

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Establishing Emergency Connectivity Fund	)	WC Docket No. 21-93
To Close the Homework Gap	)	

**REPLY COMMENTS OF INCOMPAS**

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INCOMPAS, by its undersigned counsel, hereby submits these reply comments in response to the Wireline Competition Bureau’s *Public Notice*,<sup>1</sup> which seeks comments on the Emergency Connectivity Fund for educational connections and devices to address the Homework Gap and promote remote learning during the COVID-19 pandemic.

**I. INTRODUCTION AND SUMMARY**

INCOMPAS is the preeminent national industry association for providers of internet and competitive communications networks, including both wireline and wireless providers in the broadband marketplace. We represent fixed broadband companies, including small local fiber and fixed wireless providers that provide residential BIAS, as well as other mass-market services, such as video programming distribution and voice services in urban, suburban, and rural areas. We also represent companies that are providing business broadband services to schools, libraries, hospitals and clinics, and businesses of all sizes, including regional fiber providers; transit and backbone providers that carry broadband and Internet traffic; online video

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<sup>1</sup> *Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic*, Public Notice, WC Docket No. 21-93 (rel. Mar. 16, 2021) (“*Public Notice*”).

distributors (“OVDs”) which offer video programming over BIAS to consumers, in addition to other online content, such as social media, streaming, cloud services, and voice services.

INCOMPAS filed comments in this proceeding describing how the Federal Communications Commission (“FCC” or “Commission) can most effectively and efficiently promulgate rules to set up the \$7.171 Emergency Connectivity Fund (“the Fund”) to help schools and libraries provide devices and connectivity to students, school staff, and library patrons during the COVID-19 pandemic.<sup>2</sup> Specifically, INCOMPAS suggested the following:

- The Commission take a competitively neutral approach regarding eligible equipment and services, including the construction of new networks when necessary;
- The Commission allow reimbursements of eligible equipment and services purchased as of January 27, 2020, which is defined as the beginning of the COVID-19 emergency period; and
- That a new competitive bidding process is not necessary in this emergency context for schools and libraries that have already entered into E-rate supported contracts; and if they have not, the Commission should adopt a streamlined competitive bidding process that will ensure competitive rates for equipment and services in the Fund.

INCOMPAS now files these reply comments to show the overwhelming support in the record for the above suggestions.

**II. THE RECORD SUPPORTS A COMPETITIVELY NEUTRAL APPROACH TO EQUIPMENT AND SERVICES, RETROACTIVE REIMBURSEMENTS, AND THAT A NEW COMPETITIVE BIDDING PROCESS SHOULD NOT BE REQUIRED.**

The record in this proceeding is comprised of a wide range of stakeholders, ranging from public interest organizations, school districts, trade associations, private companies, and E-rate-focused groups. Despite this diversity, there is significant support in the record to show that in

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<sup>2</sup> INCOMPAS Comments, *Establishing Emergency Connectivity Fund To Close the Homework Gap*, WC Docket No. 21-93 (filed Apr. 5, 2021). All subsequent comments mentioned in this filing are from the above-referenced proceeding.

order to make the Fund as beneficial as possible, the Commission should take a competitively neutral approach, reimburse purchases starting from January 27, 2020, and not require a new competitive bidding process for schools and libraries already under their E-rate contracts.

**(a) The Record Supports The Commission Taking A Competitively Neutral Approach Regarding Eligible Equipment and Services.**

The American Rescue Plan Act requires that support provided to eligible schools and libraries be used during the COVID-19 emergency period for the purchase of (i) eligible equipment and/or (ii) advanced telecommunications and information services as the term is used in section 254(h) of the Communications Act.<sup>3</sup> As explained in our comments, INCOMPAS urges the Commission to establish a competitively neutral approach and to take an expansive view of eligible equipment and services during this temporary Fund.<sup>4</sup> The goal of the Fund is to help schools and libraries close the Homework Gap by promoting remote learning, and even after the COVID-19 emergency period ends, students, school staff, and library patrons will continue to need connectivity as education has moved beyond the physical school and library to homes, communities, and other off-campus locations. Establishing a set of neutral rules for eligible devices and services will allow school districts to choose the services and devices that best suit their needs as well as the needs of their students, staff, and patrons. Ultimately, to best address the issue of remote learning and the Homework Gap, the Commission should ensure that schools and libraries have as wide a range of options as possible and permit these community anchor institutions to choose the technology that best works for delivery of service to their

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<sup>3</sup> See H.R. 1319, tit. VII, § 7402(a)(1)-(2), (d)(1); see also *Public Notice* at 5.

<sup>4</sup> INCOMPAS Comments at 6-10.

constituents. A wide range of stakeholders in the record support the concept of neutrality. For example, there is support in the record from other trade associations in addition to INCOMPAS:

- **According to USTelecom**, “it is of the utmost importance that the ECF program be technologically neutral and provide support for eligible services regardless of whether they are fixed or wireless services. Indeed, Section 254(h) requires that the benefits of the E-Rate program are technology neutral and competitively neutral so consumers can select the provider and technology that works best for them.”<sup>5</sup>
- **According to Internet Association**, the Commission should “avoid a prescriptive list of ‘eligible equipment’ and ‘eligible services’ that would likely become obsolete soon after it is published, and instead, it should take a flexible and technology neutral approach to ‘equipment’ and ‘services’ that may qualify for funding” in order to “ensure that schools, libraries, and consortia continue to receive the E-Rate supported services that best meet their needs for connectivity.”<sup>6</sup>
- **According to the Competitive Carriers Association**, “[t]he Commission can more effectively ensure remote access to educational resources by permitting schools and libraries flexibility to determine what services will help meet the needs of their communities, rather than by setting new one-size-fits-all minimum service standards or data thresholds.”<sup>7</sup>
- **According to WISPA**, similarly to the E-rate program, “[f]unding to support off-campus learning should likewise be provider- and technology-neutral to make available the wide range of services Congress intends to be supported and to spark competition among service providers willing and able to provide supported services and devices.”<sup>8</sup>

There is support in the record from public interest organizations:

- **According to the Public Interest Organizations (“PIOs”)**, “schools and libraries should be empowered to use financial support from [the Fund] to support whatever technologies and connectivity solutions local officials determine best meet the widely varying needs of their communities,” and therefore the

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<sup>5</sup> USTelecom Comments at 8.

<sup>6</sup> Internet Association Comments at 7, 9.

<sup>7</sup> Competitive Carriers Association Comments at 4.

<sup>8</sup> WISPA Comments at 3.

Commission should adopt the “broadest definition possible” for eligible equipment and services necessary to support connectivity for remote learning.<sup>9</sup> They explain that Congress intended for the Fund to be technology-neutral as shown in the House Committee Report where lawmakers stated: “[a]dditional emergency funding will ensure that students and low-income Americans have access to reliable high-speed internet in locations other than schools and libraries *through different technological solutions, including residential broadband service provided in different forms[.]*”<sup>10</sup> This approach implies trust that local schools and libraries are in the best position to understand their particular challenges and needs,<sup>11</sup> and that “Congress intended that all possible solutions to the homework gap should be eligible for funding in a technological-neutral manner.”<sup>12</sup>

- **According to Common Sense**, the Commission should “allow schools and libraries the greatest flexibility possible to use these funds to ensure robust access for students and teachers to distance learning throughout the duration of this public health emergency,”<sup>13</sup> and to allow schools to decide which devices and type of connectivity is best suited for their specific community and curriculum needs.”<sup>14</sup> As it explains, “[c]onnectivity is a uniquely local issue and requires a local insight for an effective response.”<sup>15</sup>

There is support in the record from providers:

- **According to Starry**, a technology neutral approach “will maximize the number of ECF recipients and broaden the universe of providers that are willing and able to deploy and expand new networks to community institutions like schools and libraries, to the benefit of those communities.”<sup>16</sup>
- **According to Alaska Communications**, “[s]chools and libraries should be encouraged to adopt a technology neutral approach to at-home connectivity:

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<sup>9</sup> PIOs Comments at 6.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 12.

<sup>13</sup> Common Sense Comments at 2.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 5.

<sup>16</sup> Starry Comments at 4.

equipment and services will depend on the community and the student and the FCC should trust school districts to adopt the appropriate technologies to serve their patrons and students.”<sup>17</sup>

There is also support in the record from organizations that specifically focus on E-rate and the needs of community anchor institutions:

- **According to SHLB**, the American Rescue Plan Act left the details about funding to be determined by the FCC, the schools, and libraries. For instance, the legislation allows funding for any “advanced telecommunications and information service” and does not specify what other types of equipment or technology could be eligible. As such, the Commission “should use this flexibility in the legislative language to recognize that local schools and libraries are in the best position to determine the needs of their communities. There is no need for excessive FCC regulation of schools and libraries’ purchasing decisions.”<sup>18</sup>
- **According to the American Library Association**, the current E-rate program is technology-neutral and it “strongly support[s] the Commission declaring that the ECF program is similarly neutral. Being open to a range of connectivity solutions will enable applicants to use a variety of technologies[.]”<sup>19</sup>
- **According to the National School Boards Association**, the Commission should “expedite the [Fund’s] distribution in a low-burden manner that best helps the largest number of students while employing transparent and flexible approaches that promote local decision-making by districts and local school boards and protects the program’s overall intent and furthers its success.”<sup>20</sup>
- **According to the Consortium for School Networking**, the FCC should adopt competitive neutral rules to allow program recipients to make decisions about how to provide the most cost-effective access for remote learning access. As it explained, broadband and device access gaps often vary, and given these local differences, recipients “should have the flexibility to use a variety of technologies and strategies to facilitate and expand remote learning access for students,” and that flexibility will “maximize the program’s reach[.]”<sup>21</sup>

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<sup>17</sup> Alaska Communications Comments at 2.

<sup>18</sup> SHLB Comments at 2-3.

<sup>19</sup> American Library Association Comments at 5.

<sup>20</sup> National School Boards Association Comments at 1.

<sup>21</sup> Consortium for School Networking Comments at 2-3.

- There is additional support from the **Council of Great City Schools, E-rate Management Professional Association, the State E-rate Coordinators' Alliance, and the Western Governors Association.**<sup>22</sup>

**(b) The Record Supports Funding The Construction Of New Networks.**

As explained above, the FCC should take a competitively neutral approach regarding eligible equipment and services, and that includes the construction of new networks. As INCOMPAS' Comments explain, new network builds should be supported by the Fund as may be necessary to ensure that capacity or service to the school or library can support connectivity to the homes. There is ample support in the record from a variety of stakeholders that a technology neutral approach includes the construction of new networks:

- **According to Motorola Solutions**, this is supported by the statutory text and congressional intent. Congress did not enumerate the types of equipment and services that fall within the definition of “advanced telecommunications and information services,” and self-provisioned networks have been eligible for E-Rate funding since 2016.<sup>23</sup> It is also good policy, and “as long as a self-provisioned broadband network is the most cost-effective solution, schools and libraries should have the option to use the Fund to provision their own network.”<sup>24</sup>
- **According to Starry**, “the Commission should ensure that limited programs like the ECF provide recipients enough flexibility to choose solutions that most adequately address their connectivity challenges. The Commission should take a technology neutral approach and refrain from explicitly precluding new networks or connections from ECF reimbursements.”<sup>25</sup>
- **According to Internet Association**, the Commission should not exclude self-constructed networks from being eligible for the Fund, “so long as these services

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<sup>22</sup> See, e.g., Council of Great City Schools Comments at 4; KIPP Public Schools Comments at 2; E-rate Management Professional Association Comments at 5; State E-rate Coordinators' Alliance Comments at 14; and Western Governors Association Comments at 1.

<sup>23</sup> Motorola Solutions Comments at 2-4.

<sup>24</sup> *Id.* at 5-6.

<sup>25</sup> Starry Comments at 4.

support greater internet bandwidth speeds.”<sup>26</sup>

- **According to ADTRAN**, it would not be good policy or consistent with the statute to exclude the possibility of new construction as “there may be some instances when the most efficient means of increasing the broadband connectivity to the school” could be new construction.<sup>27</sup>
- **According to the PIOs**, “investments to extend school networks directly to students at home and other ‘self-provisioned’ connections are among the ‘different technological solutions’ that Congress has authorized for reimbursement,” and there is “no rational basis for excluding a proven means of providing students with internet access that is often more robust and more cost-effective than purchasing mass-market ISP subscriptions[.]”<sup>28</sup>
- **According to SHLB**, the “legislation’s intent was not just to allow students and patrons to receive service via existing networks but from new networks as well, especially if no existing networks reach a student or library patron’s home.” Thus, “the Commission should make all connectivity options available to schools and libraries as they seek to bring broadband to their communities with ECF funding.”<sup>29</sup>
- **According to the American Library Association**, “[f]or connectivity in some rural areas it will be necessary to construct new networks, or at a minimum, expand existing networks.”<sup>30</sup>

There is additional support in the record for the Fund to support the construction of new networks, especially as it may be the most cost-effective or innovative solution for a school or library.<sup>31</sup>

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<sup>26</sup> Internet Association Comments at 11.

<sup>27</sup> ADTRAN Comments at 9.

<sup>28</sup> PIOs Comments at 12.

<sup>29</sup> SHLB Comments at 5.

<sup>30</sup> American Library Association Comments at 5.

<sup>31</sup> *See, e.g.*, State Educational Technology Directors Association Comments at 3-4; Consortium for School Networking Comments at 3-4; Western Governors Association Comments at 5.

On a related note, a group of Local Governments in the record advocate for the Commission to bar providers from participating in the Fund that qualify for the Emergency Broadband Benefit but have chosen not to offer it.<sup>32</sup> However, INCOMPAS disagrees. The Commission should be encouraging as many providers as possible to participate in the Fund in order to reach unserved and underserved communities, and it should not bar providers who have elected not to participate in other emergency programs, especially given that providers may have made this decision for valid reasons. For example, according to the Council of the Great City Schools, “urban school districts were effectively excluded from EBB support since we typically cover the full expense for our students and families, and do not pass along any of the subscription costs to them. For a variety of reasons, many of our families are unlikely to sign up for free or discounted EBB services on their own, and ECF funding is needed to ensure we are reimbursed for these purchases retroactively and can continue to cover their costs going forward.”<sup>33</sup> Moreover, while well over the majority of INCOMPAS’ members who qualify to participate in the EBB are doing so, a number of our members do not offer residential broadband internet access service and do not qualify to participate. Nonetheless, they offer E-rate service and should be permitted to participate in the ECF regardless of their inability to participate in the EBB. To exclude them from the ECF potentially harms the schools and libraries that rely on these providers’ services and would limit the schools’ and libraries’ competitive options, potentially driving up the cost to the schools, libraries, and the ECF.

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<sup>32</sup> Local Governments Comments at 9-10.

<sup>33</sup> Council of the Great City Schools Comments at 4.

**(c) The Record Supports Retroactive Reimbursement For Purchases Made Since The Beginning Of The Emergency Period.**

As explained in our Comments, INCOMPAS supports reimbursement for eligible equipment and services that have already been purchased and provided to E-rate eligible schools and libraries as of January 27, 2020, which is defined as the beginning of the COVID-19 emergency period (to the extent that they have not been funded through another federal funding mechanism of COVID-19 relief support).<sup>34</sup> It is fair and sound policy to reimburse schools and libraries that made the decision earlier on to invest in connectivity for remote learning, and this has broad support in the record.

- **According to the Competitive Carriers Association**, retroactive reimbursement beginning from January 27, 2020 is consistent with the legislation, which directs the FCC to provide support for purchases “during the COVID-19 emergency period.” Moreover, “retroactive reimbursement recognizes both that schools and libraries have made significant purchases in the 14 months since the COVID-19 emergency period began and that broadband providers have made significant investments in their networks to provide and maintain connectivity despite substantial economic and logistical challenges.”<sup>35</sup>
- **According to Internet Association**, the FCC should retroactively reimburse purchases made from the outbreak of COVID-19. As it explains, “the Commission should adopt rules that both promote proactivity and ensure a safety net exists for those unable to do what they would have had they access to the appropriate level or resources,” and that “any organization that took the necessary measures to prepare should be rewarded.”<sup>36</sup>
- **According to SHLB**, “[s]ome schools and libraries purchased broadband services and equipment when schools first began to close down in March 2020. These schools and libraries should not be punished for acting quickly to ameliorate the harm from the pandemic,” but rather should be entitled to retroactive

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<sup>34</sup> INCOMPAS Comments at 10-11.

<sup>35</sup> Competitive Carriers Association Comments at 8.

<sup>36</sup> Internet Association Comments at 14.

reimbursement back to the beginning of the pandemic in January 2020.<sup>37</sup>

- **According to Common Sense**, “[a]ny efforts to only allow reimbursement for future purchases would unfairly penalize schools that have allocated their limited resources in an effort to get their students connected as quickly as possible at the onset of this public health emergency.”<sup>38</sup> The **E-rate Management Professionals Association** similarly explains that “[m]any districts had the foresight to see the seriousness of the pandemic; they should not be penalized for making early purchases.”<sup>39</sup>
- **According to the Council of the Great City Schools**, the Commission should allow for retroactive reimbursement. As it explains, “[f]ollowing the closing of schools in 2020, districts were forced to take immediate steps to meet the needs of their students . . . submitting invoices for products and services that are ordered or received during the emergency period is sufficient documentation that state, local, or district procurement policies were followed to the extent possible.”<sup>40</sup>

**(d) The Record Supports Not Mandating A Competitive Bidding Process For Existing Contracts And Streamlining The Process For New Contracts.**

As explained in our comments, INCOMPAS supports the Commission’s proposal that schools and libraries that have already entered into E-rate contracts for remote learning should be reimbursed without having to go through a new competitive bidding process in this emergency context.<sup>41</sup> If a school or library does not have an E-rate supported contract, INCOMPAS supports a streamlined competitive bidding process that will ensure competitive rates for equipment and services in the Fund.<sup>42</sup> This proposal also has significant support in the record from various stakeholders:

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<sup>37</sup> SHLB Comments at 13.

<sup>38</sup> Common Sense Comments at 10.

<sup>39</sup> E-rate Management Professionals Association Comments at 4.

<sup>40</sup> Council of the Great City Schools Comments at 4; *see also* US Cellular Comments at 3.

<sup>41</sup> INCOMPAS Comments at 11-12.

<sup>42</sup> *Id.* at 12.

- **According to USTelecom**, “[t]he emergency nature of this request dictates that speed is of the essence with respect to providing the funding to those most in need[.]” Therefore, “the Commission should streamline the competitive bidding rules for this emergency funding program,” and for new contracts, the Commission should adopt a streamlined competitive bidding process.<sup>43</sup>
- **According to WISPA**, adopting a streamlined competitive bidding process for eligible schools and libraries that have not yet entered into contracts to purchase eligible equipment and/or services “will best accomplish Congressional policies intended to make support available fairly and quickly, with all providers having the opportunity to participate as Congress intended.”<sup>44</sup>
- **According to SHLB**, state and local procurement rules, budget caps, and audits ensure reasonable rates and protect against wasteful spending. As such, there is “no need to require schools and libraries go through a competitive bidding process,” especially those that already purchased equipment and services and are seeking retroactive reimbursement.<sup>45</sup> Similarly, the **E-rate Management Professionals Association** explains that “[d]ue to the exigent nature of the crisis, [it] recommends that competitive bidding be waived, and that applicants instead certify compliance with their own state and local procurement rules.”<sup>46</sup>
- **According to Verizon**, “[t]he Commission should adopt its proposal to allow schools to seek reimbursement for the cost of eligible equipment and services without having to conduct a Commission-mandated competitive bidding process, as long as the school certifies that it has complied with all state, tribal, or local procurement requirements applicable to the contracts that they used to purchases eligible equipment and services.”<sup>47</sup>
- **According to US Cellular**, the FCC should allow eligible schools and libraries currently in contract arrangement to seek reimbursement “without having conducted a Commission-mandated competitive bidding process,” and that the Commission “should adopt as streamlined a competitive bidding process as possible for schools and libraries currently out of contract.”<sup>48</sup>

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<sup>43</sup> USTelecom Comments at 11-12.

<sup>44</sup> WISPA Comments at 7-8.

<sup>45</sup> SHLB Comments at 13.

<sup>46</sup> E-rate Management Professionals Association Comments at 4.

<sup>47</sup> Verizon Comments at 12.

<sup>48</sup> US Cellular Comments at 3-4.

### III. CONCLUSION

INCOMPAS would like to reiterate its support for the establishment of the Emergency Connectivity Fund and encourages the Commission to consider these reply comments and the broad support in the record for ways to effectively and efficiently implement the Fund.

Respectfully submitted,

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