund Program, the same definitions of ''elementary school,'' ''secondary school,'' ''library,'' and ''library consortium'' as are used in the E-Rate rules, with one minor modification explained below. Those definitions are grounded in the definitions of ''elementary school'' and ''secondary school'' in section 254(h)(7) of the Communications Act, as well as the limitations on eligibility set forth in section 254(h)(4) of the Communications Act. The Commission also specifies that, as with the E-Rate Program, pursuant to section 254(h)(4) of the Communications Act, the following entities are not eligible to receive support from the Emergency Connectivity Fund: (1) For-profit schools and libraries; (2) schools and libraries with endowments in excess of $50,000,000; (3) libraries whose budgets are not completely separate from any schools; and (4) library or library consortium that are not eligible for assistance from a state library administrative agency under the Library Services and Technology Act (LSTA).

18. The LSTA was recently amended to make clear that Tribal libraries are eligible for support from a state library administrative agency under LSTA. Consistent with the those amendments, and guidance from the Institute of Museum and Library Services, the Commission clarifies that Tribal libraries, which are by statute eligible for support from state library administrative agencies under the LSTA, are eligible for support from the Emergency Connectivity Fund. The current E-Rate eligibility rules were adopted long before the LSTA was amended and include a citation to an outdated version of that LSTA. Because this proceeding is focused on the implementation of the Emergency Connectivity Fund, the Commission does not amend the E-Rate rules at this time to reflect the change to the LSTA.

19. The Commission declines to extend eligibility for support from the Emergency Connectivity Fund Program to other entities that are not eligible for E-Rate support. The Commission is sympathetic to suggestions from commenters that the Commission expands the list of entities eligible to receive funding from the Emergency Connectivity Fund to include a wide variety of public and private institutions

that have done excellent work helping students and members of the public gain access to broadband internet access services and end-user devices during the pandemic. However, the Act specifies the entities eligible for Emergency Connectivity Fund Program support and does not authorize the Commission to expand the definition of eligible entities. Thus, even when such institutions are acting in coordination with schools or libraries, there is no authority to permit such institutions to receive Emergency Connectivity Fund Program support. Moreover, straying from the focus of the statute would divert much-needed funding from schools and libraries in dire need of assistance.

20. The Commission clarifies that eligible schools and libraries do not need to be current E-Rate participants, but eligible entities, particularly those that have not applied for E-Rate support, should be prepared to demonstrate eligibility as a school or library under Program rules eligible for support from the Emergency Connectivity Fund Program during USAC's application review.

*C. Eligible Equipment and Services*

21. The Commission looks to section 7402 of the American Rescue Plan to determine what equipment and services are eligible for support from the Emergency Connectivity Fund Program. The American Rescue Plan requires that the Emergency Connectivity Fund be used for the purchase of eligible equipment and/or ''advanced telecommunications and information services, or both.'' 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.'' ''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. Section 7402(d)(1) defines ''advanced telecommunications and information services'' to mean advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.

22. *Eligible Equipment.* Consistent with the definitions in section 7402, the Commission adopts rules specifying that the following types of equipment are eligible for support from the Emergency Connectivity Fund Program: Wi-Fi hotspots, modems, routers, devices that combine a modem and router, and connected devices. The Commission agrees with those commenters that point out that air-cards used to connect end-user devices to the internet through cellular data services are wireless modems, and as such are eligible for support from the Emergency Connectivity Fund Program. The Commission finds inapplicable to the Emergency Connectivity Fund Program the E-Rate Program's requirement that applicants demonstrate that air cards (and wireless data plans) are more cost-effective than fixed wireless broadband services before seeking support for air cards (and wireless data plans). The Commission adopted that requirement for the E-Rate Program because schools and libraries require very substantial bandwidth connections to meet their on-campus connectivity needs, which in turn would require them to seek E-Rate support for large numbers of air cards to meet those needs. By contrast, individual students, school staff, or library patrons do not need enterprise level bandwidth, and in some instances air cards may be one of the few options available to provide connectivity to them.

23. *Connected Devices.* Based on the record, the Commission defines connected devices as laptop computers and tablet computers that are capable of connecting to advanced telecommunications and information services. The Commission expects connected devices to be Wi-Fi enabled and able to support video conferencing platforms and other software necessary to ensure full participation in remote learning. However, recognizing that schools and libraries have had to make challenging purchasing decisions to equip students, school staff, and library patrons with devices during the pandemic, the Commission declines to establish minimum screen size or system requirements for the connected devices supported by the Emergency Connectivity Fund Program and instead rely on schools and libraries to make the appropriate choices about their needs. At the same time, however, the Commission expects connected devices to be accessible to and usable by individuals with disabilities. If people with disabilities require connected devices to connect to the internet, the Commission expects that schools and libraries will request such devices to accommodate disabilities if needed.

24. By defining connected devices as ''laptop computers, tablet computers, or similar end-user devices that are capable of connecting to advanced telecommunications and information services,'' Congress provided the Commission the discretion to include connected devices beyond laptop and tablet computers as long as they are ''similar.'' Based on the record, the Commission excludes desktop computers from its definition of ''connected devices.'' Although the Commission recognizes the functionality and value of desktop computers, the Commission finds that desktop computers are not similar to laptop computers and tablets because they lack the portability of laptop and tablet computers, which can be a drawback for many students, school staff, and library patrons seeking to engage in remote learning. The Commission also finds it significant that instead of identifying desktop computers or any other stationary devices as eligible connected devices Congress identified a set of portable devices as eligible ''connected devices'' and gave it discretion to determine whether other devices are similar to those portable devices.

25. Also, based on the record, the Commission excludes mobile phones, including smartphones, from its definition of ''connected device'' because they lack the same functionality students, school staff, and library patrons need to perform necessary remote learning activities, homework, or research, and thus the Commission does not consider them to be ''similar'' to laptop or tablet computers for the purposes intended by the statute here. Numerous commenters, including state education departments, education groups and public interest groups agree with excluding mobile phones from the definition of connected devices because such devices do not sufficiently allow students, school staff, and library patrons to meaningfully participate in remote learning activities. In establishing the Emergency Connectivity Fund, Congress intended to provide funding for devices that support remote learning. The record demonstrates that while a smartphone may be capable of connecting a student to his or her teacher or supplementing learning, it can limit the student's ability to develop a class presentation or draft a research paper. At least one smartphone vendor shows that some of its smartphones are capable of being made more functional by being connected to larger display screens for video conferencing and to peripherals, like a keyboard and mouse. The fact that some smartphones can be made more functional for educational purposes by

adding these extra peripherals does not persuade the Commission that smartphones are similar end-user devices meeting the remote learning needs of students, school staff, or library patrons. The Commission also finds it significant that the Commission did not receive a single comment or other filing from a school or library claiming that they purchased smartphones to use instead of laptops or tablets for their students, school staff or library patrons or have found smartphones to be good substitutes for tablets or laptop computers.

26. The Commission also finds unpersuasive the arguments of some commenters that smartphones should be eligible for Emergency Connectivity Fund Program support as eligible devices because they meet the definition of a Wi-Fi hotspot, because some schools were forced to purchase smartphones to act as Wi-Fi hotspots due to supply chain issues at the start of the pandemic, or because the ability of smartphones to act as Wi-Fi hotspots was mentioned in the legislative history. Section 7402(b) of the American Rescue Plan tasks the Commission with determining whether the costs of requests for equipment are reasonable, and even with a cap on the reasonable support amount for Wi-Fi hotspots, the Commission does not find it reasonable to use limited Emergency Connectivity Fund Program support to reimburse schools and libraries for costly smartphones used as Wi-Fi hotspots, when much less expensive hotspots can serve the same purpose. This is particularly true because smartphones have myriad other functions, such as cellular voice service, and the Commission would have to choose between inappropriately expending resources on functions that are not core educational services that section 7402(a) of the American Rescue Plan was designed to fund, or allowing applicants to cost allocate eligible and ineligible portions of smartphones used as Wi-Fi hotspots. However, importing cost allocation requirements into the Emergency Connectivity Fund Program is inconsistent with the Commission's goals of administrative simplicity and fast funding decisions. It would create complexity for the applicants and for the USAC reviewers and would inevitably slow down the Emergency Connectivity Fund application processing. As such, the Commission agrees with commenters that urge it not to require cost allocation decisions in the Emergency Connectivity Fund Program and decline to include smartphones in the list of eligible connected devices or Wi-Fi hotspots for the Program.

27. *Advanced Telecommunications and Information Services.* Although section 7402(d)(1) of the American Rescue Plan defines ''advanced telecommunications and information services'' by reference to section 254(h) of the Communications Act, the Communications Act does not offer a definition of that term. Instead, in the context of determining what services should receive E-Rate support, the Commission has recognized that section 254 grants ''the Commission broad and flexible authority to set the list of [E-Rate supported] services'' and ''to design the specific mechanisms of support.'' As the Commission has recognized, ''[t]his authority reflects Congress's recognition that technology needs are constantly ''evolving'' in light of ''advances in telecommunications and information technologies and services.'' As the Commission has done in the E-Rate context, the Commission finds that because the amount of available funding is finite, ''the Commission must make thoughtful decisions about what services are not just permissible to support, but are the most essential to support.''

28. The Commission's notification, published March 22, 2021, sought comment on treating a subset of the services currently eligible for category one E-Rate support as eligible ''advanced telecommunications and information services'' for the purposes of the Emergency Connectivity Fund Program. Based on the statutory text enumerating the equipment eligible for the Emergency Connectivity Fund (*i.e.,* Wi-Fi hotspots, modems, routers, devices that combine a modem and a router, and connected devices), as well as the statutory language allowing Emergency Connectivity Fund support for the ''purchase'' of advanced telecommunications and information services, the Commission understands the legislation to be focused on quickly reaching students learning at home primarily through commercially available internet access services delivered via Wi-Fi hotspots with wireless broadband connectivity or via leased modems with fixed broadband connectivity, generally delivered from a local internet service provider. The Commission therefore finds, that, unless there is no internet access service available to purchase in an area, to qualify for funding as advanced telecommunications or information services, schools and libraries will only be reimbursed for purchasing a commercially available service providing a fixed or mobile broadband internet access connection for off-campus use by students, school staff, or library patrons.

29. *Dark Fiber and New Networks.* With the one exception for areas where no service is available for purchase, the Commission excludes from eligibility funding for dark fiber and the construction of new networks, including the construction of self-provisioned networks. In so doing, the Commission agrees with commenters that argue that, as a general rule, using Emergency Connectivity Fund Program support to construct new networks or self-provisioned networks is inconsistent with Congress' intent to fund ''the purchase'' of broadband services to meet students, school staff and library patrons' immediate needs, rather than the construction of networks. As such, the Commission disagrees with those commenters that argue that Congress intended that the Emergency Connectivity Fund be used to support everything eligible under the E-Rate Program's category one services because it referenced ''advanced telecommunications and information services'' under section 254(h) of the Communications Act. The E-Rate Program does not provide funding for all types of advanced telecommunications and information services. Instead, over time, the Commission has evaluated whether and under what conditions providing funding for various types of advanced telecommunications and information services would be both cost-effective and further the policy goals of the program. For example, when the Commission chose to make school and library self-provisioned networks eligible in 2014, it did so subject to strict competitive bid requirements and cost-effectiveness safeguards to ensure that E-Rate funds are only spent on a self-provisioned network when it is demonstrated to be the most cost-effective option.

30. Here, where the Commission is primarily relying on local, state, and Tribal procurement requirements and striving to provide a simple application review process, where it is possible to purchase broadband internet access services, the Commission thinks that is the most prudent path for meeting the goals of the Emergency Connectivity Fund Program of quickly getting connectivity to students, school staff, and library patrons. Moreover, in the Commission's experience with the E-Rate Program and as supported by the record, planning and executing self-provisioned networks is complex and time-consuming. Although there are narrow instances where constructing a

new network is speedy and reasonable, and therefore we provide one limited exception, the Commission is not persuaded that on the whole, network construction is consistent with or appropriate given the goals of the Emergency Connectivity Fund Program to quickly fund schools and libraries during the pandemic or consistent with the statute and section 254(h)(2)(A)'s direction that the Commission create rules to enhance economically reasonable access to support advanced telecommunications and information services. This is a short-term program, designed to give students, school staff, and library patrons access to devices and connectivity that is needed now for remote learning during the COVID–19 emergency period. Therefore, the Commission believes Congress intended it to provide funding for a narrower set of commercially available internet access services, and doing so provides a path to offering fast and simple application and reimbursement processes for desperately needed equipment and services.

31. The Commission recognizes that some schools and libraries have taken extraordinary steps to connect their students and patrons since the start of the pandemic and applaud their commitment to connect their students, school staff, and library patrons. But, by excluding support for potentially costly construction or self-provisioning projects, the Commission is able to satisfy the Congressional goals and swiftly act to provide much-needed support to more schools and libraries throughout the country. The Commission thus finds that providing support for such network construction in areas with commercially available options would be inconsistent with the emergency purposes of the Emergency Connectivity Fund and better addressed through other Commission Universal Service Fund Programs or broadband efforts that have established competitive bidding and cost-effectiveness safeguards. Adding all such program safeguards for areas with commercially available connectivity would be administratively burdensome and contrary to the goal to quickly provide access to equipment and connectivity to students, school staff, and library patrons during the pandemic.

32. Some stakeholders agree that excluding dark fiber and other network construction makes sense due to the nature of the emergency, but many seek flexibility and inclusion of additional equipment that may be used, to extend a school or library's existing E-Rate-supported broadband service to students' homes (largely, wirelessly) or provision a separate network. The Commission disagrees that the language in section 7402 of the American Rescue Plan should be read to allow funding for additional, unenumerated equipment for network expansion and to use Emergency Connectivity Fund support for antennas, cell towers, Citizens Band Radio Service (CBRS), television white space (TVWS) base stations, or drone-powered internet, and other such wireless network equipment, except in the case outlined below. To the extent schools and libraries expanded their networks or built new networks to serve their students or library patrons over the last year, such equipment is ineligible for reimbursement through the Emergency Connectivity Fund Program, except for the portions of the network that fit into the enumerated list of eligible equipment (*i.e.,* Wi-Fi hotspots, modems, routers, or devices that combine a modem and router). Relatedly, the Commission is focusing in this document on implementation of section 7402 of the American Rescue Plan, and therefore, this Order does not address requests for action on a petition to allow schools and libraries to use their E-Rate-supported networks without cost-allocating out the off-campus use during the pandemic.

33. *Limited exception for network construction and/or datacasting where there is no commercially available internet access service option.* Despite this understanding of Congress' intent to speed funding to schools and libraries through commercially available broadband internet access service offerings, the Commission provides a limited exception to this finding. The record reflects the fact that in some instances there is simply no commercially available internet access service for purchase available to reach students, school staff, and library patrons in their homes. In only those limited instances, network construction (including construction of wireless networks) is the only way to quickly bring internet connectivity to these students, school staff, and library patrons, and the Commission believes that the ''purchase'' of equipment necessary to make advanced telecommunications and information services functional is consistent with Congress' intent to provide emergency connectivity to students, school staff, and library patrons that do not have any other internet access options. The record also demonstrates that where commercially available internet access services are not available datacasting can help meet students' remote learning needs by providing them with access to educational content outside of school. Therefore, where there are no such commercially available broadband internet access services available, the Commission will allow schools and libraries to seek Emergency Connectivity Fund Program support to construct or self-provision networks to connect students, school staff, and library patrons during the COVID–19 emergency period who would otherwise not be connected to the internet, and the Commission will not require schools and libraries to engage in competitive bidding. Under those same circumstances the Commission will also allow schools and libraries to seek support for the customer premises equipment needed to receive access to educational content through datacasting. Some schools are already using datacasting and others may have already constructed wireless networks where there were no commercially available options and cannot go back and conduct competitive bidding. The Commission also considered requiring competitive bidding for applicants in areas with no commercially available options, but the timing does not work in light of the COVID–19 emergency and upcoming school year.

34. To reduce the risk of using emergency funding on time-consuming infrastructure construction projects better suited for funding from other programs, applicants seeking support for network construction, including self-provisioned networks, and those seeking support for customer premises equipment used to receive datacasting services, must therefore demonstrate that there were no commercially available internet access service options sufficient to support remote learning from one or a combination of providers. For networks already constructed or equipment already purchased during the pandemic, applicants must show that services were provided to students, school staff, or library patrons during the funding period supported by the second filing window. For future construction, they must show that construction is completed and services provided within one year of a funding commitment decision. Applicants seeking support for network construction or customer premises equipment used to receive datacasting services must define the geographic area that was or will be served and assess the estimated number of students and school staff, or library patrons to be served. Schools and libraries must be able to provide clear evidence demonstrating how they determined that an existing fixed or mobile

broadband network sufficient to support remote learning was or is not available and that for prospective network construction, that they sought service from existing providers serving the area prior to constructing a new network, and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library patrons. Additionally, when the Emergency Connectivity Fund Program support is sought for future construction, or for customer premises equipment used to receive datacasting services, applicants will be required to certify that they sought service from existing service providers in the relevant area and that such providers were unable or unwilling to provide broadband internet access services sufficient to meet the remote learning needs of their students, school staff or library patrons.

35. *Minimum Service Standards.* While the benefits to students, school staff, and library patrons of receiving high speed broadband services that include no data caps and low latency are well documented in the record, because of the current emergency and the lack of ubiquitous high speed broadband nationwide, the Commission declines to apply minimum service standards to covered services for the Emergency Connectivity Fund Program. As commenters recognize, to do otherwise would penalize schools, libraries, students, school staff, and library patrons in places where slower speed, data capped, and/or high latency services are currently the only affordable options. The Commission also recognizes that schools and libraries made purchases over the last year based on availability during the emergency, but without specific knowledge of whether such purchases might be eligible or ineligible for future support, such as from the Emergency Connectivity Fund. Moreover, as commenters argue, schools and libraries are in the best position to know what is available and sufficient for their remote learning needs. The Commission expects that schools and libraries will make the best decisions to meet the remote learning needs of their students, school staff, or library patrons. The Commission therefore finds that to qualify for funding as advanced telecommunications or information services purchased by schools and libraries for off-campus use by students, school staff, or library patrons, a service must include a fixed or mobile broadband connection that permits students, school staff, or library patrons to use those connections for remote learning or library services. The approach the Commission takes in this document maximizes available choices during this emergency and thus speeds Emergency Connectivity Fund Program support to eligible schools and libraries making good faith efforts to facilitate remote learning throughout the pandemic.

36. *Installation, Taxes, and Fees.* The Commission agrees with commenters that the Emergency Connectivity Fund Program should also cover reasonable costs of the enumerated equipment, connected devices, and services, including installation, activation, and initial configuration costs, taxes, and fees. Such action is consistent with the E-Rate Program and most logically aligns with Congress' desire to cover the reimbursement of eligible equipment and services needed for remote learning without requiring a complicated cost allocation of items on participant invoices.

37. *Other Requests for Eligible Services and Equipment.* Commenters suggest many other types of equipment, services, or software be eligible for Emergency Connectivity Fund Program support including cybersecurity tools, learning management systems, private network services, online learning services that support online learning platforms, video conferencing equipment, and standalone microphones. The Commission does not dispute that schools and libraries need many of the identified products and services, but the Commission believes they are outside the scope of what Congress directed it to support through the Emergency Connectivity Fund. The Commission also denies Verizon's request to permit the use of Emergency Connectivity Fund Program support to fund Children's Internet Protection Act (CIPA) implementation costs. The Commission previously determined that E-Rate recipients are statutorily prohibited from obtaining discounts under the universal service support mechanism for the purchase or acquisition of technology protection measures necessary for CIPA compliance. The Commission finds that the use of Emergency Connectivity Fund Program support for implementing CIPA compliance is similarly statutorily barred.

38. While the Commission finds it imperative to focus the Emergency Connectivity Fund Program on the equipment and services specified by Congress, the Commission also seeks to avoid the challenging cost allocation application requirements needed in the E-Rate Program and therefore clarify that any components purchased with the eligible equipment and necessary for the equipment to operate, such as cords and chargers, do not require cost allocation. These minimal costs do not warrant the expense or time of cost allocation in an emergency program designed to help students, school staff, and library patrons now. The Commission finds this will simplify applications and invoicing, which ultimately will speed funding to schools and libraries during this emergency. Consistent with the E-Rate Program, a manufacturer's multi-year warranty for a period up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, may be included in the cost of the component, but unbundled warranties are ineligible. To further assist applicants with determining eligible equipment and services for the Emergency Connectivity Fund Program, an eligible services list is included in the full version of this Report and Order.

39. Because the issue was raised in the record, the Commission also clarifies that, consistent with the E-Rate Program, schools and libraries may contract with any service provider or vendor willing to comply with the Emergency Connectivity Fund Program rules, not just eligible telecommunications carriers. The Commission also declines the suggestion of at least one commenter that the Commission excludes providers of broadband services that are not participating in the Emergency Broadband Benefit Program from providing eligible services in the Emergency Connectivity Fund Program. While hundreds of broadband providers are participating in the Emergency Broadband Benefit Program, some are not, and the Commission does not want to penalize schools or libraries for reasons beyond their control.

40. *National Security Supply Chain Restrictions.* Finally, the Commission reminds Emergency Connectivity Fund Program participants that, in accord with § 54.10 of the Commission's rules, participants are prohibited from using Federal subsidies to purchase, rent, lease, or otherwise obtain any covered communications equipment or service from a company identified as posing a national security threat to the integrity of communications networks or the communications supply chain. The Commission finds that this prohibition covers Emergency Connectivity Fund Program support, consistent with the determination that the prohibition applies to the Universal Service Fund Programs as providing funds for capital

expenditures necessary for the provision of advanced communications services. A list of covered equipment and services was posted on the Commission's website on March 12, 2021 and will be updated to reflect any future determinations.

*D. Service Locations and Per-Location/Per-User Limitations*

41. The American Rescue Plan requires the Commission to adopt regulations providing for the provision of support from the Emergency Connectivity Fund to an eligible school or library for the purchase of eligible equipment and/or services for use by students, school staff, and library patrons at locations that include locations other than the school or library. While the Act does not impose any explicit restrictions on the number of connections or connected devices supported by the Fund, it requires that reimbursements for eligible equipment ''not exceed an amount that the Commission determines . . . is reasonable.'' Moreover, Emergency Connectivity Fund Program support is provided under section 254(h)(2) of the Communications Act, which requires the Commission to consider what is technically feasible and economically reasonable when providing support for access to advanced telecommunications and information services for eligible schools and libraries. Mindful of the importance of maximizing the use of limited funds, the notification sought comment on whether the Commission should limit the locations where eligible equipment and services may be used or impose per-location or per-user limitations on eligible equipment and services. The notification also sought comment on the Commission's authority to impose such limitations, if any.

42. *Eligible Locations.* Recognizing that students, school staff, and library patrons are engaged in remote learning activities from a wide variety of off-campus locations that include, but are not limited to, their homes, the Commission declines to define or limit the specific off-campus locations where eligible equipment and services supported by the Emergency Connectivity Fund Program may be used during the COVID–19 emergency period. The Commission agrees with commenters that argue that limiting the off-campus locations where eligible equipment and services can be used would be inconsistent with the broad language in the Act. The Commission also agrees with those commenters that argue that schools and libraries are well positioned to determine where best to connect their students, school staff, and library patrons.

43. The Commission expects that in most instances, the primary off-campus locations where students, school staff, and library patrons have been using eligible equipment and services is and—for the duration of the emergency period—will be their homes. At the same time, the record is clear that there are some students, school staff, and library patrons who cannot receive broadband service at home, or for other reasons need access at locations other than their homes. For example, emphasizing the rural nature of much of the Navajo Nation and the important role government ''anchor institutions'' play in Tribal life, the Navajo Nation Telecommunications Regulatory Commission stresses the need to permit the placement of eligible equipment, like Wi-Fi hotspots, wherever students are engaged in educational activities. Other commenters explain that restricting where students, school staff, and library patrons may use eligible equipment and services could leave the most disadvantaged populations, like the unhoused, unconnected, and urge the Commission not to impose restrictions on service locations that would exclude these populations. The Commission agrees.

44. The Commission therefore will permit eligible schools and libraries to seek and receive support for the purchase of eligible equipment and services for use by students, school staff, and library patrons at locations that include, but are not limited to, the homes of students, school staff, and library patrons; community centers; churches; and any other off-campus locations where they are engaged in remote learning activities. In so doing, the Commission seeks to provide flexibility to eligible schools and libraries to determine the service locations that best fit their needs without hampering their ability to undertake creative solutions for connecting students, school staff, and library patrons or disadvantaging certain vulnerable populations during this unprecedented time.

45. Notwithstanding this broad interpretation of the Act, and pursuant to its authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, the Commission prohibits schools and libraries from seeking and receiving reimbursement for eligible equipment and services purchased for use solely at the school or library. Some commenters suggest that the Act may permit funding for eligible equipment and services intended solely for on-campus use, pointing to the language in section 7402(a) that eligible equipment and services be used at ''locations that *include* locations other than the school'' and ''locations that *include* locations other than the library.'' The Commission disagrees with this reading of the statutory text. The primary purpose of the Emergency Connectivity Fund is to support off-campus connectivity for students, school staff, and library patrons that are unable to benefit from existing connectivity at their schools or libraries because of the pandemic, an interpretation supported by the legislative history. The Commission construes the statute in light of that primary purpose, while not precluding the likely reality of the need for some use of the eligible equipment, and perhaps incidental use of mobile services at school and library ''locations'' as well, as long as the eligible equipment and services were purchased to provide off-campus access. The Commission also does not believe that providing Emergency Connectivity Fund support for equipment or services to be used solely on campus is reasonable or sound policy in light of the significant need for off-campus connectivity brought on by the pandemic and considering that the E-Rate Program already provides funding to meet students', school staff, and library patrons' on-campus connectivity needs. To permit limited funding from the Emergency Connectivity Fund Program to be used to support eligible equipment and services solely for on-campus uses would effectively allow schools and libraries to replace connections already funded through the E-Rate Program with funding from the Emergency Connectivity Fund and to use the Fund to purchase every device used on campus. The Commission does not believe Congress intended such a result.

46. In particular, the Commission recognizes the benefit of being able to use connected devices—laptops and tablets—funded through this Program at schools and libraries as schools and libraries begin to reopen, and the Commission is sensitive to the need to provide some flexibility during this uncertain time. If those connected devices were purchased for the purpose of providing students, school staff, and library patrons with devices for off-campus use consistent with the rules the Commission adopts in this document, the Commission will not prohibit such on-campus use. Fixed wireless and wireline connections purchased with funding from the Emergency Connectivity Fund may not,

however, be similarly used on-campus given that these connections are already eligible for funding under the E-Rate Program. While the Commission prohibits the use of funding to purchase eligible equipment and services used solely on campus, the Commission remains mindful of the importance of robust school and library networks, particularly in rural areas, for the provision of educational and library services across the nation. The Commission is committed to continuing to provide support for these networks through the E-Rate Program, and encourage schools and libraries participating in this new Program to continue to seek support for their on-campus connectivity needs through the E-Rate Program.

47. *Per-Location/Per-User Limitations.* To maximize the use of limited funds, the Commission imposes certain per-location and per-user limitations on applicants seeking support for eligible equipment and services under this Program. Specifically, the Commission will not permit an eligible school or library to apply for support for more than one fixed broadband internet access connection per location. Nor will the Commission provide support for eligible schools and libraries to purchase more than one connected device and more than one Wi-Fi hotspot per student, school staff member, or library patron during the COVID–19 emergency period.

48. Recognizing that Wi-Fi hotspots can be easily moved and used in different locations, while fixed broadband connections are delivered to a specific location, and pursuant to its authority under section 7402(b) of the Act and section 254(h)(2)(A) of the Communications Act, the Commission first limits support for those costs associated with fixed broadband services to one connection per location, but otherwise refrain from imposing a similar per-location limitation on Wi-Fi hotspots. The Commission agrees with those commenters that suggest that while a per-location limitation on fixed broadband services is reasonable, a similar limitation on Wi-Fi hotspots would be impractical since many of the Wi-Fi hotspots distributed by schools and libraries are insufficient for multiple users and many homes with multiple students, school staff, or library patrons could benefit from more than one Wi-Fi hotspot. For purposes of the per-location limitation the Commission imposes on fixed broadband services, the Commission will consider each unit in a multi-tenant environment (*e.g.,* apartment buildings) a separate location.

49. Next, with the exception of fixed broadband connections, for which there is a one-per-location limit, the Commission prohibits schools and libraries from providing more than one supported connection and more than one connected device to a student, school staff member, or library patron and clarify that this limitation shall apply for the duration of the COVID–19 emergency period. That is, during the defined emergency period, the Commission will permit eligible schools and libraries to request and receive support for no more than one connection and no more than one connected device for each student, school staff member, or library patron they serve.

50. While commenters generally support this approach, some argue that there may be instances where more than one connected device or connection per user may be appropriate. These commenters do not, however, provide any specific examples where more than one connected device or connection is necessary; and, the one example offered in the record by the American Library Association, the Commission finds inapposite. Specifically, the American Library Association explains that in some cases a parent may request two connected devices from a library—one for use of the parent and the other for use of the child. Because the library in this instance is providing each device for use of one, individual user, the Commission considers such use consistent with the per-user limitation the Commission imposes on schools and libraries. As such, the Commission is not persuaded by those commenters that suggest that more than one connection or connected device per user is necessary, particularly in light of its obligation to limit reimbursements to amounts the Commission finds reasonable.

51. Nor is the Commission persuaded that limited funding should be used to allow schools and libraries to purchase additional connected devices or other equipment beyond the per-user limitation the Commission sets to account for equipment damage and breakage. The notification sought comment on ''what 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?'' While the Commission agrees with commenters that it is a sensible practice for schools and libraries to purchase some percentage of extra devices in preparation for inevitable equipment breakage, the Commission finds that limiting support for connected devices and Wi-Fi hotspots provided to students, school staff, and library patrons to no more than one of each such type of equipment per person is reasonable. Were the Emergency Connectivity Fund unlimited, the Commission would likely provide support for additional equipment. To do so under the present circumstances would, however, be inconsistent with the goal to provide students, school staff, and library patrons with as many needed devices and broadband services as possible in the near term and prevent unnecessary warehousing.

52. In adopting a per-user limitation on these connections and connected devices, the Commission seeks to equitably distribute and maximize the use of limited funds and the number of students, school staff, and library patrons served by this Program. To further ensure requests for support for connected devices are reasonable, in the case of a library, the Commission directs USAC to make inquiries if a library or library system seeks reimbursement for more devices than seems reasonable based on the size of the library or library system.

53. To ensure compliance with the per-location and per-user limitations the Commission imposes on schools and libraries, and to aid in preventing waste, fraud, and abuse, the Commission also requires schools and libraries to document the student(s), school staff member(s), and library patron(s) served at each location. Because the Commission expects that many schools and libraries are, in the normal course of business, already documenting this information, the Commission anticipates that imposing this requirement for purposes of participating in the Emergency Connectivity Fund Program will not be an additional burden on most applicants. Moreover, in requiring schools and libraries to collect and document this information as detailed below, the Commission acknowledges some comments expressing concerns about protecting the privacy of students and library patrons, as well as the confidentiality of library records, and asserting that imposing such a requirement on schools and libraries could discourage them from participating in the Program. The Commission is mindful of the need to safeguard the privacy of students, school staff, and library patrons, and the Commission commits to ensuring that, if the Commission or USAC staff needs to access this information, for example, for audit purposes, they will request and safeguard the information in accordance

with the applicable privacy laws and guidance. With this approach, the Commission seeks to balance the need to protect limited funds from waste, fraud, and abuse and the privacy of students, school staff, and library patrons.

54. *Wi-Fi Hotspots on School Buses and Bookmobiles.* Consistent with its decision above regarding eligible locations, the Commission allows schools and libraries to use Emergency Connectivity Fund Program support to purchase Wi-Fi hotspots for school buses and bookmobiles to provide off-campus broadband services to students, school staff, and library patrons who currently lack sufficient broadband access. The Commission finds ample support in the record for its action and agree with those commenters that assert that deploying Wi-Fi hotspots on schools buses or bookmobiles is a cost-effective means by which to provide much-needed connectivity to those students, school staff, and library patrons in areas with limited options. In addition, the Commission is aware that a number of schools and libraries have already undertaken initiatives to equip school buses and bookmobiles with Wi-Fi hotspots during the COVID–19 emergency period and have found such initiatives to be particularly effective. As such, during the second application window, schools and libraries will be able to seek support for these purchases if made during the relevant time period.

*E. Eligible Uses*

55. Consistent with the goal of funding the connections and devices needed for remote learning embodied in section 7402(a) of the American Rescue Plan and section 254(h)(1)(B) of the Communications Act, and with the E-Rate program, the Commission requires that equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes. Although the text of section 7402 of the American Rescue Plan is silent on permitted uses of equipment and services eligible for Emergency Connectivity Fund support, that section of the Act is entitled ''Funding for E-Rate Support for Emergency *Educational* Connections and Devices.'' Moreover, it provides that the Commission promulgate rules for the provision of funding consistent with sections 254(h)(1)(B) and (2) of the Communications Act, and section 254(h)(1)(B) of the Communications Act requires telecommunications carriers to provide services to schools and libraries for ''educational purposes.'' As a result, the Commission's E-Rate rules require schools and libraries to use E-Rate-supported services ''primarily for educational purposes.'' Educational purposes, in turn, are defined as ''activities that are integral, immediate, and proximate to the education of students'' in the case of schools and activities that are ''integral, immediate, and proximate to the provision of library services to library patrons'' in the case of libraries. The Commission takes that same approach here.

56. For purposes of the Emergency Connectivity Fund Program, the Commission therefore defines ''educational purposes'' as activities that are integral, immediate, and proximate to the education of students in the case of a school, and activities that are integral, immediate, and proximate to the provision of library services to library patrons in the case of a library. And, the Commission requires schools and libraries to use eligible equipment and services supported by this Program primarily for educational purposes, but still limit use to students, school staff, and library patrons as intended by Congress. Because the Commission requires eligible equipment and services be used primarily for educational purposes, as defined in § 54.500 of its rules, in the case of schools, the Commission emphasizes that the provision of eligible equipment and services for school staff is limited to school staff that will be providing (or provided) educational services during the relevant time periods and would otherwise lack access to connected devices or broadband connections sufficient to facilitate remote learning during the pandemic.

57. The Commission recognizes that some commenters would prefer that schools and libraries be able to use eligible equipment and services for any purpose they see fit. At least one commenter suggests that the Commission adopts a presumption that all off-campus use of eligible equipment and services is an ''educational use.'' Others argue that the Commission should allow eligible equipment and services to be used for broader purposes without imposing any constraints or giving priority to educational uses, including for professional development and to support household connectivity that provides access to a variety of internet resources, not just educational or library resources or limited to the intended users specified in the Act. In requesting such expansive uses for eligible equipment and services, commenters ignore the fact that the Congressional reason for establishing the Emergency Connectivity Fund was to fund emergency educational connections and devices, as reflected in the title of section 7402 of the American Rescue Plan, for use by students, school staff, and library patrons. What is more, such arguments, when taken to an extreme, are also an invitation to waste, fraud, and abuse.

58. At the same time, the Commission is sensitive to the critical need students, school staff, and library patrons have for broadband connections and devices for any number of important and productive uses during the COVID–19 pandemic, as well as the need to provide schools and libraries with as much flexibility as possible to meet the unique remote learning needs of students, school staff, and library patrons. The Commission also recognizes that even the most ardent student will not be using his or her connected device and broadband connection to attend classes and do schoolwork all day every day, and that library patrons use the broadband services at libraries for an enormous variety of purposes. The Commission therefore finds that it is only reasonable that schools and libraries be given the flexibility to allow the use of eligible equipment and services for other purposes when they are not needed for educational purposes in the first instance. The Commission concludes that requiring that eligible equipment and services supported by the Emergency Connectivity Fund Program be used primarily for educational purposes strikes the right balance. It will ensure that such equipment and services are first and foremost used to facilitate remote learning, as intended by Congress, while also allowing them to be used for other purposes for the benefit of students, school staff, and library patrons.

59. To ensure that connected devices supported by this Program are used primarily for educational purposes and by students, school staff, and library patrons, the Commission requires schools and libraries to restrict access to eligible connected devices to only those students, school staff, and library patrons with appropriate credentials. The Miami-Dade County Public Schools, in response to the question in the notification, confirms in its comments that it already requires appropriate credentials, and the Commission expects other schools and libraries are doing the same. The Commission thus finds that imposing such a restriction will not impose an additional burden on most applicants and is an important safeguard to ensure that connected devices supported by this Program are used for their intended purpose and by intended users. In addition requiring schools and libraries

to restrict access to the connected devices they provide for use by students, school staff, and library patrons helps protect the privacy of those users by limiting access to any information they have stored on such devices.

60. Recognizing that it may not always be technically possible to similarly restrict access for other eligible equipment and eligible services supported by this Program, the Commission encourages, but do not require, schools and libraries to take the same approach for the use of other eligible equipment and services. The Commission finds that restricting access in this way is a best practice and will help ensure that eligible services are provided to students, school staff, and library patrons, as provided for by the Act.

*F. Reasonable Support Amount*

61. The Commission next establishes a range of costs that are presumed reasonable for eligible connected devices and Wi-Fi hotspots and direct USAC to limit funding commitments for each type of equipment or device to the maximum amount deemed reasonable. The Commission also establishes an application review process for considering the reasonableness of other types of eligible equipment and services. In the E-Rate Program, competitive bidding and the requirement to use price as the primary factor help ensure cost-effective purchasing. As discussed in greater detail below, because the Commission is providing support for purchases made during the pandemic without requiring a competitive bidding process, those protections do not exist here. Moreover, schools and libraries purchased these equipment and services, often on short notice and during a time when demand was high for tablets, laptops, and Wi-Fi hotspots, and supply chains were disrupted leading some schools and libraries to pay premium prices for needed equipment. At the same time, the Commission is mindful that the Emergency Connectivity Fund, while substantial, is insufficient to meet the entire need of the nation's schools and libraries for eligible devices and services. Congress therefore directed the Commission to 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.'' Read in conjunction with section 254(h)(2)(A) of the Communications Act's direction that services be ''technically feasible and economically reasonable,'' the Commission adopts reasonable support amounts for connected devices and Wi-Fi hotspots and a framework to determine unreasonable costs for other eligible equipment and services supported under this Program.

62. For connected devices and Wi-Fi hotspots, the two types of eligible equipment for which the Commission expects to see the most requests for support through the Emergency Connectivity Fund Program, the Commission adopts per-device caps based on a reasonable support amount, up to which an applicant may receive support. Adopting these reasonable maximum support amounts will provide the simplest review process for applications requesting these two types of equipment, although applicants will be reimbursed based on the actual costs of the equipment. First, after consideration of the record, the Commission finds that $400 is a reasonable, maximum support amount for connected devices. In response to the *Remote Learning Public Notification,* 86 FR 9309 (Feb. 12, 2021), commenters discussed costs of between $160 and $650, and just under $300 for iPads. Here, stakeholders support a reimbursement limit between $300 and $750 per device to ensure that the Emergency Connectivity Fund is not used entirely to support a limited number of expensive connected devices and to allow the Program to support the much-needed connectivity for students, school staff, and library patrons. One commenter suggests that $500 is more than sufficient to cover the most commonly used connected devices, while another representing states across the country determined that $300 per device reflects a reasonable allowance based on knowledge of procurements over the last year. However, after consideration of the record, $400 is a reasonable amount to reimburse for the vast majority of the devices suggested in the record, consistent with limits other programs have used. The Commission also elects a maximum support amount of $400 in order to ensure funding is available equitably, does not unintentionally provide more support to schools and libraries that had greater access to funds, and increases the likelihood of available funds for those schools and libraries with continuing unmet needs. To be clear, applicants that spend more than $400 per connected device may seek support of $400 for each such device.

63. The Commission recognizes that in some instances $400 may not be a reasonable maximum cost for a connected device that meets the needs of some people with disabilities. Applicants may request a waiver of the reasonable support amount for connected devices, if the reasonable cost to purchase devices for students, school staff, or patrons with disabilities is higher than $400 and the public interest warrants deviation from the general rule. The Commission emphasizes that applicants seeking a waiver for this purpose should demonstrate that the additional cost associated with connected devices for those with disabilities is necessary to meet the needs of students, school staff, and library patrons with disabilities that would otherwise not be met with the purchase of a connected device at the $400 reasonable support amount the Commission sets for the Program.

64. For Wi-Fi hotspots, the Commission adopts $250 as a maximum reasonable cost for a Wi-Fi hotspot provided by a school or library to a student, school staff member, or library patron, based on advertised costs for Wi-Fi hotspots. Again, applicants that spend more than $250 per Wi-Fi hotspot may seek $250 in support for such devices. This maximum allowable cost is for the equipment itself, and the Commission expects applicants to separately seek support for the cost of the service provided using the hotspot device.

65. For the other types of eligible equipment—namely, modems, routers, and devices that combine modems and routers—the Commission does not at this time have a sufficient record to determine a reasonable maximum support amount, nor does the Commission expect to receive requests totaling a substantial amount of the Fund. The Commission therefore directs USAC to carefully review the requests and identify applications that are out of line with the funding requests of other applicants. The Commission delegates authority to the Bureau to provide guidance to USAC for assessing the reasonability of those applications based on the universe of requests for reimbursement for similar equipment and on applicants' justifications for their requests. The Commission recognizes that costs may be higher because of supply chain issues at the start of the pandemic, or geographic differences, and the Commission expects applicants to be prepared to explain their selections and costs, as needed, to be eligible for 100% reimbursement.

66. Consistent with this approach for eligible equipment and the requirements under section 254(h)(2)(A) that the Commission provide access to services to the extent technically feasible and economically reasonable, the Commission also directs USAC to review applications for commercially available advanced telecommunications and information services and identify the applications with outlying costs. The Commission delegates authority to the Bureau to provide guidance to USAC on how to determine the reasonableness of such costs. Based on the record, the Commission expects that most of the applications for support for broadband internet access services will be for services purchased under bulk purchase agreements, and the Commission expects services to generally be in the range suggested by commenters between $10 and $25 per month.

67. At the same time, the Commission recognizes that not all schools and libraries will be able to benefit from such bulk purchasing arrangements and pricing for broadband services varies widely across its nation based on the availability of competitive options, rurality, and other factors. In assessing the reasonableness of costs for broadband internet access services, particularly in rural locations, USAC and the Bureau should make use of the reasonable comparability benchmarks established for the High Cost Universal Service Support Program. The Bureau and the Office of Economics and Analytics publishes an updated reasonable comparability benchmark annually, including Alaska-specific benchmarks.

68. The Commission is mindful of the many valid concerns expressed in the record that there may be insufficient funding available for the Emergency Connectivity Fund Program to fully support the emergency connectivity and device needs of all eligible schools and libraries across the nation. In recognition of the concerns that reimbursement could be slow or uncertain, the Commission aims throughout this Report and Order to implement Program rules and processes that help applicants easily apply for funding and receive support as quickly as possible.

69. The Commission has carefully considered, but do not adopt here, the recommendation made by many commenters that instead of imposing reasonable maximum support amounts by type of eligible equipment and service, the Commission sets funding amounts for schools based on the number of students in a school, and for libraries based on their square footage, with some adjustments for higher poverty or more rural applicants. This is the basic model used for determining the amount of funding provided to schools and libraries that apply for E-Rate support for internal connections (category two services).

70. The Commission agrees with commenters that budgets have been a successful approach to funding category two services. The commenters supporting a similar budget approach for apportioning the Emergency Connectivity Fund, however, fail to acknowledge that those category two budgets were adopted after a lengthy rulemaking and analysis of the costs of deploying internal connections within schools and libraries. While these category two budgets do not precisely meet the costs of each applicant, they were established with a goal of meeting every school and library's need for category two services over the course of a five-year budget cycle using available data on the costs and network needs and made permanent after careful examination of the budget amounts. Here, the Commission lacks sufficient data or estimates to make such determinations and instead find commenters' suggested budget levels to largely be focused on dividing the appropriated funds with slight differences to account for income or rurality. Had Congress wished to provide a set amount of funding to each school and library in the country, it could have easily done so. Instead, the American Rescue Plan clearly states that the Commission shall reimburse 100% of the costs associated with the eligible equipment and services, subject to a determination of what constitutes reasonable equipment costs, and suggestions that the Commission implement applicant budgets is simply inconsistent with this direction.

*G. Application Process*

71. The Commission adopts an application process that first provides funding to schools and libraries for purchases during the coming school year of eligible equipment and services for use by students, school staff, and library patrons who would otherwise lack access to eligible equipment or services sufficient to engage in remote learning and virtual library services. As discussed further below, during this first application window, applicants will be able to submit requests for funding for purchases made between July 1, 2021 and June 30, 2022, which aligns with the coming school year and the E-Rate funding year, with which schools and libraries are very familiar. Then, if there are remaining funds after this initial application window, the Commission will open a second application window for schools and libraries to seek funding for eligible equipment and services they previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID–19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services.

72. In adopting this approach, the Commission is particularly cognizant of the substantial remaining unmet need for connected devices and broadband internet access services among students, school staff, and library patrons. The Commission also recognizes that a significant amount of other Federal funding has been made available to schools to assist with digital learning (although schools have had the option to use that funding to meet a plethora of other pressing needs as well) through both the Coronavirus Aid, Relief, and Economic Security (CARES) Act last year, as well as other provisions of the American Rescue Plan Act. The approach the Commission takes in prioritizing existing unmet need, followed by a funding window providing support for previous purchases during the pandemic, is consistent with the suggestion made by those commenters who support prioritizing future purchases, as well as those who support allowing applicants to request support for both past and future purchases. Some other commenters support allowing requests only for purchases made after the date of this Order, others support prioritizing prior purchases, and still others support opening a single application window providing support for past and future purposes. The Commission recognizes that there is some merit to these other approaches. In particular, the Commission sees the appeal of using the Emergency Connectivity Fund Program to first reimburse those schools and libraries that have already paid for

eligible equipment and services to meet the needs of their students, school staff, and library patrons by prioritizing past purchases. On balance, however, the Commission finds that doing so would not be the best use of public funds because it would create a risk that the Commission would have insufficient funding available to provide support for connected devices and broadband internet access services for students, school staff, and library patrons who otherwise will not have access to devices and connectivity sufficient to meet their remote learning needs during the coming school year. Adopting a single funding window for past and future purchases creates the same risk, and imposes substantial administrative burdens on schools and libraries and on USAC.

73. As discussed above, section 7402(a) requires that the Commission promulgates rules for the provision of support under sections 254(h)(1)(B) and (h)(2) of the Communications Act. Section 254(h)(2) of the Communications Act, in turn, requires the Commission to consider what is technically feasible and economically reasonable when providing support for advanced telecommunications and information services. Given this statutory direction, as well as the limited funding available under the Emergency Connectivity Fund Program, the Commission therefore finds it reasonable to prioritize support to connect those students, school staff, and library patrons that would otherwise lack sufficient connectivity to benefit from remote learning this coming school year. In so doing, the Commission is also mindful of the purpose of the Fund and Congress' intent to address the connectivity needs of students, school staff, and library patrons who would otherwise be unable to access educational and library services due to the pandemic.

74. To ensure that funding is focused on unmet need, the Commission will require schools to certify, as part of their funding application, that they are only seeking support for eligible equipment provided to students and school staff who would otherwise lack access to connected devices sufficient to engage in remote learning. The Commission will also require schools to certify, as part of their funding application, that they are only seeking support for eligible services provided to students and school staff who would otherwise lack broadband services sufficient to engage in remote learning. This should not be an onerous burden, as the record shows that many school districts have conducted needs assessments to determine the connectivity needs of their students and staff. The Commission thinks that schools are in the best position to determine whether their students and staff have devices and broadband services sufficient to meet their remote learning needs, and the Commission recognizes that they are making such decisions in the midst of a pandemic. The Commission, therefore, will not impose any specific metrics or process requirements on those determinations, but the Commission expects schools to take reasonable measures to determine need, avoid duplicating support provided by other programs such as the Emergency Broadband Benefit Program, and document need to the extent they do not already do so.

75. The Commission recognizes that libraries do not usually inquire about the needs of their patrons before providing services. They do, however, typically have acceptable use policies governing patron use of library computers and Wi-Fi hotspots. To ensure that libraries are providing eligible equipment and services to patrons with unmet needs, the Commission therefore requires that on a going forward basis before providing a library patron with eligible equipment or services, for which the library is seeking Emergency Connectivity Fund support, the library must provide the patron a copy of an eligible use policy, which explains that the equipment or service is intended for library patrons who do not otherwise have access to equipment or services sufficient to meet the patron's educational needs. On a going forward basis, the Commission also requires that the library patron sign and return a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.

76. *Initial Emergency Connectivity Fund Program Application Filing Window.* To speed the availability of funds to schools and libraries during the public health emergency, the Commission directs USAC to open an initial 45-day Emergency Connectivity Fund Program filing window as soon as practicable. During this initial Emergency Connectivity Fund Program filing window, eligible schools and libraries may apply for funding for the purchase of eligible equipment and services made between July 1, 2021 and June 30, 2022 and provided during that time period to students, school staff and library patrons who still lack access to adequate connected devices, other eligible equipment or eligible services. The Commission includes within this first window, only eligible equipment ordered by and received, as well as only services delivered by June 30, 2022.

77. The Commission finds that a 45-day application window will provide sufficient time for schools and libraries to apply for reimbursement. The Commission considered the suggestion of some commenters that a 30-day application filing window would be sufficient, but the Commission is mindful that this is a new program, the application window will be open during the summer, and school staff have much to do to get schools ready for the upcoming school year. The Commission also considered suggestions that the filing window be longer, but this is an ''emergency'' program. Closing the window after 45 days will allow USAC to quickly size demand, review applications, and release funding commitment decision letters—ensuring that funding from the Emergency Connectivity Fund will begin to flow to eligible applicants within a short period of time.

78. *Additional Application Filing Windows.* If demand does not exceed available funds for the first application period and the Commission does not open a second prospective window, the Commission delegates authority to the Bureau to direct USAC to open additional application filing windows until the funds are exhausted or the emergency period ends, whichever is earlier. The Commission recognizes that there will be a point at which the administrative costs to applicants and USAC of opening an application process for a relatively small amount of remaining funds is not cost-effective and delegate authority to the Bureau, after consultation with the Office of the Managing Director and USAC, to determine when that point has been reached.

79. In setting a start date for purchases that are reimbursable through the Emergency Connectivity Fund Program in the second application filing window, the Commission agrees with commenters that urge the Commission to use March 1, 2020 as the starting date for the Emergency Connectivity Fund Program. Although January 27, 2020 is the date the Secretary of Health and Human Services retroactively determined that a public health emergency existed as a result of COVID–19 pursuant to section 319 of the Public Health Service Act, and section 7402 states that its regulations should provide for the provision of support for purchases ''during a COVID–19 emergency period,'' the Commission views that language as giving it

discretion to determine the appropriate funding period for purchases made during the COVID–19 emergency period. While some commenters suggest using July 1, 2020 as a start date for eligibility for Emergency Connectivity Fund support for administrative ease, the Commission agrees with those commenters that argue that it will be fairer to applicants that acted quickly, once they became aware of the looming pandemic, to use March 1, 2020 as the starting date based on when schools began sending students home because of the pandemic. As the Remote Learning Coalition points out, every state in the nation began closing schools in March 2020. Given the statutory goal of meeting the need of students, school staff, and library patrons for connectivity during the pandemic, allowing reimbursement for purchases made beginning on the first day of the month when schools began to close because of the pandemic helps ensure that the Commission provides support that is tied to needs arising from the pandemic.

80. *Competitive Bidding Requirements.* The Commission allows 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. Based on the record, the Commission concludes that it is appropriate in light of the emergency, rather than adopting an Emergency Connectivity Fund competitive bidding process, to require schools and libraries seeking funding from the Emergency Connectivity Fund to certify that they have complied with all applicable local, state, and Tribal procurement requirements with respect to *both* previous purchases and future purchases and contracts. This requires schools and libraries that are not subject to public procurement rules to follow their own procurement process and rules, such as those that may be included in a written charter.

81. For purchases that have already been made and contracts that have already been executed, it is impractical to attempt to impose Commission-specific competitive bidding or other contract restrictions on such purchases, and the Commission is also persuaded that compliance with local, state, and Tribal procurement requirements offer significant protections against waste, fraud and abuse. Schools and libraries have been asked to take incredible steps at great cost this year in order to facilitate remote learning and keep their communities connected, and they did so without the knowledge of whether such expenses would be reimbursed. While such expenses will still be reviewed to ensure the costs were reasonable, the Commission is convinced that the Commission can rely on the local, state, and Tribal procurement requirements as a check on unreasonable spending. For purchases made after the date of this Report and Order, some stakeholders recommend a streamlined competitive bidding approaches, ranging from just minor modifications to the E-Rate competitive bidding rules to a shortened 14-day competitive bidding window. Given the emergency nature of this funding, as well as the ability of the Commission to review and reject the requests for unreasonable costs, the Commission is convinced that compliance with local, state, and Tribal procurement regulations will sufficiently safeguard the Program for future purchases and decline to adopt a streamlined competitive bidding process for the Emergency Connectivity Fund Program.

82. The Commission also clarifies that schools and libraries may seek support from the Emergency Connectivity Fund Program for the purchase of eligible services and equipment using existing bulk purchase programs or sponsored service agreements, so long as doing so is consistent with the relevant local, state and Tribal procurement regulations. Unlike the traditional E-Rate Program, which funds broadband connectivity to a single school or district of schools and therefore generally only funds service from the single most cost-effective service provider, the Emergency Connectivity Fund Program is aimed at connecting numerous students, school staff, and library patrons at their homes or other locations, and therefore a school district or library system appropriately may have agreements with multiple service providers to offer connectivity. At the same time, the Commission declines to adopt the suggestion made by at least one commenter that the Commission requires school districts to select multiple existing providers, or set requirements for solicitation, finding that flexibility is appropriate under the circumstances. The Commission also reminds applicants that only eligible schools and libraries may seek reimbursement for such costs, and therefore a non-profit organization or other entity that arranged for such bulk purchases is not eligible for reimbursement through the Emergency Connectivity Fund Program.

83. *Leveraging E-Rate Processes and Forms.* As commenters strongly support, the Commission directs USAC to leverage the existing E-Rate application, *i.e.,* FCC Form 471 (Description of Services Ordered and Certification Form) and other E-Rate processes to the extent feasible for the Emergency Connectivity Fund Program. Schools and libraries are already familiar with these processes and will be able to apply more easily than if an entirely new system is developed using different forms and processes. The Commission also expects that leveraging E-Rate processes and forms will likely reduce administrative costs and delays in the Emergency Connectivity Fund Program and ensure that Emergency Connectivity Fund Program support is quickly released to schools and libraries.

84. *Prioritization.* In the event that demand exceeds available funds during any Emergency Connectivity Fund Program application filing window, the Commission will prioritize requests based on applicants' E-Rate Program discount rate for category one services, adjusted to provide a five percent bump up for rural schools and libraries. Those schools and libraries entitled to a higher discount will receive funding ahead of those entitled to a lower discount rate. In the event there is insufficient funding to meet the need at a particular discount rate, the Commission will prioritize within the discount rate based on the percentage of free and reduced lunch eligible students, consistent with the rules for the E-Rate Program. Commenters suggest using assorted variations on the E-Rate discount matrix or a set-aside to reflect need in rural or Tribal areas, or special education programs and services. Adjusting the discount matrix to increase the likelihood of rural schools and libraries receiving funding in the event that demand exceeds available funds, will provide a more equitable geographic distribution of available funds, particularly in light of the higher cost of residential broadband services in many rural areas and the extraordinary circumstances of the pandemic. The Commission declines suggestions that the Commission provides a prorated amount of funding to all applicants that apply for support, finding instead that prioritizing by the discount rates provides a better method to prioritize the needs of high poverty and rural schools and libraries. The Commission finds that the approach the Commission adopts in this document balances the goal of targeting funding to the students, school staff, and library patrons with the greatest need with the goal of maximizing administrative efficiency by adjusting existing E-Rate Program standards rather than creating whole

new processes just for the Emergency Connectivity Fund Program.

*H. Invoicing and Reimbursement Process*

85. As discussed above, one of the goals the Commission adopts for the Program is to efficiently and effectively administer funding, which will be measured in part by the speed and ease of the reimbursement process. Consistent with that goal, the Commission establishes a streamlined invoicing process for applicants and service providers to submit requests for reimbursement, leveraging existing E-Rate forms to reduce administrative burdens where possible, while providing effective safeguards against waste, fraud, and abuse.

86. *Submission of Reimbursement Requests.* As part of this streamlined process, the Commission allows applicants and service providers to submit requests for reimbursement. The Commission agrees with those commenters that explain allowing both applicant and service provider invoicing options is the most efficient and direct way to get much needed funding to eligible schools and libraries. The Commission sees no reason not to send the actual funds to the service provider where the applicant and service provider have both consented to that approach and the applicant can show that the contractual obligation exists. As part of the invoicing process, applicants and service providers must provide required certifications, along with any necessary documentation to support their requests. The Commission clarifies that applicants may use consultants and service providers to assist with the preparation of their reimbursement requests to the extent necessary, but any fees associated with such assistance are not eligible for funding under the Program.

87. In addition, the Commission is also sympathetic to concerns raised by commenters that applicants may not be able to cover the upfront costs associated with eligible equipment and services. The Commission therefore will allow applicants who have entered into contractual arrangements or are otherwise legally obligated to purchase eligible equipment and services from their service provider, to submit requests for reimbursement before they have paid for the requested equipment and services. Applicants must pay their service provider within 30 days after receipt of funds and will be required to certify compliance and provide verification of payment to the service provider.

88. Although the Commission allows applicants to request that their service providers submit invoices for payment from the Emergency Connectivity Fund, the Commission does not require service providers to accept that responsibility. At this juncture, the Commission expects that applicants and service providers may have already entered into contracts for much of the eligible equipment and services to be purchased in the coming school year, and service providers would not have entered into those contracts expecting to have responsibility for invoicing the Emergency Connectivity Fund Program. At the same time, if requested to do so by the school or library, some service providers may be willing to invoice the Federal Government rather than the school or library for payment. The Commission therefore concludes on balance that allowing both options for submission of Emergency Connectivity Fund Program reimbursement requests is an efficient and effective way to ensure that applicants are actually able to purchase the eligible equipment and services. For administrative simplicity, applicants must specify at the application stage whether the applicant or service provider will be doing the invoicing. If an applicant indicates that the service provider will be doing the invoicing, the applicant will have to submit evidence of the service provider's willingness to do so.

89. *Documentation.* To protect against waste, fraud, and abuse of the Fund, the Commission will require applicants and service providers to submit, along with their reimbursement requests, invoices detailing the items purchased. Invoices must support the amounts requested in the application form and reimbursement request. The Commission agrees with commenters that suggest submission of invoices with reimbursement requests is sufficient in most instances and will help expedite review of reimbursement requests and the disbursement of funds. While the Commission will not require applicants and service providers to submit other supporting documentation at the time they submit their reimbursement requests, as discussed further below and pursuant to its document retention requirements, all participants must certify receipt/delivery of eligible equipment and services and that only eligible equipment and services were invoiced, as well as retain and provide upon request by USAC, Commission staff, or any other authorized Federal entity with oversight authority over Federal financial assistance and/or the Federal response to the pandemic, all records related to their reimbursement request (including, for example, contracts and asset inventories).

90. *Leveraging Existing E-Rate Invoicing Forms.* To further streamline the invoicing process and reduce burdens on applicants, the Commission directs USAC to leverage the existing E-Rate invoicing forms to the extent feasible for the Emergency Connectivity Fund Program. Because the Commission allows applicants and service providers to submit reimbursement requests, the Commission expects USAC to use, to the extent possible, the FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice (SPI) Form) for this purpose. As detailed below, the Commission will require participants to make certain certifications on the form to protect against waste, fraud, and abuse. By leveraging existing E-Rate forms, the Commission expects to save participants time needed to familiarize themselves with new forms and reduce administrative costs.

91. *Invoicing Deadline.* The notification sought comment on establishing a short window for schools and libraries to file invoices and reimbursement requests and sought comment on what the shortest possible invoice filing window would be that would not impose undue burden on applicants. In order to allow the Commission to de-obligate committed funds for use by other schools and libraries, the Commission directs USAC to start accepting requests for reimbursement within 15 days of the first wave of commitments in the first application filing window. The Commission permits applicants and service providers to submit reimbursement requests and invoices for prior and prospective purchases for 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding commitment; or service delivery date, whichever is later. That is half the time provided in the E-Rate Program, but necessary to ensure that the Commission can identify unspent funds and make them available to other applicants as quickly as possible. Commenters agree that a shorter invoicing period is reasonable and recommend an invoicing window of between 60 and 90 days. The Commission finds that 60 days strikes the correct balance.

*I. Payment Administration*

92. While USAC will be administering the Emergency Connectivity Fund

Program as permitted under section 7402(c)(2)(A) of the American Rescue Plan, and pursuant to the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency Connectivity Fund Program, the Commission must authorize the payments from the Emergency Connectivity Fund prior to the disbursement of those funds by the United States Department of Treasury. In this Report and Order, the Commission provides guidance on steps participants must be prepared to take to ensure timely payment of reimbursement claims from the Fund, as well as processes used to ensure proper payment.

93. *FCC Red Light Rule.* To implement the requirements of the Debt Collection Improvement Act of 1996, the Commission established what is commonly referred to as the ''red light rule.'' Under the red light rule, the Commission will not take action on applications or other requests by an entity that is found to owe debts to the Commission until full payment or resolution of that debt. If the delinquent debt remains unpaid or other arrangements have not been made within 30 days of being notified of the debt, the Commission will dismiss any pending applications. If an Emergency Connectivity Fund participant is currently on red light, it will need to satisfy or make arrangements to satisfy any debts that it owes to the Commission before its application can be processed.

94. *System for Award Management (SAM) Registration.* All applicants that intend to participate and all service providers that elect to submit requests for reimbursement in the Emergency Connectivity Fund Program must also register with the System for Award Management (SAM). SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the Federal Government's partners in support of Federal awards, grants, and electronic payment processes. Registration in the SAM provides the Commission with an authoritative source of information necessary to provide funding to applicants and to ensure accurate reporting pursuant to the Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014 (collectively, Transparency Act or FFATA/DATA Act). Only those applicants and service providers that are actively registered in SAM will be able to receive reimbursement from the Emergency Connectivity Fund Program. Applicants and service providers that are already registered with SAM do not need to re-register with that system in order to receive payment from the Emergency Connectivity Fund Program. Applicants who are not already registered with SAM may still participate in the Emergency Connectivity Fund Program, apply for funding, and receive program commitments. However, active SAM registration is required for an applicant or service provider to receive a payment from the Emergency Connectivity Fund Program. To assist participants who are not registered with SAM, the Commission directs USAC to provide information and guidance to participants regarding the SAM registration process. Furthermore, Program recipients may be subject to further FFATA/DATA Act reporting requirements to the extent that awardees subaward the payments they receive from the Program, as defined by FFATA/DATA Act regulations. Recipients may be required to submit data on those subawards.

95. *Do Not Pay.* Pursuant to the requirements of the Payment Integrity Information Act of 2019, the Commission is required to ensure that a thorough review of available databases with relevant information on eligibility occurs to determine program or award eligibility and prevent improper payments before the release of any Federal funds. To meet this requirement, the Commission and USAC will make full use of the Do Not Pay system administered by the U.S. Treasury's Bureau of the Fiscal Service. If a check of the Do Not Pay system results in a finding that an Emergency Connectivity Fund Program applicant or service provider should not be paid, the Commission will not issue any funding commitments or issue disbursements. The Emergency Connectivity Fund Program participant is responsible for working with the relevant agency to correct its information in the Do Not Pay system before its Emergency Connectivity Fund Program application is processed and Program payments can be issued.

### *J. Designating USAC as the Administrator of the Emergency Connectivity Fund Program*

96. Pursuant to the authority granted in section 7402(c)(2)(A) of the American Rescue Plan, and the terms of the Memorandum of Understanding between the Commission and USAC that authorizes the use of USAC for the administration of the Emergency Connectivity Fund, the Commission designates USAC as the Administrator of the Emergency Connectivity Fund Program. The Commission will use USAC's services to review and approve applications for funding, recommend funding commitments, issue funding commitment decision letters, review requests for reimbursement and invoices and recommend payment of funds, as well as other administration-related duties. Commenters that addressed the issue overwhelmingly support using USAC and its processes for the efficient and effective administration of the Emergency Connectivity Fund Program, and the Commission agrees that USAC's experience administering the E-Rate Program and other Commission pandemic response programs makes USAC uniquely situated to be the administrator of the Emergency Connectivity Fund Program.

97. In designating USAC as Administrator of the Emergency Connectivity Fund Program, the Commission adopts the same requirements for USAC as are currently provided in § 54.702(c)–(d) of its rules governing USAC's duties as Administrator of the Universal Service Support Programs. In so doing, among other things, the Commission prohibits USAC from making policy, interpreting unclear statutes or rules relied upon to implement and administer the Emergency Connectivity Fund Program, or interpreting the intent of Congress.

98. In its administration of the Program, the Commission also directs USAC to comply with, on an ongoing basis, all applicable laws and Federal Government guidance on privacy and information security standards and requirements, such as the Privacy Act, relevant provisions in the Federal Information Security Modernization Act of 2014, National Institute of Standards and Technology publications, and Office of Management and Budget guidance.

99. Universal Service Fund Program audits have been successful in helping participants become compliant with the Commission's rules and in protecting the funds from waste, fraud, and abuse. The Commission therefore reminds Emergency Connectivity Fund Program participants including schools, libraries, consortia, and service providers, that similar to the E-Rate and other Universal Service Fund Programs, they shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund Program. If the Commission determines that USAC should administer program

audits for the Emergency Connectivity Fund Program, the Commission will direct USAC to perform such audits pursuant to the Commission and USAC's respective roles and responsibilities in the Memorandum of Understanding.

100. The Commission also provides a path for recourse to parties aggrieved by decisions issued by USAC. Specifically, the Commission adopts the appeals and waiver request rules that govern USAC's administration of the Universal Service Support Programs, including the E-Rate Program. The Commission finds these existing processes sufficient to provide a meaningful review of decisions issued by USAC and the Commission regarding the Emergency Connectivity Fund Program. However, the Commission makes one modification for the Emergency Connectivity Fund Program appeal and waiver rules and provide a 30-day timeframe to request the review of an action by USAC, or to request the review of a decision by USAC or a waiver of the Commission's rules. The Commission makes this change because this is a short-term emergency program and to help provide faster timeframes for issuing appeal and waiver decisions.

*K. Children's Internet Protection Act*

101. The Commission finds that the obligations of the Children's Internet Protection Act (CIPA), which apply to schools and libraries having computers with internet access that seek E-Rate funding for internet access, internet service, or internal connections under section 254(h)(1)(b) of the Communications Act also apply to schools and libraries making certain purchases through the Emergency Connectivity Fund Program. Specifically, the Commission concludes that CIPA applies to the use of school or library owned computers, including laptop and tablet computers, if the school or library accepts Emergency Connectivity Fund or E-Rate support for internet access or internet services, or E-Rate support for internal connections. The Commission also concludes that CIPA does not apply where schools or libraries have purchased advanced telecommunications and information services through the Emergency Connectivity Fund Program to be used only in conjunction with student-, school staff- or patron-owned computers. As explained below, these conclusions reflect the fact that section 7402(a) of the American Rescue Plan expressly provides that Emergency Connectivity Fund support is to be made available pursuant to section 254(h)(1)(B) and (2) of the Communications Act.

102. Congress enacted CIPA as part of the Consolidated Appropriations Act of 2001, amending section 254 of the Communications Act. CIPA requires a school or library ''having'' internet-connected computers and receiving E-Rate funding for internet access, internet service, or internal connections to comply with, and certify its compliance with, specific internet safety requirements for ''its'' computers, including the adoption and enforcement of an internet Safety Policy that includes the operation of a technology protection measure. Schools, but not libraries, must also provide education about appropriate online behavior including cyberbullying.

103. Many commenters support the applicability of CIPA requirements in the context of the Emergency Connectivity Fund Program, while others raised concerns regarding the potential challenges of implementing CIPA compliance on services and devices that are outside of the applicant's direct control. The Commission rejects the argument made by at least two commenters that CIPA does not apply to the Emergency Connectivity Fund Program because the American Rescue Plan does not explicitly cite to the CIPA provisions in section 254 of the Communications Act. Section 7402(a) of the American Rescue Plan requires that the Emergency Connectivity Fund is to be made available under section 254(h)(1)(B) and (2), and CIPA requirements apply to eligible entities having computers with internet access that seek funding for internet access, and internet service, and internal connections under the same provision, section 254(h)(1)(B). Therefore, as discussed further in this section, the Commission concludes that CIPA requirements extend to eligible entities having computers with internet access that seek support for internet access or internet service through the Emergency Connectivity Fund pursuant to section 254(h)(1)(B). Few commenters, however, analyzed whether CIPA's applicability might depend on which equipment and services a school or library purchases through the Emergency Connectivity Fund Program. And the Commission concludes that such an analysis is necessary, given the unique text and structure of CIPA.

104. *First,* the Commission concludes that CIPA applies to the use of any computers owned by a school or library, including those purchased with Emergency Connectivity Fund support if the school or library receives Emergency Connectivity Fund or E-Rate support for internet access or internet services, or E-Rate support for internal connections. This is true even if the student or library patron does not use internet access services provided by the school or library. This conclusion follows from the statutory text: CIPA applies to a school or library ''having'' computers and requires the entity to certify compliance as to ''its'' computers. Both words indicate that CIPA is triggered by ownership of a device, not the location where the device is used or temporarily possessed. The Commission disagrees with the suggestion that CIPA applicability is narrowly limited to school- or library-owned computers within a school or library building. While the drafters of CIPA may have been primarily focused on computers within schools or libraries, that is because of the circumstances at the time, and the plain language of the statute is not so limited. It reaches the use of devices owned by schools and libraries, regardless of whether the device is used off-campus, including use of such devices by students in their homes.

105. *Second,* the Commission concludes that CIPA does *not* apply to the use of computers owned by a school or library including those laptop computers or tablet computers purchased with support from the Emergency Connectivity Fund Program, if the purchasing entity does not *also* receive Emergency Connectivity Fund or E-Rate discounted internet access or internet services, or E-Rate discounted internal connections—or network equipment for internet access, internet service, or internal connections. Here too, the Commission's conclusion follows from the plain text of the statute. CIPA prohibits a school or library from ''receiv[ing] services at discount rates'' unless it complies with CIPA. CIPA also makes clear that this prohibition does not apply to a school or library that receives discounted services ''only for purposes other than the provision of internet access, internet service, or internal connections.'' The Commission has construed these provisions to mean that CIPA ''applies [only] to entities receiving internet access, internet service, or internal connections'' under section 254(h). Thus, there is no statutory basis for requiring CIPA compliance from a school or library that does not receive those services through E-Rate or the Emergency Connectivity Fund—even if it purchases laptop computers or tablet computers through the Emergency Connectivity Fund.

106. *Third and finally,* the Commission concludes that CIPA does not apply to the use of third-party

owned devices, even if the school or library receives Emergency Connectivity Fund or E-Rate support for internet access or internet services, or E-Rate support for internal connections. This interpretation flows from the statute. A school or library does not ''hav[e]'' student-, school staff- or patron-owned devices, nor would it make sense for a school or library to certify that those devices are ''its'' devices for purposes of CIPA compliance. Moreover, when read in conjunction with section 254(h)(5) and (6), section 254(l) is meant to apply only to a school's or library's computers—and not to the delivery of services for a student's, school staff's or library patron's personal computer. Schools and libraries are free to decide whether to allow the use of third-party devices on their own networks or the broadband connections purchased for use by their students, school staff, and library patrons and to adopt measures to protect or limit the use of those connections by students, school staff or library patrons using their own devices to access those connections.

107. *CIPA Certifications.* In recognition of the long history of CIPA compliance in the E-Rate application process, the Commission finds that an Emergency Connectivity Fund applicant need not complete additional CIPA compliance certifications if it has already certified its CIPA compliance for E-Rate support for the relevant funding year (*i.e.,* has certified its compliance in an FCC Form 486 or FCC Form 479). To the extent an applicant for Emergency Connectivity Fund Program support has not already certified its CIPA compliance for E-Rate applications, these applicants will be required to certify either (1) that it is in compliance with CIPA requirements under section 254(h) and (l); (2) that it is undertaking the actions necessary to comply with CIPA requirements; or (3) if applicable, that the requirements of CIPA do not apply, because the applicant is not receiving discounted internet access, internet services, or internal connections. The Commission concludes that its approach will best ensure full accountability and compliance on the part of all schools and libraries, while minimizing administrative burdens and costs for applicants and the Commission. To streamline the application and reimbursement process, the CIPA certifications will be included on the FCC Form 471 that will be used for the Emergency Connectivity Fund Program and will not be on a separate FCC form.

*L. Protections Against Waste, Fraud, and Abuse*

108. The Commission takes seriously its obligation to be a careful steward of the Emergency Connectivity Fund, and to protect the Program from waste, fraud, and abuse. The Commission is committed to ensuring the integrity of the Emergency Connectivity Fund Program and will pursue instances of waste, fraud, or abuse under its own procedures and in cooperation with law enforcement agencies. The specific procedures identified below regarding asset inventory requirements, document retention requirements, the prohibition on gifts, certifications, audits, and treatment of eligible equipment are tools at the Commission's disposal to protect the Emergency Connectivity Fund and to ensure the limited funding is used for its intended purposes to support and enable remote learning for students, school staff, and library patrons nationwide.

1. Device and Service Inventory Requirements

109. The Commission requires Emergency Connectivity Fund Program participants to maintain inventories of devices and services purchased with Program support. Commenters are very supportive of requiring Emergency Connectivity Fund Program participants to maintain device and service inventories, which are also required in the E-Rate Program. Requiring eligible entities to keep and maintain inventories for eligible equipment and services purchased through the Emergency Connectivity Fund Program ensures that schools and libraries know where the Emergency Connectivity Fund-supported equipment and services are located and that they are being used consistent with the same requirement in the E-Rate Program. The Commission is sympathetic to concerns expressed by some commenters that keeping track of equipment in the homes of students and library patrons is more difficult than maintaining an inventory list of equipment in a school or library. The Commission acknowledges the fact that some loss of equipment as a result of students, school staff, or library patrons breaking or losing the equipment or moving out of the area and not returning it, and other similar scenarios is to be expected and is not *per se* evidence of waste, fraud and abuse by the applicants. However, it is the obligation of schools and libraries to keep track of and document the devices and other equipment that they distribute, and that includes documenting information about missing, lost, or damaged equipment.

110. For the Emergency Connectivity Fund Program, the asset inventory for devices provided to individuals, must include the following information: (a) Device type (*i.e.,* laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the person to whom the device was provided; and (e) the dates the device was loaned out and returned to the school or library. The inventory for devices not provided to individual students, school staff, or library patrons, but used to provide service to multiple eligible users, for example, a Wi-Fi hotspot used to provide service on a school bus, must include the following information: (a) Device type (*i.e.,* laptop, tablet, mobile hotspot, modem/router); (b) device make/model; (c) equipment serial number; (d) the name of the school or library employee responsible for that device; and (e) the dates the device was in service.

111. The Commission further requires Emergency Connectivity Fund Program participants to maintain a record of services purchased with Emergency Connectivity Fund support. This record of services must include the following information: (a) Type of service provided (*i.e.,* DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: Upload and download speeds and monthly data cap; (c) the name(s) of the person(s) to whom the service was provided; and for fixed broadband service; (d) the service address, and (e) the installation date of service: And (f) the last date of service (as applicable). The inventory for service not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users must include the following information: (a) Type of service provided (*i.e.,* DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including: Upload and download speeds and monthly data cap; and (c) the name of the school or library employee responsible for the service; (d) a description of the intended service area; and for fixed broadband service; (e) the service address; (f) the installation date of service, and (g) the last date of service (as applicable).

2. Document Retention Requirements

112. The Commission also adopts records retention rules for the Emergency Connectivity Fund Program. Specifically, the Commission requires Emergency Connectivity Fund Program

participants to retain records related to their participation in the Program sufficient to demonstrate compliance with all Program rules for at least 10 years from the last date of service or delivery of equipment. This 10-year document retention requirement is consistent with the document retention requirement in the E-Rate Program, and many commenters were supportive of conforming the document retention requirements of the two programs. Doing so allows E-Rate participants to rely on their existing retention polices and mitigates the confusion that different retention periods might create. Some commenters supported a shorter document retention period, explaining that the emergency nature of the Emergency Connectivity Fund Program makes the 10-year document retention period too long. The Commission finds some of the shorter suggested document retention periods of only one or two years inadequate to protect the integrity of the Fund—as they would not provide sufficient time to uncover and investigate instances of waste, fraud, and abuse. Although the Commission has adopted shorter document retention periods for both the Emergency Broadband Benefit Program and the COVID–19 Telehealth Program, the Commission notes that Emergency Connectivity Fund Program support may be available through September 30, 2030 and given the size of the fund, $7.17 billion, a longer document retention period is reasonable for this Program. On balance, the Commission finds that a 10-year period is appropriate for the Emergency Connectivity Program, because it allows the Commission the ability to protect the integrity of the Emergency Connectivity Fund Program and is consistent with the document retention requirements for the E-Rate Program. Participants are further required to present this information upon request to the Commission or its delegates, including USAC, as well as to the Commission's Office of Inspector General.

3. Gift Rule

113. In balancing the longstanding goal of fair and open procurement of eligible equipment and services, with the efforts made to date by schools and libraries and service providers to meet remote learning needs during the pandemic, the Commission agrees with commenters that gift restrictions should apply to the Emergency Connectivity Fund Program. As AT&T explains, not applying the gift rule ''could compromise fair and open procurement.'' The Commission recognizes that many schools and libraries may have taken advantage of free or discounted connections and devices offered by service providers over the course of the pandemic as a result of the waiver of the E-Rate gift rule granted by the Bureau last year. That waiver currently enables service providers to offer and provide, and schools and libraries to solicit and accept improved broadband connections or equipment for remote learning through June 30, 2021. Moreover, it is impractical to try to impose restrictions on activity that occurred before Congress established the Emergency Connectivity Fund.

114. Therefore, the Commission adopts gift restrictions for the Emergency Connectivity Fund Program that take into account that waiver. The gift restrictions the Commission adopts for the Program prohibit eligible schools and libraries receiving support through the Emergency Connectivity Fund Program, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards, from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in the Emergency Connectivity Fund Program. Participating service providers are likewise prohibited from offering or providing any gift or other thing of value to eligible entities, including their employees, officers, representatives, agents, independent contractors, and individuals who are on the governing boards.

115. In light of the extraordinary needs of schools and libraries to meet the remote learning needs of students, school staff, and library patrons during the pandemic, and the existing partial waiver of the gift rule in the E-Rate program, the Commission provides an exception in the Emergency Connectivity Fund Program gift rule that allows service providers to offer and provide, and applicants to solicit and accept, broadband connections, devices, networking equipment, or other things of value that are directly related to addressing the pandemic-related needs of students, school staff, and library patrons through June 30, 2022. The Commission provides this limited exception for the Emergency Connectivity Fund Program through the end of June 2022 with the hope that by the end of this coming school year, the pandemic-related needs of schools and libraries for broadband connections, devices and networking equipment will have, for the most part, been met. Should that not be the case, affected parties will be able to seek a waiver of the gift rules, following the sunset of this exception. The Commission finds that this approach protects the integrity of the procurement of purchases through the Emergency Connectivity Fund Program without unnecessarily burdening applicants or hindering beneficial partnerships between participating service providers, schools, and libraries that support remote learning efforts during these unprecedented times.

4. Certifications

116. As an additional measure to safeguard the Emergency Connectivity Fund from waste, fraud, and abuse, the Commission requires participants to provide several certifications as part of the application and invoicing processes. The Commission has found, and participants largely agree, that the use of certifications are a key compliance mechanism to protect the limited funds from waste, fraud, and abuse. All certifications must be made subject to the provisions against false statements contained in the Communications Act and Title 18 of the United States Code.

117. *Compliance with Local, State, and Tribal Procurement Requirements Certification.* To streamline and promote an efficient application process without adopting competitive bidding requirements for the Emergency Connectivity Fund Program, applicants will be required to certify as part of the FCC Form 471 that they have complied with all applicable local, state, and Tribal procurement requirements for any equipment and services purchased, or that will be purchased, with Emergency Connectivity Fund Program support. Schools and libraries that are not subject to public procurement requirements must certify that that have complied with their own procurement processes and requirements, such as those included in a written charter. Complying with local, state, and Tribal procurement rules is an important safeguard to ensure that costs for eligible equipment and services are reasonable and cost-effective. If applicants are unable or unwilling to certify that they have complied with local, state, or Tribal procurement requirements, they will not receive support from the Emergency Connectivity Fund Program. The Commission recognizes this may cause hardship for certain schools and libraries, but given the importance of protecting the Emergency Connectivity Fund Program, the Commission must ensure applicants are compliant with local, state, or Tribal procurement requirements to receive commitments

and reimbursements through the Program.

118. *Duplicate Funding Certification.* To avoid duplicative funding, protect against waste, fraud, and abuse, and to stretch the limited support available through the Emergency Connectivity Fund Program, the Commission will not provide support from the Fund for eligible equipment and services that have already been reimbursed through other Federal pandemic relief programs (*e.g.,* CARES Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan); state programs specifically targeted to providing funding for eligible equipment and services; other external sources of funding or gifts specifically targeted to providing funding for eligible equipment and services. For example, if a student's household is receiving support from the Emergency Broadband Benefit Program for broadband internet access connectivity, the student would not be eligible for broadband connectivity under the Emergency Connectivity Fund Program. Commenters are supportive of adopting this limitation to stretch the limited funds.

119. However, the Commission also agrees with commenters that argue schools and libraries should be able to request reimbursement for a portion of the costs of eligible equipment and services if they received funding from another source for only a portion of the costs of that equipment or services. For example, the California Public Utilities Commission (CPUC) explains that it established the California Teleconnect Fund Distance Learning Discount in March 2020 to provide a 50% discount on monthly recurring charges for mobile data services (hotspots) to qualifying K–12 schools, libraries, and other community-based organizations. The Commission agrees that the schools and libraries that received 50% discounts through this Program should still be able to seek reimbursement through the Emergency Connectivity Fund Program for the portion of the costs that were not covered by the CPUC's program. The Commission therefore makes clear that schools and libraries may request and receive reimbursement for the portion of the costs of eligible equipment and services that were not covered through other sources of funding.

120. The Commission agrees, to an extent, with commenters that argue that if applicants were able to pay for eligible equipment and services through a financial gift or donation, that they should be allowed to also seek reimbursement through the Emergency Connectivity Fund in some situations. If the donor specified that the gift was to be used for the type of equipment or services at issue, the applicant cannot seek to use the Emergency Connectivity Fund Program as a second source of funding for the same equipment or service. But, if the school or library simply used general funds it had available to it as the result of gifts or donations, it can seek reimbursement of the cost of the equipment or services from the Emergency Connectivity Fund Program.

121. To implement this prohibition on requesting or receiving duplicative funding, the Commission will require applicants to certify, on the application for funding and on the invoicing form that they are not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed with other Federal pandemic-relief funding (*e.g.,* CARES Act, Emergency Broadband Benefit Program, Emergency Connectivity Fund Program); targeted state funding; other external sources of targeted funding or targeted gifts; or eligible for discounts through the schools and libraries universal service support mechanism or other universal service support mechanisms. The Commission takes this action to ensure that the limited Emergency Connectivity Fund Program support will be used for its intended purposes and if the eligible equipment and services were reimbursed through other Federal funds or other sources targeted for those purposes, the applicants should not be seeking funding through the Emergency Connectivity Fund Program.

122. *Non-Usage Certification.* In order to ensure that the Emergency Connectivity Fund Program makes the best use of limited funding, the notification sought comment on whether service providers providing monthly services reimbursed through the Emergency Connectivity Fund should be required to report and validate usage of the supported services. The notification also sought comment on whether, if there is non-usage during a service month, service providers should be required 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 for that service month. The notification further sought comment on whether service providers should also be required to certify that they have notified the school or library regarding any non-usage during a service month and have removed charges from such non-usage from the invoices submitted to the school or library for payment. There was widespread agreement that such actions to address non-usage would be overly burdensome on both the service providers and the applicants.

123. Based on the record, the Commission finds that the better course will be to have applicants certify on requests for reimbursement (*i.e.,* the invoicing form) that the equipment and services are being primarily used for educational purposes by students, school staff, or library patrons and both applicants and service providers are not willfully or knowingly requesting reimbursement for equipment or services that are not being used. Participants should take reasonable actions to monitor and track the usage of equipment and services that are purchased and reimbursed through the Emergency Connectivity Fund, for example, requiring their service providers to provide monthly reports or other information on data use. The Commission adopts these measures to ensure that the equipment and services purchased through the Emergency Connectivity Fund Program are being used for educational purposes and to prevent wasteful spending for unused services, and determine the certification requirement strikes a fair balance between the burdens on applicants and service providers to monitor non-usage and the need to protect the Emergency Connectivity Fund Program from wasteful non-usage.

124. *Additional Certification Requirements.* The Commission also requires participants when submitting requests for reimbursement (*i.e.,* invoicing forms) to provide several additional certifications. Participants will also certify that they are seeking funding only for eligible equipment and services. In addition, consistent with the asset and service inventories and records retention requirements discussed above, participants will be required to certify that they maintain an asset inventory, an inventory of services provided, and data regarding fixed broadband services. Participants will also be required to certify that they will retain all program records for 10 years following the last date of service, as well as to their agreement to participate in audits and other post-commitment reviews as may be required.

5. Audits

125. As the Commission has for all the Universal Service Fund Programs, the Commission considers audits in the Emergency Connectivity Fund Program to be an important tool in ensuring compliance, and identifying instances of waste, fraud, and abuse. Every dollar

lost to waste, fraud, and abuse is funding that does not go to provide devices or connectivity to students, school staff, or library patrons. Not surprisingly, commenters are largely supportive of establishing audit procedures for the Emergency Connectivity Fund Program. To that end, the Commission delegates authority to the Office of the Managing Director to develop and implement an audit process for participants that complies with the requirements and procedures of the Emergency Connectivity Fund Program. The Office of the Managing Director may obtain the assistance of third parties, including but not limited to USAC, in carrying out this effort.

126. In developing audit requirements, the Office of the Managing Director should be mindful of the emergency nature of the pandemic and the intended use for eligible equipment and services purchased with Emergency Connectivity Fund Program support. Specifically, Emergency Connectivity Fund participants shall be subject to audits and other investigations to evaluate compliance with the statutory and regulatory requirements for the Emergency Connectivity Fund, including what equipment and services may be purchased using support from the Emergency Connectivity Fund, and how the equipment and services may be used. Funding recipients are required to maintain documentation sufficient to demonstrate their compliance with program rules for ten years after the last date of delivery of services or connected devices supported through the Emergency Connectivity Fund Program. Upon request, Emergency Connectivity Fund Program participants must submit documents sufficient to demonstrate compliance with Program rules. Additionally, schools and libraries participating in the Emergency Connectivity Fund Program, may be subject to other audit processes including audits by the Office of Inspector General, and certain schools and libraries participating in the Emergency Connectivity Fund Program that meet the thresholds for being audited under the Single Audit Act are subject to a single audit that contains the FCC compliance supplement for the Emergency Connectivity Fund Program.

127. The Commission is also mindful of the privacy concerns raised regarding providing personally identifiable information to USAC or Commission staff about the individual (*e.g.,* student, school staff member, or library patron) that is receiving and using the Emergency Connectivity Fund-supported equipment and/or services. USAC and Commission staff will abide by all applicable Federal and state privacy laws. The Commission also directs USAC and Commission staff to take into account the importance of protecting the privacy of students, school staff and library patrons, to design requests for information from schools and libraries that minimize the need to produce information that might reveal personally identifiable information, and to work with auditors to accept anonymized or deidentified information in response to requests for information wherever possible. If anonymized or deidentified information regarding the students, school staff, and library patrons is not sufficient for auditors' or investigative purposes, the auditors or investigators may request that the school or library obtain consent of the parents or guardians, for students, and the consent of the school staff member or library patron to have access to this personally identifiable information or explore other legal options for obtaining personally identifiable information. In the event consent is not available, the Commission recognizes that the auditors may need to use other procedures or take different actions to determine if there is any evidence of waste, fraud or abuse in the Emergency Connectivity Fund Program.

6. Treatment of Eligible Equipment During and After the COVID–19 Emergency Period

128. In order to protect against waste, fraud, and abuse in the Emergency Connectivity Fund Program, and consistent with the current E-Rate rules, the Commission prohibits schools and libraries from selling, reselling, or transferring equipment funded through the Emergency Connectivity Fund Program in consideration of money for three (3) years after its purchase. The Commission concludes that eligible equipment purchased with Emergency Connectivity Fund Program support that has been in use for at least three years will be considered obsolete. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded. This approach is consistent with section 254(h)(3) of the Communications Act, which applies to the E-Rate Program, and the existing E-Rate Program rules, which prohibit sale, resale or transfer of E-Rate-supported equipment for five years. The Commission adopts this shorter three-year time frame for the Emergency Connectivity Fund, because the Commission agrees with commenters that devices and other equipment loaned to students, school staff, and library patrons and installed off-campus will likely have a shorter average life cycle than equipment installed and maintained on school or library premises.

129. The Commission considers but reject suggestions that the Commission ''should not prohibit the sale, resale, or transfer of the purchased equipment for anything of value despite the current E-Rate Program rules so long as any such proceed or value be employed for educational or library purposes.'' Congress has authorized the use of billions of dollars for purchase of specific types of equipment, and the Commission thinks permitting schools and libraries to trade in that equipment to fund other programs or services would be inconsistent with Congress' intent.

130. The Commission hopes and expects that the useful life of much of the eligible equipment purchased through the Emergency Connectivity Fund Program will extend beyond the COVID–19 emergency period, and that schools and libraries can continue to use the equipment as the pandemic recedes. At the same time, the Commission recognizes that needs may change over the next few years. To that end, commenters urge the Commission to provide schools and libraries the flexibility to determine how such equipment should be treated after the pandemic ends. The Commission agrees with commenters that argue that schools and libraries are in the best position to determine the best use of their equipment. The Commission therefore allows participating schools and libraries to use the equipment after the emergency period for such purposes as the school or library considers appropriate, provided that the equipment be used for educational purposes. The Commission finds this approach will provide schools and libraries the flexibility to account for the limited lifespan of eligible equipment, while simultaneously combating potential waste, fraud, and abuse.

*M. Cost-Effectiveness Analysis*

131. The American Rescue Plan requires the Commission to take action by May 10, 2021 to promulgate rules for the provision of support from the Emergency Connectivity Fund to schools and libraries for specified equipment and services. The Commission has no discretion to diverge from statutory direction 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, the Commission considers whether the actions the Commission takes in this document are the most cost-effective means to implement this legislation, recognizing that these actions are designed to mitigate a crisis and require swift action.

132. In that regard, because eligible schools and libraries are already very familiar with the E-Rate Program, by leveraging, to the extent feasible, existing E-Rate rules and processes to provide support from the Emergency Connectivity Fund Program, the Commission is adopting the most cost-effective means currently at its disposal for timely implementation of the legislative direction. Those rules have been developed through a series of careful, and iterative rulemaking proceedings, and are well understood. The alternative of devising new approaches would lengthen the process of implementation and, given that they would need to be developed quickly and without the degree of scrutiny usually applied, they would be prone to unintended consequences. Further, a new process would require the benefiting schools and libraries to deal with the unfamiliar, increasing the time and effort they would necessarily expend exactly when both those things come at a premium, and increasing the likelihood of error. The Commission also finds that limiting funding to schools which certify that they are using support from the Emergency Connectivity Fund Program to satisfy otherwise unmet needs for connectivity or for devices of students or staff make its actions more cost-effective than other alternatives.

*N. Enforcement*

133. The notification sought comment on imposing administrative forfeitures and other penalties on Emergency Connectivity Fund Program participants found to be in violation of the Program rules and requirements. The record supports the application of the Commission's existing enforcement powers, including imposing administrative forfeitures and other penalties on participating providers that violate the Program rules and requirements, to protect the integrity of the Emergency Connectivity Fund Program, thus the Commission concludes it is appropriate to use the Commission's existing, statutorily permitted enforcement powers for the Program. The Commission also finds it appropriate to apply the Commission's suspension and debarment rules currently applicable to the Universal Service Fund Programs to the Emergency Connectivity Fund Program participants. The Commission will withhold Emergency Connectivity Fund Program support from participants found to be in violation of the Program rules, if appropriate, and will also seek to recoup improperly disbursed funds, in addition to appropriate enforcement penalties. The Commission thinks T-Mobile's concern that an ''unduly strict approach to enforcement'' could discourage participation in the Program and undermine the goals of the Program is misplaced. The rules the Commission adopts in this document are straightforward and consistent with the goals of the statute, and the Commission does not think a safe harbor to protect against good faith errors is warranted. Instead, the Commission finds that these enforcement mechanisms sufficiently balance the need for widespread participation in the Emergency Connectivity Fund Program with the importance of maintaining the Program's integrity and protecting the Program from waste, fraud, and abuse.

*O. Delegations to the Bureau and the Office of Managing Director*

134. The Commission delegates authority to the Bureau, in consultation with the Office of the Managing Director, to implement the decisions reached here. Those implementing decisions may include providing additional detail and specificity to the requirements of the Program to conform with the decisions in this Report and Order, thus ensuring the efficient functioning of this Program.

135. In addition, the Commission delegates financial oversight of this program to the Commission's Managing Director and direct the Office of the Managing Director to work in coordination with the Bureau to ensure that all financial aspects of the program have adequate internal controls. These duties fall within the Office of the Managing Director's current delegated authority to ensure that the Commission operates in accordance with Federal financial statutes and guidance. Such financial oversight must be consistent with the rules adopted in this Report and Order. The Office of the Managing Director performs this role with respect to USAC's administration of the Commission's Universal Service Programs, the COVID–19 Telehealth Program, and the Emergency Broadband Benefit Program, and the Commission anticipates that the Office of the Managing Director will leverage existing policies and procedures, to the extent practicable and consistent with the American Rescue Plan, to ensure the efficient and effective management of the Emergency Connectivity Fund Program. Finally, the Commission provides that the Office of the Managing Director is required to consult with the Bureau on any policy matters affecting the Emergency Connectivity Fund Program, consistent with § 0.91(a) of the Commission's rules. The Office of the Managing Director, in coordination with the Bureau, may issue additional directions to USAC and Emergency Connectivity Fund Program participants in furtherance of the decisions reached here.

136. The Commission directs the Bureau, as well as the Commission's Consumer and Governmental Affairs Bureau (CGB), to conduct outreach to educate eligible schools and libraries about the Emergency Connectivity Fund Program, and to coordinate, as necessary, with Congressional offices, other Federal agencies, and state, local and Tribal governments. The Commission also directs USAC to develop and implement a communications strategy, under the oversight of the Bureau, in coordination with CGB, to provide training and information necessary for schools and libraries to successfully participate in the Emergency Connectivity Fund Program and provide support to students, school staff, and library patrons who lack adequate access to connected devices and broadband connections necessary for remote learning. At the suggestion of several stakeholder groups, the Commission also directs USAC to engage with external users for the testing of any new systems for the Emergency Connectivity Fund Program. Outreach, education, and engagement with eligible schools and libraries will be an important tool in ensuring the Emergency Connectivity Fund Program meets its goals of providing connected devices and broadband connections to students, school staff, and library patrons that otherwise would lack sufficient access and be unable to engage in remote learning and virtual library services.

137. The Commission recognizes that, once implementation of the Emergency Connectivity Fund Program begins, the Bureau or USAC may encounter unforeseen issues or problems with the administration of the Program that will need to be resolved. To promote maximum effectiveness and smooth administration of the Emergency Connectivity Fund Program, the Commission delegates this authority to Bureau staff to address and resolve such issues related to the administration of the Emergency Connectivity Fund Program provided that doing so is

consistent with the decisions the Commission reaches here in this document.

**III. Procedural Matters**

138. *Administrative Procedure Act Exception.* The Commission finds good cause exists for making the rules the Commission adopts in this document effective May 28, 2021. The Administrative Procedure Act (APA) provides that with a showing of ''good cause,'' an agency is permitted to make rules effective before 30 days after publication in the **Federal Register**. ''In determining whether good cause exists, an agency should 'balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.' '' As a general matter, the Commission believes that the APA requirements are an essential component of its rulemaking process. In this case, however, because of the unprecedented nature of this pandemic and the need for immediate action, the Commission finds there is good cause to make the Program rules effective May 28, 2021. Waiting an additional 30 days to make this relief available ''would undermine the public interest by delaying'' Congress' intent to quickly provide resources to eligible schools and libraries to provide the greatly needed connectivity and connected devices to enable students, school staff, and library patrons to fully engage in remote learning during the COVID–19 emergency period.

139. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a final regulatory flexibility analysis ''whenever an agency promulgates a final rule under [5 U.S.C. 553], after being required by that section or any other law to publish a general notice of proposed rulemaking.'' The Commission finds good cause that the notice and public procedure on the rule adopted herein are impracticable, unnecessary, or contrary to the public interest, and thus no final regulatory flexibility analysis is required.

140. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that the regulations implementing the Emergency Connectivity Fund Program are a ''major rule'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission finds for good cause that notice and public procedure on the rules adopted herein are impracticable, unnecessary, or contrary to the public interest, and therefore this Report and Order will become effective upon publication in the **Federal Register** pursuant to 5 U.S.C. 808(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

141. *Paperwork Reduction Act.* This document contains new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521. It was submitted to the Office of Management and Budget (OMB) for review and emergency processing pursuant to section 3507(j) of the PRA, 44 U.S.C. 3507(j). On May 20, 2021, OMB has approved, for a period of six months, the information collection requirements contained in 47 CFR 54.1710(a)–(b), 54.1711(a)–(b), 54.1714, and 54.1715. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1286. The forgoing notice is required by the Paperwork Reduction of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507. The March 22, 2021 notification sought specific comment on how the Commission may reduce the information collection burden on small business concerns with fewer than 25 employees pursuant to 44 U.S.C. 3506(c)(4).

142. *Late-Filed Comments.* The Commission notes there were several comments filed in this proceeding after the April 5, 2021 comment deadline. In the interest of having as complete and accurate record as possible, and because the Commission would be free to consider the substance of those filings as part of the record in any event, the Commission will accept the late-filed comments and waive the requirements of 47 CFR 1.46(b), and have considered them in this Report and Order. This does not apply to late-filed comments that are prohibited under the Commission's *ex parte* rules as modified in this proceeding by the Wireline Competition Bureau in a Public Notice dated April 30, 2021.

**IV. Ordering Clauses**

143. Accordingly, *it is ordered* that, pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Public Law 117–2, 135 Stat. 4, this Report and Order *is adopted* and *shall become effective* May 28, 2021.

144. *It is further ordered* that, pursuant to the authority contained in section 808(2) of the Congressional Review Act, 5 U.S.C. 808(2), and 5 U.S.C. 553(d), this Report and Order *shall become effective* May 28, 2021.

145. *It is further ordered,* that pursuant to the authority contained in section 7402, Title VII of the American Rescue Plan Act, 2021, Public Law 117–2, 135 Stat. 4, part 54 of the Commission's rules, 47 CFR part 54, is *amended* as set forth below, and such rule amendments shall be effective May 28, 2021.

146. *It is further ordered* that the Commission *shall send* a copy of this Report and Order to the Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 54**

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons set forth above, part 54 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

■ 2. Add subpart Q to read as follows:

## Subpart Q—Emergency Connectivity Fund

Sec.

54.1700 Terms and definitions.
54.1701 Eligible recipients.
54.1702 Emergency Connectivity Fund eligible equipment and services.
54.1703 Emergency Connectivity Fund competitive bidding requirements.
54.1704 Emergency Connectivity Fund gift restrictions.
54.1705 Emergency Connectivity Fund eligible uses.
54.1706 Emergency Connectivity Fund service locations.
54.1707 Emergency Connectivity Fund reasonable support amounts.
54.1708 Emergency Connectivity Fund cap and requests.
54.1709 Availability period of the Emergency Connectivity Fund.

54.1710 Emergency Connectivity Fund requests for funding.
54.1711 Emergency Connectivity Fund requests for reimbursement.
54.1712 Duplicate support.
54.1713 Treatment, resale, and transfer of equipment.
54.1714 Audits, inspections, and investigations.
54.1715 Records retention.
54.1716 Children's internet Protection Act certifications.
54.1717 Administrator of the Emergency Connectivity Fund.
54.1718 Appeal and waiver requests.

**§ 54.1700 Terms and definitions.**

(a) *Advanced telecommunications and information services.* ''Advanced telecommunications and information services'' are services, as such term is used in section 254(h) of the Communications Act, 47 U.S.C. 254(h).

(b) *Billed entity.* A ''billed entity'' is the entity that remits payment to service providers for equipment and services rendered to eligible schools and libraries.

(c) *Connected devices.* ''Connected devices'' are laptop computers or tablet computers that are capable of connecting to advanced telecommunications and information services. Connected devices do not include desktop computers or smartphones.

(d) *Consortium.* A ''consortium'' is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

(e) *COVID–19 emergency period.* The ''COVID–19 emergency period'' has the meaning given the term in title VII, section 7402(d)(5), Public Law 117–2 (the American Rescue Plan Act).

(f) *Educational purposes.* For purposes of this subpart, activities that are integral, immediate, and proximate to the education of students in the case of a school, or integral, immediate, and proximate to the provision of library services to library patrons in the case of a library, qualify as ''educational purposes.''

(g) *Elementary school.* An ''elementary school'' means an elementary school as defined in 20 U.S.C. 7801, a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

(h) *Library.* A ''library'' includes:

(1) A public library;

(2) A public elementary school or secondary school library;

(3) A Tribal library;

(4) An academic library;

(5) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(6) 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 paragraph (h).

(i) *Library consortium.* A ''library consortium'' is 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 the purposes of this subpart, references to library will also refer to library consortium.

(j) *National school lunch program.* The ''national school lunch program'' is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced-price lunches to economically-disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced-price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(k) *Secondary school.* A ''secondary school'' means a secondary school as defined in 20 U.S.C. 7801, a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

(l) *Wi-Fi.* ''Wi-Fi'' is a wireless networking protocol based on Institute of Electrical and Electronics Engineers standard 802.11.

(m) *Wi-Fi hotspot.* A ''Wi-Fi hotspot'' is a device that is capable of receiving advanced telecommunications and information services, and sharing such services with another connected device through the use of Wi-Fi.

**§ 54.1701 Eligible recipients.**

(a) *Schools.* (1) Only schools meeting the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.1700, and not excluded under paragraph (a)(2) or (3) of this section shall be eligible for support under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for support under this subpart.

(3) Schools with endowments exceeding $50,000,000 shall not be eligible for support under this subpart.

(b) *Libraries.* (1) Only libraries eligible for assistance from a state library administrative agency under the Library Services and Technology Act and not excluded under paragraph (b)(2) or (3) of this section shall be eligible for support under this subpart.

(2) A library's eligibility for Emergency Connectivity Fund support shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for support as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for support under this subpart.

(c) *Consortia.* For consortia, reimbursement through the Emergency Connectivity Fund shall apply only to the portion of eligible equipment and services purchased by eligible schools and libraries and used by students, school staff, or library patrons as provided for by this subpart.

**§ 54.1702 Emergency Connectivity Fund eligible equipment and services.**

(a) *Eligible equipment.* For the purposes of this subpart, the following shall be considered equipment eligible for Emergency Connectivity Fund support:

(1) Wi-Fi hotspots;

(2) Modems;

(3) Routers;

(4) Devices that combine a modem and a router; and

(5) Connected devices.

(b) *Eligible services.* (1) For purposes of this subpart, except as provided in paragraph (b)(2) of this section, services eligible for Emergency Connectivity Fund support shall be commercially-available fixed or mobile broadband

internet access services, including those available for purchase by schools and libraries through bulk purchasing arrangements.

(2) For eligible entities unable to provide students, school staff, or library patrons commercially-available fixed or wireless broadband internet access services, services eligible for Emergency Connectivity Fund support shall include the reasonable costs of construction of new networks, including self-provisioned networks included in the Emergency Connectivity Fund eligible services list; and/or the reasonable costs of customer premises equipment to receive datacasting services.

**§ 54.1703 Emergency Connectivity Fund competitive bidding requirements.**

A school, library, or consortium seeking to participate in the Emergency Connectivity Fund must comply with all applicable state, local, or Tribal procurement requirements for all equipment and services supported by the Emergency Connectivity Fund.

**§ 54.1704 Emergency Connectivity Fund gift restrictions.**

(a) *Gift restrictions.* (1) Subject to paragraphs (a)(3) and (4) of this section, an 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 Emergency Connectivity Fund 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 in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individuals or entities subject to this subpart, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (a)(2)(ii) of this section.

(2) For purposes of this paragraph (a):

(i) The terms ''school, library, or consortium'' include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants or independent contractors of such entities involved on behalf of such school, library, or consortium with the Emergency Connectivity Fund Program, including individuals who prepare, approve, sign or submit Emergency Connectivity Fund Program applications, or other forms related to the Emergency Connectivity Fund Program, or who prepare bids, communicate, or work with Emergency Connectivity Fund Program service providers, Emergency Connectivity Fund Program consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Emergency Connectivity Fund Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph (a) shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible school, library, or consortium that includes an eligible school or library, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible school, library, or consortium; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible school, library, or consortium that includes an eligible school or library in the support of its programs as long as such contributions are not directly or indirectly related to Emergency Connectivity Fund procurement activities or decisions and are not given by service providers to circumvent Emergency Connectivity Fund Program rules in this subpart.

(b) *COVID–19 pandemic exception.* Any service provider may offer and provide, and any applicant may solicit and accept, broadband connections, devices, networking equipment, or other things of value directly related to addressing remote learning needs of students, school staff, and library patrons due to the COVID–19 pandemic through June 30, 2022.

**§ 54.1705 Emergency Connectivity Fund eligible uses.**

Eligible equipment and services purchased with Emergency Connectivity Fund support must be used primarily for educational purposes, as defined in § 54.1700.

**§ 54.1706 Emergency Connectivity Fund service locations.**

(a)(1) Eligible schools and libraries can request and receive support for the purchase of eligible equipment and services for use by:

(i) In the case of a school, students and school staff at locations other than the school; and

(ii) In the case of a library, patrons of the library at locations other than the library.

(2) Service locations may include, but are not limited to, homes, community centers, churches, school buses, bookmobiles, and any other off-campus locations where students, school staff, and library patrons are engaged in remote learning activities.

(b) Eligible schools and libraries cannot request and receive support from the Emergency Connectivity Fund for the purchase of eligible equipment and services for use solely at the school or library during the COVID–19 emergency period. However, some use of eligible equipment, as defined in § 54.1700, and eligible mobile services, purchased for off-campus may be used at the school or library is permitted.

(c) Emergency Connectivity Fund support for eligible equipment and services is limited to no more than one fixed broadband internet access connection per location, and one connected device and one Wi-Fi hotspot device per student, school staff member, or library patron. For purposes of the per-location limitation imposed on fixed broadband internet access services in this paragraph (c), each unit in a multi-tenant environment is a separate location for purposes of this paragraph (c).

**§ 54.1707 Emergency Connectivity Fund reasonable support amounts.**

Except as provided elsewhere in this subpart, in providing support from the Emergency Connectivity Fund, the Commission shall reimburse 100% of the costs associated with the eligible equipment and/or services, except that any reimbursement of for the costs associated with any eligible equipment or service may not exceed a reasonable support amount as provided in paragraphs (a) and (b) of this section.

(a) Support amounts are limited up to $400 for connected devices and up to $250 for Wi-Fi hotspots.

(b) The Wireline Competition Bureau is delegated authority to provide guidance to the Administrator to assess the reasonableness of requests for other eligible equipment or services, including those identified by the Administrator as containing costs that are inconsistent with other requests.

**§ 54.1708 Emergency Connectivity Fund cap and requests.**

(a) *Cap.* (1) The Emergency Connectivity Fund shall have a cap of $7,171,000,000.

(2) $1,000,000 to remain available until September 30, 2030, for the Inspector General of the Commission to conduct oversight of support provided through the Emergency Connectivity Fund.

(3) Not more than 2% of the cap, or approximately $143,420,000, shall be used by the Commission and the Administrator for administration of the Emergency Connectivity Fund.

(b) *Requests.* The Administrator shall implement an initial filing window, covering funding for purchases made between July 1, 2021 and June 30, 2022 for eligible equipment and services provided to students, school staff, and library patrons who would otherwise lack connected devices and/or broadband internet access services sufficient to engage in remote learning. All schools and libraries filing an application within that the initial filing period will have their applications treated as if they were simultaneously received. The initial filing period shall conclude after 45 days. If demand does not exceed available funds for the first filing window, the Wireline Competition Bureau will direct the Administrator to open a second application window for schools and libraries to seek funding for eligible equipment and services schools and libraries previously purchased to address the needs of students, school staff, and library patrons who would otherwise have lacked access to the equipment or services sufficient to engage in these activities during the COVID–19 pandemic. During this second application window, applicants will be able to submit requests for funding for purchases made from March 1, 2020 to June 30, 2021. However, in consideration of the importance of providing support for unconnected students, in the event that demand for prospective support in the first window appears to be far short of meeting current needs, the Commission may consider opening a second prospective window before opening an application window to fund previously purchased eligible equipment and services. If demand does not exceed available funds after the close of the second filing window, the Wireline Competition Bureau may direct the Administrator to open additional filing windows until the funds are exhausted or the emergency period ends, whichever is earlier.

(c) *Rules of distribution.* (1) When the filing window(s) described in paragraph (b) of this section closes, the Administrator shall calculate the total demand for support submitted by applicants during the filing window. If total demand exceeds the total support available, the Administrator shall allocate funds to these requests for support, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries category one discount matrix in § 54.505(c) adjusted to provide a five percent increase for rural schools and libraries, as shown in the following matrix.

TABLE 1 TO PARAGRAPH (c)(1)

| % of students eligible for National School Lunch Program | Emergency connectivity fund prioritization matrix | |
|---|---|---|
| | Discount level | |
| | Urban | Rural |
| < 1 | 20 | 30 |
| 1–19 | 40 | 55 |
| 20–34 | 50 | 65 |
| 35–49 | 60 | 75 |
| 50–74 | 80 | 85 |
| 75–100 | 90 | 95 |

(2) Schools and libraries eligible for a 95 percent discount shall receive first priority for the funds. The Administrator shall next allocate funds toward the requests submitted by schools and libraries eligible for an 90 percent discount, then for a 85 percent discount, and shall continue committing funds in the same manner to the applicants at each descending discount level until there are no funds remaining. If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, the Administrator shall allocate funds at that discount level using the percentage of students eligible for the National School Lunch Program.

**§ 54.1709 Availability period of the Emergency Connectivity Fund.**

The Emergency Connectivity Fund was established by Congress in the United States Treasury through an appropriation of $7.171 billion, to remain available until September 30, 2030.

**§ 54.1710 Emergency Connectivity Fund requests for funding.**

(a) *Filing of the FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive Emergency Connectivity Fund support for eligible equipment and services under this subpart shall submit a completed FCC Form 471 to the Administrator.

(1) The FCC Form 471 shall be signed by the person authorized to order eligible services for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this application on behalf of the above-named applicant and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this application has been examined and is true, accurate and complete. I acknowledge that any false statement on this application or on other documents submitted by this applicant can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or

can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, this applicant is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this application, I certify that the information contained in this application is true, complete, and accurate, and the projected expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The school meets the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.1700, does not operate as for-profit businesses, and does not have endowments exceeding $50 million.

(v) The library or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996, does not operate as for-profit businesses, and their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(vi) The school, library, or consortia listed on the FCC Form 471 application has complied with all applicable state, local, or Tribal local laws regarding procurement of services for which support is being sought.

(vii) The school or school consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to students and school staff who would otherwise lack connected devices and/or broadband services sufficient to engage in remote learning.

(viii) The library or library consortium listed on the FCC Form 471 application is only seeking support for eligible equipment and/or services provided to library patrons who have signed and returned a statement that the library patron would otherwise lack access to equipment or services sufficient to meet the patron's educational needs if not for the use of the equipment or service being provided by the library.

(ix) The school, library, or consortia is not seeking Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased and reimbursed in full with other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanism.

(x) The applicant or the relevant student, school staff member, or library patron has received the equipment and services for which funding is sought.

(xi) The equipment and services the school, library, or consortium purchases using Emergency Connectivity Fund support will be used primarily for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(xii) The school, library, or consortium will create and maintain an equipment and service inventory as required by § 54.1715.

(xiii) The school, library, or consortium has complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.

(xiv) The applicant recognizes that it may be audited pursuant to its application, that it will retain for ten years any and all records related to its application, and that, if audited, it shall produce shall records at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xv) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(2) Applicants seeking support for new network construction or end-user equipment for datacasting services through the Emergency Connectivity Fund must also certify under penalty of perjury that they sought service from existing service providers in the relevant area and that such service providers were unable or unwilling to provide broadband internet access services sufficient to meet the remote learning needs of their students, school staff, or library patrons.

(3) All information submitted as part of an FCC Form 471 application shall be treated as public and non-confidential by the Administrator.

(b) *Service substitution.* (1) A request by an applicant to substitute equipment or service for one identified on its FCC Form 471 must be in writing.

(2) The Administrator shall approve such written request where:

(i) The equipment or service has the same functionality; and

(ii) This substitution does not violate any contract provisions or state, local, or Tribal procurement law.

(3) In the event that an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. Reimbursement for substitutions shall only be provided after the Administrator has approved a written request for substitution.

(c) *Mixed eligibility equipment and services.* If equipment or service includes both ineligible and eligible components, the applicant must remove the cost of the ineligible components of the equipment or service from the request for funding submitted to the Administrator.

**§ 54.1711 Emergency Connectivity Fund requests for reimbursement.**

(a) *Submission of request for reimbursement (FCC Form 472 or FCC Form 474).* Emergency Connectivity Fund Program reimbursement for the costs associated with eligible equipment and/or services shall be provided directly to an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund Program upon submission and approval of a completed FCC Form 472 (Billed Entity Applicant Reimbursement Form) or a completed FCC Form 474 (Service Provider Invoice) to the Administrator.

(1) The FCC Form 472 shall be signed by the person authorized to submit requests for reimbursement for the eligible school, library, or consortium and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named school, library or consortium and that based on information known to me or provided to me by employees responsible for the

data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the school, library or consortium is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements in this subpart and received by either the school, library, or consortium, or the students, school staff, or library patrons as appropriate.

(v) The portion of the costs eligible for reimbursement and not already paid for by another source was either paid for in full by the school, library, or consortium, or will be paid to the service provider within 30 days of receipt of funds.

(vi) The amount for which the school, library, or consortium is seeking reimbursement from the Emergency Connectivity Fund consistent with the requirements set out in § 54.1707.

(vii) The school, library, or consortium is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full with other Federal pandemic relief funding (*e.g.,* the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Emergency Broadband Benefit Program, or other provisions of the American Rescue Plan), targeted state funding, other external sources of targeted funding, or targeted gifts or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

(viii) The equipment and services the school, library, or consortium purchased using Emergency Connectivity Fund support will be used primarily for educational purposes as defined in § 54.1700 and that the authorized person is not willfully or knowingly requesting reimbursement for equipment or services that are not being used.

(ix) The equipment and services the school, library, or consortium purchased will not be sold, resold, or transferred in consideration for money or any other thing of value, except as allowed by § 54.1713.

(x) The school, library, or consortium recognizes that it may be subject to an audit, inspection or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(xi) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(xii) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(2) The FCC Form 474 shall be signed by the person authorized to submit requests for reimbursement for the service provider and shall include that person's certification under penalty of perjury that:

(i) ''I am authorized to submit this request for reimbursement on behalf of the above-named service provider and that based on information known to me or provided to me by employees responsible for the data being submitted, I hereby certify that the data set forth in this request for reimbursement has been examined and is true, accurate and complete. I acknowledge that any false statement on this request for reimbursement or on other documents submitted by this school, library or consortium can be punished by fine or forfeiture under the Communications Act (47 U.S.C. 502, 503(b)), or fine or imprisonment under Title 18 of the United States Code (18 U.S.C. 1001), or can lead to liability under the False Claims Act (31 U.S.C. 3729–3733).''

(ii) ''In addition to the foregoing, the service provider is in compliance with the rules and orders governing the Emergency Connectivity Fund Program, and I acknowledge that failure to be in compliance and remain in compliance with those rules and orders may result in the denial of funding, cancellation of funding commitments, and/or recoupment of past disbursements. I acknowledge that failure to comply with the rules and orders governing the Emergency Connectivity Fund Program could result in civil or criminal prosecution by law enforcement authorities.''

(iii) ''By signing this request for reimbursement, I certify that the information contained in this request for reimbursement is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, sections 1001, 286–287 and 1341 and Title 31, sections 3729–3730 and 3801–3812).''

(iv) The funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund

Program rules and requirements in this subpart and received by either the school, library, or consortium, or by students, school staff, or library patrons, as appropriate.

(v) The amount for which the service provider is seeking reimbursement from the Emergency Connectivity Fund is consistent with the requirements set forth in § 54.1707.

(vi) The service provider is not willfully or knowingly requesting reimbursement for services that are not being used.

(vii) The service provider is not seeking Emergency Connectivity Fund reimbursement for eligible equipment and/or services for which it has already been paid.

(viii) The service provider recognizes that it may be subject to an audit, inspection, or investigation pursuant to its request for reimbursement, that it will retain for ten years any and all records related to its request for reimbursement, and will make such records and equipment purchased with Emergency Connectivity Fund reimbursement available at the request of any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity.

(ix) No kickbacks, as defined in 41 U.S.C. 8701 and/or 42 U.S.C. 1320a–7b, were paid or received by the applicant to anyone in connection with the Emergency Connectivity Fund.

(x) No Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained, as required by § 54.10.

(b) *Required documentation.* Along with the submission of a completed FCC Form 472 or a completed FCC Form 474, an eligible school, library, consortium that includes an eligible school or library, or service provider seeking reimbursement from the Emergency Connectivity Fund must submit invoices detailing the items purchased or ordered to the Administrator at the time the FCC Form 472 or FCC Form 474 is submitted. Applicants that seek payment from the Emergency Connectivity Fund prior to paying their service provider(s) must also provide verification of payment to the service provider(s) within 30 days of receipt of funds.

(c) *Reimbursement and invoice processing.* The Administrator shall accept and review requests for reimbursement and invoices subject to the invoice filing deadlines provided in paragraph (d) of this section.

(d) *Invoice filing deadline.* Invoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.

**§ 54.1712 Duplicate support.**

Entities participating in the Emergency Connectivity Fund may not seek Emergency Connectivity Fund support or reimbursement for eligible equipment or services that have been purchased with or reimbursed in full from other Federal pandemic-relief funding, targeted state funding, other external sources of targeted funding or targeted gifts, or eligible for discounts from the schools and libraries universal service support mechanism or other universal service support mechanisms.

**§ 54.1713 Treatment, resale, and transfer of equipment.**

(a) *Prohibition on resale.* Eligible equipment and services purchased with Emergency Connectivity Fund support shall not be sold, resold, or transferred in consideration of money or any other thing of value, except as provided in paragraph (b) of this section.

(b) *Disposal of obsolete equipment.* Eligible equipment purchased using Emergency Connectivity Fund support shall be considered obsolete if the equipment are at least three years old. Obsolete equipment may be resold or transferred in consideration of money or any other thing of value, disposed of, donated, or traded.

**§ 54.1714 Audits, inspections, and investigations.**

(a) *Audits.* Schools, libraries, consortia, and service providers shall be subject to audits and other investigations to evaluate their compliance with the statutory and regulatory requirements in this subpart for the Emergency Connectivity Fund, including those requirements pertaining to what equipment and services are purchased, what equipment and services are delivered, and how equipment and services are being used.

(b) *Inspections and investigations.* Schools, libraries, consortia, and service providers shall permit any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity to enter their premises to conduct inspections for compliance with the statutory and regulatory requirements in this subpart of the Emergency Connectivity Fund.

(c) *Production of records for audits, inspections, and investigations.* Where necessary for compliance with Federal or state privacy laws, Emergency Connectivity Fund participants may produce records regarding students, school staff, and library patrons in an anonymized or deidentified format. When requested by the Administrator or the Commission, as part of an audit or investigation, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

**§ 54.1715 Records retention.**

(a) *Equipment and service inventory requirements.* Schools, libraries, and consortia shall keep asset and service inventories as follows:

(1) For each connected device or other piece of equipment provided to an individual student, school staff member, or library patron, the asset inventory must identify:

(i) The device or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The full name of the person to whom the device or other piece of equipment was provided; and

(v) The dates the device or other piece of equipment was loaned out and returned to the school or library, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged.

(2) For each connected device or other piece of eligible equipment not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the asset inventory must contain:

(i) The device type or equipment type (*i.e.* laptop, tablet, mobile hotspot, modem, router);

(ii) The device or equipment make/model;

(iii) The device or equipment serial number;

(iv) The name of the school or library employee responsible for that device or equipment; and

(v) The dates the device or equipment was in service.

(3) For services provided to individual students, school staff, or library patrons, the service inventory must contain:

(i) The type of service provided (*i.e.,* DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The full name of the person(s) to whom the service was provided;

(iv) The service address (for fixed broadband service only);

(v) The installation date of the service (for fixed broadband service only); and

(vi) The last date of service, as applicable (for fixed broadband service only).

(4) For services not provided to an individual student, school staff member, or library patron, but used to provide service to multiple eligible users, the service inventory must contain:

(i) The type of service provided (*i.e.,* DSL, cable, fiber, fixed wireless, satellite, mobile wireless);

(ii) The service plan details, including upload and download speeds and monthly data cap;

(iii) The name of the school or library employee responsible for the service;

(iv) A description of the intended service area;

(v) The service address (for fixed broadband service only);

(vi) The installation date of the service (for fixed broadband service only); and

(vii) The last date of service, as applicable (for fixed broadband service only).

(b) *Records retention.* All Emergency Connectivity Fund participants shall retain records related to their participation in the program sufficient to demonstrate compliance with all program rules in this subpart for at least ten (10) years from the last date of service or delivery of equipment.

(c) *Production of records.* All Emergency Connectivity Fund participants shall present such records upon request any representative (including any auditor) appointed by a state education department, the Administrator, the Commission and its Office of Inspector General, or any local, state, or Federal agency with jurisdiction over the entity. When requested by the Administrator or the Commission, schools, libraries, and consortia must seek consent to provide personally identification information from a student who has reached the age of majority, the relevant parent/guardian of a minor student, or the school staff member or library patron prior to disclosure.

**§ 54.1716 Children's Internet Protection Act certifications.**

(a) *Definitions*—(1) *School.* For the purposes of the certification requirements of this section, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

(2) *Library.* For the purposes of the certification requirements of this section, library means library, library board or authority responsible for administration of a library.

(3) *Billed entity.* Billed entity is defined in § 54.1700. In the case of a consortium, the billed entity is the lead member of the consortium.

(4) *Connected devices.* Connected devices are defined in § 54.1700.

(b) *Who is required to make certifications*? (1) A school or library that receives support for internet access, internet service, or internal connections services under the Federal universal service support mechanism for schools and libraries, or internet access or internet service through the Emergency Connectivity Fund, must make such certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(2) A school or library that receives support for connected devices through the Emergency Connectivity Fund and uses internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or through the Emergency Connectivity Fund must make the certifications as described in paragraph (c) of this section. The certifications required and described in paragraph (c) of this section must be made in each funding year.

(3) Schools and libraries that are not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries; internet access or internet service through the Emergency Connectivity Fund; or connected devices that do not use internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund are not subject to the requirements in 47 U.S.C. 254(h) and (l), but must indicate, pursuant to the certification requirements in paragraph (c) of this section, that they are not receiving support for such services or that the connected devices do not use internet access or internet service funded through the Federal universal service support mechanism for schools and libraries or the Emergency Connectivity Fund.

(c) *Certifications required under 47 U.S.C. 254(h) and (1).* (1) An Emergency Connectivity Fund applicant need not complete additional Children's Internet Protection Act (CIPA) compliance certifications if the applicant has already certified its CIPA compliance for the relevant funding year (*i.e.,* has certified its compliance in an FCC Form 486 or FCC Form 479).

(2) Emergency Connectivity Fund applicants that have not already certified their CIPA compliance for an E-Rate application for the relevant funding year (*i.e.,* have not completed a FCC Form 486 or FCC Form 479), will be required to certify:

(i) That they are in compliance with CIPA requirements under sections 254(h) and (l);

(ii) That they are undertaking the actions necessary to comply with CIPA requirements as part of their request for support through the Emergency Connectivity Fund; or

(iii) If applicable, that the requirements of CIPA do not apply, because the applicant is not receiving support for internet access, internet service, or internal connections under the Federal universal service support mechanism for schools and libraries or internet access or internet service through the Emergency Connectivity Fund, or the connected devices do not use internet access or internet service funded through the Federal universal support mechanism for schools and libraries or the Emergency Connectivity Fund.

(d) *Failure to provide certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to submit certifications as required by this section shall not be eligible for support through the Emergency Connectivity Fund until such certifications are submitted.

(2) *Consortia.* A billed entity's knowing failure to collect the required certifications from its eligible school and library members or knowing failure to certify that it collected the required certifications shall render the entire

consortium ineligible for support through the Emergency Connectivity Fund.

(3) *Reestablishing eligibility.* At any time, a school or library deemed ineligible for equipment and services under the Emergency Connectivity Fund because of failure to submit certifications required by this section may reestablish eligibility for support by providing the required certifications to the Administrator and the Commission.

(e) *Failure to comply with the certifications*—(1) *Schools and libraries.* A school or library that knowingly fails to comply with the certifications required by this section must reimburse any funds and support received under the Emergency Connectivity Fund for the period in which there was noncompliance.

(2) *Consortia.* In the case of consortium applications, the eligibility for support of consortium members who comply with the certification requirements of this section shall not be affected by the failure of other school or library consortium members to comply with such requirements.

(3) *Reestablishing compliance.* At any time, a school or library deemed ineligible for support through the Emergency Connectivity Fund for failure to comply with the certification requirements of this section and that has been directed to reimburse the program for support received during the period of noncompliance may reestablish compliance by complying with the certification requirements under this section. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school or library shall be eligible for support through the Emergency Connectivity Fund.

(f) *Waivers based on state or local procurement rules and regulations and competitive bidding requirements.* Waivers shall be granted to schools and libraries when the authority responsible for making the certifications required by this section cannot make the required certifications because its state or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required. The waiver shall be granted upon the provision, by the authority responsible for making the certifications on behalf of schools or libraries, that the schools or libraries will be brought into compliance with the requirements of this section before the close of the relevant funding year.

**§ 54.1717 Administrator of the Emergency Connectivity Fund.**

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the Emergency Connectivity Fund and shall be responsible for administering the Emergency Connectivity Fund.

(b) The Administrator shall be responsible for reviewing applications for funding, recommending funding commitments, issuing funding commitment decision letters, reviewing invoices and recommending payment of funds, as well as other administration-related duties.

(c) The Administrator may not make policy, interpret unclear provisions of statutes or rules, or interpret the intent of Congress. Where statutes or the Commission's rules in this subpart are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the Emergency Connectivity Fund.

(e) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools and libraries.

(f) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the Emergency Connectivity Fund.

(g) The administrator shall provide performance measurements pertaining to the Emergency Connectivity Fund as requested by the Commission by order or otherwise.

(h) The Commission shall have the authority to audit all entities reporting data to the Administrator regarding the Emergency Connectivity Fund. When the Commission, the Administrator, or any independent auditor hired by the Commission or the Administrator, conducts audits of the participants of the Emergency Connectivity Fund, such audits shall be conducted in accordance with generally accepted government auditing standards.

(i) The Commission shall establish procedures to verify support amounts provided by the Emergency Connectivity Fund and may suspend or delay support amounts if a party fails to provide adequate verification of the support amounts provided upon reasonable request from the Administrator.

(j) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the Emergency Connectivity Fund ends. If its participation in administering the Emergency Connectivity Fund ends, the Administrator shall be subject to close-out audits at the end of its term.

**§ 54.1718 Appeal and waiver requests.**

(a) *Parties permitted to seek review of Administrator decision.* (1) Any party aggrieved by an action taken by the Administrator must first seek review from the Administrator.

(2) Any party aggrieved by an action taken by the Administrator under paragraph (a)(1) of this section may seek review from the Federal Communications Commission as set forth in paragraph (b) of this section.

(3) Parties seeking waivers of the Commission's rules in this subpart shall seek relief directly from the Commission and need not first file an action for review from the Administrator under paragraph (a)(1) of this section.

(b) *Filing deadlines.* (1) An affected party requesting review of a decision by the Administrator pursuant to paragraph (a)(1) of this section shall file such a request within thirty (30) days from the date the Administrator issues a decision.

(2) An affected party requesting review by the Commission pursuant to paragraph (a)(2) of this section of a decision by the Administrator under paragraph (a)(1) of this section shall file such a request with the Commission within thirty (30) days from the date of the Administrator's decision. Further, any party seeking a waiver of the Commission's rules under paragraph (a)(3) of this section shall file a request for such waiver within thirty (30) days from the date of the Administrator's initial decision, or, if an appeal is filed under paragraph (a)(1) of this section, within thirty days from the date of the Administrator's decision resolving such an appeal.

(3) In all cases of requests for review filed under paragraphs (a)(1) through (3) of this section, the request for review shall be deemed filed on the postmark date. If the postmark date cannot be determined, the applicant must file a sworn affidavit stating the date that the request for review was mailed.

(4) Parties shall adhere to the time periods for filing oppositions and replies set forth in § 1.45 of this chapter.

(c) *General filing requirements.* (1) Except as otherwise provided in this section, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications

Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned ''In the Matter of Request for Review by (name of party seeking review) of Decision of Universal Service Administrator'' and shall reference the applicable docket numbers.

(2) A request for review pursuant to paragraphs (a)(1) through (3) of this section shall contain:

(i) A statement setting forth the party's interest in the matter presented for review;

(ii) A full statement of relevant, material facts with supporting affidavits and documentation;

(iii) The question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; and

(iv) A statement of the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(3) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in § 1.47 of this chapter.

(4) If a request for review filed pursuant to paragraphs (a)(1) through (3) of this section alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in § 1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in § 1.45 of this chapter and the requirement for service of documents set forth in § 1.47 of this chapter.

(d) *Review by the Wireline Competition Bureau or the Commission.* (1) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Wireline Competition Bureau; provided, however, that requests for review that raise novel questions of fact, law, or policy shall be considered by the full Commission.

(2) An affected party may seek review of a decision issued under delegated authority by the Wireline Competition Bureau pursuant to the rules set forth in part 1 of this chapter.

(e) *Standard of review.* (1) The Wireline Competition Bureau shall conduct *de novo* review of request for review of decisions issued by the Administrator.

(2) The Federal Communications Commission shall conduct *de novo* review of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Wireline Competition Bureau under delegated authority.

(f) *Emergency Connectivity Fund disbursements during pendency of a request for review and Administrator decision.* When a party has sought review of an Administrator decision under paragraphs (a)(1) through (3) of this section, the Commission shall not process a request for the reimbursement of eligible equipment and/or services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Commission may authorize disbursement of funds for any amount of support that is not the subject of an appeal.

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