

May 5, 2021

Ex Parte Letter—VIA ECFS

Federal Communications Commission
45 L Street, NE
Washington, D.C. 20554

Re: *Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93*

Dear Acting Chairwoman Rosenworcel, Commissioner Carr, Commissioner Starks, and Commissioner Simington:

INCOMPAS, the internet and competitive networks association, would like to express our support for the Commission’s draft Report and Order released in the Emergency Connectivity Fund proceeding.¹ We applaud the Commission’s efforts to help close the Homework Gap for millions of students across the country and the steps taken to ensure that schools and libraries have the funding they need to continue connecting students, school staff, and library patrons in off-campus learning. Schools and libraries that invested in remote learning earlier during the pandemic will be rightly reimbursed, and we are hopeful that schools and libraries that still need to invest will be able to receive reimbursements for their future purchases as well.

In addition, we would like to recommend one change to help clarify the language of the draft Report and Order. We suggest further clarification in paragraph 39 of the draft order to ensure that schools and libraries better understand when the installation of new facilities would be allowed, which you will find in the attached letter from ENA, an INCOMPAS member.²

¹ The draft Report and Order understandably explains that “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[,]” *citing* to the SHLB Petition. *See Report and Order*, WC Docket No. 21-93 at ¶ 120. INCOMPAS continues to support the Commission’s further consideration of the SHLB Petition in a future ruling as explained in our reply comments in that proceeding, WC Docket No. 21-31.

² Letter to Marlene H. Dortch, Secretary, FCC, from Gina Spade, counsel to ENA Services, LLC, WC Docket No. 21-93 (filed May 5, 2021).

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

/s/ Angie Kronenberg

Angie Kronenberg
Chief Advocate and General Counsel

Attachment

cc: Travis Litman
Ramesh Nagarajan
Ben Arden
Greg Watson
William Davenport
Austin Bonner
Carolyn Roddy

May 5, 2021

SUBMITTED ELECTRONICALLY VIA ECFS

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

Re: Establishing Emergency Connectivity Fund to Close the Homework Gap; WC Docket No. 21-93

Dear Ms. Dortch:

On May 4, 2021, Kitty Ganier, general counsel of ENA Services, LLC (ENA) and Gina Spade of Broadband Legal Strategies, outside counsel for ENA, participated in a video conference with Carolyn Roddy, chief of staff and senior legal advisor to Commissioner Simington. We discussed the Emergency Connectivity Fund (ECF) draft order (Order) released by the Commission on April 30, 2021.

ENA noted the draft Order is remarkable because it will help schools and libraries across the United States with connectivity that closes the Homework Gap. ENA asked that the ECF program ensure that students, school staff and library patrons without access to sufficient existing commercial broadband services be able to access remote learning and online library services. ENA believes the Commission can satisfy Congress's intent to ensure this access with a few simple, yet important, revisions to the section limiting new construction.¹

First, we discussed that the draft order, in paragraph 39, requires schools and libraries to "demonstrate" that there were no commercially available service options sufficient to support remote learning from one or a combination of providers. We noted it is unclear how schools and libraries would make this showing, as the Commission is essentially asking the applicants to prove a negative. Instead, ENA suggests that applicants certify that they were not aware of any existing commercially available service options that could serve their students, staff, or library patrons, or that they considered existing services and found them insufficient to serve their remote learning needs.

¹ See Draft Order at ¶ 33.

Second, the draft order states that new construction is only allowed when there are no existing commercially available service options. It is unclear whether that showing is required for all of the students or library patrons served by a school or library or only some of them. It does not seem reasonable for the Commission to require the entire geographic footprint of a school district have no commercially available providers before a district or library could deploy new networks.

While ENA believes the goal of the Order should be to ensure that every student, school staff or library patron should be able to access broadband sufficient to support remote learning or library services, ENA favors a practical approach that would allow connectivity and installation that utilizes new or existing facilities, as a school deems appropriate, when a certain threshold of need is met. For example, new construction should be allowed when 10 percent of students (or library patrons) – at a specific school, for an entire school district or in a certain geographic area – are unserved by services sufficient to allow remote learning or access to library services. Attached is specific language ENA believes will help clarify these issues.

ENA also discussed its support for prioritizing applications for prospective funding over applications seeking funding for services already provided.

Please let us know if you have any questions.

Respectfully submitted,



Gina Spade
Counsel for ENA Services, LLC

cc: Carolyn Roddy, Commissioner Simington's office

Suggested Language for Paragraph 39 of the Draft Order

39. *Limited exception for network construction where there is no sufficient commercially available option.* Despite this understanding of Congress' intent to speed funding to schools and libraries through existing commercially available broadband offerings, we provide a limited exception to this finding. The record reflects the fact that in some instances there is simply no existing sufficient commercially available service for purchase available to reach students, school staff, and library patrons in their homes.¹¹⁶ In only those limited instances,¹¹⁷ network construction (including construction of wireless networks) is the only way to quickly bring connectivity to these students, school staff, and library patrons, and we believe 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 options. Where there are or were no such sufficient services available, we will allow schools and libraries to seek Emergency Connectivity Fund Program support to for the construction or ~~construct or~~ self-provisioning of-networks to connect students, school staff, and library patrons during the COVID-19 emergency period who would otherwise not be connected. We allow new construction or the installation of new facilities when 10 percent or more of students or school staff (or library patrons, in the case of libraries) do not have access to existing commercially available broadband services sufficient for remote learning or online access to library services. The 10 percent of students, school staff or library patrons could be assessed by building (school or library), the entire school district or library system, or by a specific geographic area, such as a neighborhood.

We will ~~, and we will~~ not require schools and libraries to engage in competitive bidding. Some schools may have already constructed wireless networks where there were not sufficient commercially available options and cannot go back and conduct competitive bidding. We also considered requiring competitive bidding for applicants in areas with no sufficient commercially available options,¹¹⁸ but the timing does not work in light of the COVID-19 emergency and upcoming school year. 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, must therefore certify that they were not aware of any ~~demonstrate that there were no~~ commercially available service options sufficient to support remote learning from one or a combination of providers, or that they considered existing services and found they are insufficient to serve their remote learning needs;¹¹⁹ ~~F~~for networks already constructed during the pandemic, applicants must certify services were provided to students, school staff, or library patrons during the funding period supported by the initial filing window; and for future construction, construction must be ~~is~~ completed and services provided within one year of a funding commitment decision.¹²⁰