January 28, 2022

Chairwoman Jessica Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Federal Communications Commission
45 L St. NE
Washington, DC 20554

Re: Ex parte submission in WC Docket No. 13-184 and WC Docket 21-93 to make adjustments to the Emergency Connectivity Fund program and the E-rate program.

Dear Chairwoman Rosenworcel and Commissioners Carr, Starks, and Simington:

The Emergency Connectivity Fund (ECF) program has been tremendously important to schools and libraries seeking to address the "homework gap" by providing low-cost broadband services and devices to school students and library patrons in need over the past year. The Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) are to be commended for making extraordinary efforts to implement the ECF program quickly and effectively.

Now that we have almost one year of experience with the program under our belt, the Schools, Health & Libraries Broadband (SHLB) Coalition, the Consortium for School Networking (CoSN), the State Educational Technology Directors Association (SETDA) and the American Library Association (ALA) respectively submit that there are additional adjustments that the Commission can take to continue to implement the program successfully and with continuing public benefits. In brief, the Commission should take the following actions: (1) extend the June 30, 2022, service delivery deadline; (2) open a third funding window in the spring of 2022 to distribute the program's remaining funds; (3) extend the gift rule to coincide with the extended service delivery deadline; (4) reconsider the record-keeping requirements with respect to library applicants; and (5) waive the cost allocation rule in the E-rate program, at least for the duration of the public health emergency.

First, the Commission should extend the June 30, 2022, service delivery deadline for expending funding for one additional year (until June 30, 2023) to allow schools and libraries that receive awards to expend the full amount of that award to help students and library patrons remain connected after June 30, 2022. As of this writing, the FCC has approved ECF applications totaling approximately $4.4 billion, about 70 percent of the $6.3 billion requested by applicants in the first two application windows. Many schools and libraries who applied for ECF funding last year only recently received approval, and a significant

percentage of applicants have not received a decision at all. These recently-approved and still pending applications will not be able to use all of the funding that they requested and will ultimately be awarded by June 30, 2022. Even though applicants submitted their applications in August and September/October of 2021, they prudently waited to enter contracts for the purchase of devices or provision of service until they received approval. Every month they did not receive a commitment is a month of service that they will not be able to provide for their students. It would be unfair if students and patrons in some areas of the country are allowed to obtain low-cost broadband connectivity for a full year, while others obtain connectivity for just a few months, based solely on how quickly the applications were approved.

To provide a concrete example, in the state of Mississippi most wireless service providers will only sign a minimum six-month contract. Those schools and libraries that receive approval after January 1, 2022, will not be able to sign a six-month contract using ECF, given the current June 30, 2022, deadline. Thus, they will not be able to obtain service at all and will not be able to use *any* of their commitment. This unfortunate result would be inconsistent with the goal of the program to provide affordable devices and connectivity to students and library in need.

The June 30, 2022, deadline was adopted by the Commission and is not dictated by statute.[1] The Commission's decision to require applicants to spend their funding quickly was understandable at the time the deadline was adopted in June 2021 due to the COVID pandemic and the need for emergency action. The timing of the funding awards, however, make the current deadline unworkable for many applicants. Many of the applicants who have not yet received approval are among the most "in-need" because they are from smaller and more rural locations or have proposed network build-out where no commercial service is available. If the Commission does not extend the service delivery deadline, these applicants will have to apply a second time (in the third application window) for services and equipment that have already been approved. Extending the deadline past June 30, 2022, will ensure all applicants are treated fairly and equitably, regardless of when their application was processed.[2] Most important, it will allow schools and libraries to continue to provide eligible students and patrons with their broadband connectivity beyond July 1, 2022 and avoid a sudden cut-off of service on that date.

Second, we encourage the Commission to open a third funding window in the spring of 2022 to allocate the remaining appropriated funding. The Commission has received applications for approximately $6.3 billion compared to the appropriated amount of $7.17 billion, which leaves about $800 million available for additional support.[3] The new spike in COVID cases due to the new "omicron" variant means that the need for broadband connectivity for students at home remains strong. Some schools are again closing down as many teachers and staff contract the disease or are forced to quarantine. The FCC itself recently

---

[1] The Commission adopted the June 30, 2022, service provisioning deadline for both recurring services and for equipment and other non-recurring services. https://www.fcc.gov/document/wcb-waives-ecf-invoice-deadline-and-clarifies-service-delivery-date.

[2] Even if the Commission opens a third window for prospective funding, if the Commission does not extend the service delivery deadline, these applicants will have to apply for a second time (in the third application window) for services that were already approved. Those applicants will therefore have to undergo additional efforts, not because of their own delays or issues, but because of the unpredictability of application processing. And it is even more unfair that this burden will fall upon some of the most needy applicants.

[3] In addition, additional funding may be available 1) from funding that was awarded but not used by applicants and 2) from applications that are not approved.

recognized the harm cause by the rise in COVID cases when it waived certain rules for the Emergency Broadband Benefit/Affordability Connection Program in an order released on December 30, 2021 ("The effects of the COVID-19 pandemic continue to be felt by many Americans, and recently a new variant of the coronavirus has emerged that has contributed to uncertainty about the ongoing pandemic.").[4] Opening a third funding window this spring would give schools and libraries the opportunity to obtain additional funding needed to continue engaging in online instruction to students and patrons in need. Further, some schools and libraries that were unfamiliar with the ECF program last year would have an opportunity to apply for ECF funding going forward.[5]

We also encourage the Commission to set benchmarks for resolving applications submitted in the third window more quickly and also to expedite the reimbursement of invoices. Since the Commission has gained from the experience of the first two windows, it should be able to make funding decisions more quickly and process post-commitment changes and reimbursements more quickly going forward.

Third, we urge the FCC to extend the gift rule waiver for ECF funding to June 30, 2023, so that it coincides with the extension of the service delivery date.

Fourth, we urge the FCC to reconsider the extensive record-keeping requirements that make it difficult for libraries to apply for and accept ECF funding. These record-keeping requirements go beyond the language of the statute and are inconsistent with libraries' privacy practices.[6] Requiring each patron to certify their eligibility and need for the equipment, and then requiring that this information be stored for 10 years, creates a major hurdle that prevents most libraries from participating in the ECF program. Patron privacy would not be protected by state privacy laws because they would be superseded by the contractual obligations on a certified ECF form.

Finally, we also encourage the Commission to waive the cost allocation rule in the E-rate program (at least for the duration of the public health emergency) in order to make it easier to extend service to the students and library patrons at home. As the SHLB Coalition and others pointed out in our petition for rulemaking submitted about one year ago, the cost allocation rules discourage schools and libraries from extending their networks to serve students and library patrons at home out of concern that they will lose some of their E-rate funding. As long as schools and libraries can justify using E-rate funding their level of broadband service for educational purposes at the school/library building, they should be allowed to share their network capacity with the surrounding community (for example, at night, or after school). The waiver would also ensure that schools and libraries are not penalized with a reduction in E-rate funding if students, staff and library patrons are logging into school and library local networks remotely to obtain access to resources and applications stored there.

---

[4] Order, In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket 11-42, December 30, 2021, para. 1.

[5] We recognize that allowing applicants to extend their purchasing beyond June 30, 2022 and also allowing them to apply in the third window could create some potential for an overlap in funding requests. We believe this can be addressed by holding educational sessions for applicants and by clarifying in the application process that applicants may only request funding in the third window for services that have not been previously funded. USAC has a history of ensuring that applicants are not allowed to obtain duplicative funding.

[6] For more information on this issue, see the ECF comments filed by the American Library Association, April 5, 2021, (https://ecfsapi.fcc.gov/file/10405314108601/ALA_ECF_Comments_04052021.pdf).

It is extremely difficult for any school district with a virtual campus to receive approval in a timely fashion because of the application of the cost allocation rule. According to one applicant, "The back and forth between PIA [program integrity assurance] and the applicant on appropriate cost allocation is maddening, not to mention that is incredibly unfair to those who have made the commitment to a virtual learning environment," Waiving the cost allocation rule and allowing schools/libraries to extend service off-campus would not increase demand for additional funding in the E-rate program but could allow more students and patrons to obtain low-cost broadband connectivity that will help them engage in online learning.
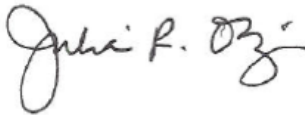
Sincerely,

John Windhausen, Jr.
Executive Director
Schools, Health & Libraries Broadband
(SHLB) Coalition

Senior Director, Public Policy and
Government Relations
American Library Association (ALA)

Julia Fallon
Executive Director
State Educational Technology Directors
Association (SETDA)

Keith Krueger
CEO
Consortium for School Networking
(CoSN)