Before the
Federal Communications Commission
Washington, DC 20054

In the Matter of:

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The Emergency Connectivity Fund for	)	
Educational Connections and Devices to	)	
Address the Homework Gap during the	)	**WC Docket No. 21-93**
Pandemic	)	
	)	

Comments of the American Library Association[1]

The American Library Association welcomes the opportunity to comment on how libraries may leverage the strengths of the E-rate program to quickly address still-persistent connectivity gaps through the Emergency Connectivity Fund (ECF). As libraries constitute an essential thread in the nation's digital safety net, we appreciate the need for urgent action to maximize the reach of this new $7.1 billion program while carefully balancing applicant burden with protections against waste, fraud or abuse.

Library staff in communities of all sizes have worked tirelessly over the past year to serve students, teachers, researchers, unemployed workers, and learners of all ages who have no other or have inadequate broadband to meet their needs.[2] We have also noted many of these examples in previous comments to the Commission,[3] and appreciate the opportunity to share learnings from this past year to inform the rules for the ECF.

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[1] The American Library Association (ALA) is the foremost national organization providing resources to inspire library and information professionals to transform their communities through essential programs and services. For more than 140 years, ALA has been the trusted voice for academic, public, school, government and special libraries, advocating for the profession and the library's role in enhancing learning and ensuring access to information for all. ALA represents the nation's 116,867 libraries, which includes 16,568 public libraries.

[2] http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/broadband/Libraries_Connect_Communities_ALA_020421.pdf.

[3] http://www.ala.org/advocacy/sites/ala.org.advocacy/files/content/telecom/erate/ALA_Homework_Gap_Comments_02162021.pdf.

We support all of the services and equipment explicitly specified in the American Rescue Plan Act (Act) and agree that funding should be targeted at the services and equipment needed to enable and support remote learning for students, staff, and library patrons. We believe maximizing local flexibility, carefully balancing program goals, and recognizing critical differences in how libraries and schools address learning and connectivity gaps within their missions will bring the most value to unserved and underserved students, families, and communities.

We therefore urge the Commission to:

1. Give library and school applicants maximum flexibility to determine the most cost-effective and efficient solutions to provide internet connectivity to students and library patrons who are otherwise unconnected.

2. Give applicants maximum flexibility related to purchasing of eligible equipment and services and flexibility in determining what constitutes an eligible location.

3. Balance program goals—including protections against waste, fraud, and abuse, and expediency—with equitable distribution of funds and minimal administrative burdens on applicants.

4. Find that the Children's Internet Protection Act (CIPA) does not apply to the use of the Emergency Connectivity Fund.

The ALA also provides more detailed responses to questions in the Public Notice below.

Program goals and any metrics developed to assess the impact of the Emergency Connectivity Fund must allow for local variation and library patron privacy constraints. (*Notice* p.3)

To protect patron privacy, we do not support any metric that requires libraries to collect patron use of ECF-supported services and report such use to any outside organization. Forty-eight states and the District of Columbia have laws protecting the confidentiality of library records. Two

states, Kentucky and Hawaii, have attorney general's opinions protecting library users' privacy. While the language varies, the majority of these laws declare that a library user's records and information are confidential and not subject to disclosure, unless certain conditions are met, such as the service of a court order.

Libraries can and do collect circulation data and could provide information on the number of times a hotspot or laptop has been checked out. Libraries have also not generally collected detailed information about patrons who lack a home internet connection or device during the pandemic. However, they are generally aware, anecdotally, where households lack connectivity and often allocate their limited resources, such as distributing Wi-Fi hotspots, to meet this household need.

It also is important to note that libraries will have many different ways of loaning connectivity devices based on local community needs, and thus just one type of data will not be possible to collect. For example, some libraries may lend a Wi-Fi hotspot and tablet for four weeks while others may lend them for a school semester or calendar year. We recommend circulation data and data use statistics, with redacted personally identifiable information, would indicate the reach and demand for services provided through libraries.

Ensure tribal libraries are eligible to participate in the Emergency Connectivity Fund by amending the definition of tribal library and providing extra support for these applicants. (*Notice* p.4)

ALA thanks the Commission for raising the long-standing issue of tribal library eligibility in the existing E-rate program in relationship to ensuring that these libraries are fully eligible for funding from the ECF. We agree with the Commission that for tribal libraries to be eligible for funding through the ECF, it must revise the E-rate rules to reflect the 2018 amended language in the Library Services and Technology Act.[4] This is a small but crucial step the Commission must take to fulfill its statutory obligation in the Act.

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[4] ALA commented on tribal library eligibility in *Addressing the Homework Gap through the E-rate program* https://ecfsapi.fcc.gov/file/10318390618596/ALA_Homework_Gap_Comments_02162021.pdf (p 8).

We further point out that tribes may designate a tribally owned entity as a library provided that entity meets minimum requirements outlined by the Institute of Museum and Library Services (IMLS), and we assert that these libraries should also be eligible for ECF funding. We encourage the Commission to consult with IMLS regarding the amended definition. We also urge the Commission to consult with IMLS regarding outreach efforts to tribal libraries. As the federal agency that provides grants to tribal libraries and collects data on them, it has the expertise necessary to ensure tribal libraries are aware of the ECF program, are eligible to apply for ECF funds, and are successful applicants.

As a practical matter, many tribal libraries will not have had prior experience with the E-rate program and very likely will need additional time to apply to the ECF program. Furthermore, feedback from tribal libraries on navigating federal funding opportunities has highlighted numerous challenges in participating in grant programs. These include, but are not limited to, securing administrative approval, negotiating contracts with vendors, and navigating layered requirements across tribal, state, and federal government jurisdictions. For these reasons, the Commission should extend the application window for tribal libraries, by up to two additional weeks.

The Emergency Connectivity Fund should maximize the ability of applicants to connect students and library patrons by allowing applicants to make local decisions on how best to target funding to address the local connectivity gap.

Eligible equipment and services should support local connectivity solutions. (*Notice* p.5-8)

We support all of the services and equipment explicitly specified in the Act and also agree that funding should be targeted at the services and equipment needed to enable and support remote learning for students, staff, and library patrons. However, we do have concerns about the Commission's proposal to exclude the construction of new networks, including the construction

of self-provisioned networks.[5] For connectivity in some rural areas it will be necessary to construct new networks, or at a minimum, expand existing networks.

While we understand the Commission's intent to not fund the build-out of dark fiber, we do not agree with the Commission's assumption that the construction of new, off-campus networks[6] is totally prohibited by the Act's list of eligible equipment. This assumption ignores the law's directive to provide access to advanced telecommunication and information services. Furthermore, the assumption that network construction is not supported by the Act is at least partly rebutted in the next paragraph on page seven of the *Notice* where it states, "Should the Commission interpret 'advanced telecommunications and information services' to include the equipment necessary to deliver these services to connected devices as eligible?" Our answer is clear: Yes, the Commission should definitely make such an interpretation, which would also include any related installation costs, taxes, and fees.

The current E-rate program is neutral regarding the technology used to provide library and school broadband and internet connectivity. We strongly support 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 including, for example, Citizens Broadband Radio Service (CBRS) and TV White Space (TVWS). In addition, some libraries will elect a relatively low-cost technology of placing more powerful Wi-Fi equipment on the roof of the library and then broadcasting the signal out into the surrounding neighborhood. It is important to note that with some of these technologies the remote connectivity will be backhauled to the library's own network. In such instances, it is essential that the bandwidth needed to support the

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[5] *Public Notice*, page 7. Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund For Educational Connections And Devices to Address The Homework Gap During The Pandemic. WC Docket No. 21-93. March 16, 2021 (*Notice*).
[6] We acknowledge the critical role the High Cost Program has in network build-out and encourage the Commission to review the network build-out plans of High Cost fund recipients to ensure there is no overlap with network build-out funds requested via the ECF, assuming the latter is eligible. Ideally, the High Cost Program would be our preferred option for build-out and the Low Income and new Emergency Broadband Benefit (EBB) program used for ongoing connectivity for eligible households.

connection from the library to its internet provider not be subject to any cost allocation based on the off-campus use of the library's bandwidth.[7]

We believe the Commission's current speed benchmark of 25 Mbps downstream and 3 Mbps upstream is insufficient to address the needs of many patrons and students. Households often have multiple users and with the current benchmarks it may be difficult to have acceptable interactive video sessions and use other applications that demand more bandwidth than this benchmark. We suggest a target speed minimum of 50/10 Mbps down and up with the realization that in some rural localities achieving this may not be possible.

In response to the pandemic, libraries are providing connectivity services in a variety of ways and at a variety of locations. (*Notice* p.8-9)

Local libraries are in the best position to judge what locations should be served by remote access to best meet the needs of library patrons that lack connectivity and/or devices and thus we oppose the Commission imposing restrictions on what off-campus locations may be served. Any such restrictions are likely to be arbitrary and confusing and thus open to endless questions by applicants seeking further clarification.

We agree with the Commission's proposal to allow Wi-Fi hotspots on bookmobiles and at library kiosks. We note that there are other areas to which libraries have provided services in response to the pandemic. These include locating library-owned hotspots at neighborhood community centers, local businesses, government buildings, mobile home parks, and homeless shelters. In other instances, libraries provide an extended Wi-Fi signal that broadcasts into a nearby public space. Libraries have also provided devices like tablets to the public at these locations. But we offer these as examples and not a finite list of possible locations. Given the broad diversity of community characteristics across the country, it is not practical to attempt to enumerate all possible locations.

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[7] No cost allocation should be needed because any eligible off-campus site should be treated the same as any eligible library branch location that connects to the main library which has broadband circuit connecting to the internet.

The Commission proposes that "Libraries document the patron or patrons served at each supported location and prohibit libraries from providing more than one supported connection and one connected device to any one patron at a given time."[8] Libraries that currently lend internet hotspots generally check these out in a process similar to checking out any other item from the library. Documentation of the hotspot check-out transaction is then stored in the library's integrated library system (ILS). But, as noted above, states have strict library privacy laws and individually identifiable patron data is not readily available without a court order.[9] Furthermore, we do not agree that only one connected device should be checked out per patron because there are instances in which an adult may need two devices. For example, a parent may checkout two devices—one for themselves and one for their child learning at home. Rather than the Commission establishing a rule on this, such cases should be left to the library to decide based on its device lending and acceptable use policies.

Libraries are best equipped to determine appropriate uses of equipment and services they provide their patrons (*Notice* p.9-10)

The Commission asks if the equipment and services funded by the ECF should be used "primarily for educational purposes."[10] Specifically for libraries this is defined as "activities that are integral, immediate, and proximate to the provision of library services to library patrons."[11] It is important for the Commission to recognize that for libraries, "educational purposes" has a much broader interpretation than is the case for schools because libraries serve many diverse users in their communities.

Library staff do not inquire what subject, issue or interest brings a patron to the library to use its print or online resources because of patron privacy policies. Of interest, a recent nationally representative survey of the general public's usage of library online resources and the impact of the pandemic on these usage patterns found meaningful differences between those who lost their main source of internet access when many public libraries shut down in March 2020 (15 percent

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[8] *Notice*, p. 8.
[9] See http://www.ala.org/advocacy/privacy/statelaws.
[10] *Notice*, p. 9.
[11] 47 CFR § 54.500.

of the sample) and those who did not (85 percent). The "Public Libraries and the Pandemic" report by New America[12] found that those who lost their main internet access are more likely to say they use online resources for school or work—or to help out another adult who is not a library card holder.

We note the above example because in the *Notice* the Commission asks what guidance it should give or what safeguards it should adopt to ensure that the purchased services or equipment are used for educational purposes.[13] Considering the broad nature of library services, the only guidance or safeguard necessary is for the Commission to remind libraries that patrons are to use the online services or hardware in compliance with the library's existing rules that cover the use of any other library resources (e.g., books, videos, etc). More specifically in addressing off-campus use, libraries can ensure that patrons are properly registered and in good standing to borrow a Wi-Fi hotspot tablet or laptop. Libraries also have acceptable use policies that patrons must adhere to on the use of such items off-site. However, libraries cannot be responsible for policing exactly how patrons will use Wi-Fi hotspots or tablets in their homes or other locations any more than libraries police patron use of in-building library resources.

The process through which ECF funding is disbursed should provide applicants with certainty and ensure an equitable distribution of available funding. The process should also provide some equity across urban/rural locations and account for applicants that serve high-poverty areas. (*Notice* p.10-13)

ALA recognizes that the urgency in connecting students and library patrons is a primary driver for the ECF program. As such, our approach has been to determine how to leverage local libraries that already are providing connectivity services in response to the pandemic and incent their participation in the ECF program, while also encouraging libraries to seek creative and effective solutions to increase local impact in addressing connectivity gaps. We appreciate the challenges in determining an equitable and expeditious means to distribute finite funding. We are

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[12] https://www.newamerica.org/education-policy/reports/public-libraries-and-the-pandemic/executive-summary
[13] *Notice*, p. 10.

particularly concerned that rural, tribal and libraries that serve high poverty communities are able to receive adequate funding.

Librarians across the country report that having certainty of available funding is an important factor in participating in the E-rate program; thus, we believe it will be equally important in deciding whether to apply for ECF funds. Because of this and also the significant possibility that available funding will not be enough to meet the demand of both retroactive and prospective reimbursements, we are strongly considering a budget approach in which each library system and school district would be allocated a specific amount of funding.

On the issue of retroactive reimbursements, ALA recommends approving reimbursements for eligible services and equipment beginning July 1, 2020, rather than going back to January 27, 2020. As we stated in our response to the *Remote Learning Public Notice,*[14] we believe this is a reasonable compromise, assuming there is adequate funding for retroactive reimbursements at all. ALA continues its analysis on the most effective distribution process and expects to provide further elaboration as part of its Reply Comments.

In reimbursing applicants for previous purchases, we ask the Commission to accommodate libraries that have paid for ECF-eligible equipment/services under entities not currently in the E-Rate program. Some libraries that purchased equipment to provide connectivity during the pandemic secured funds from the Friends of the Library group or library foundation, which often serve as the fiscal agent for the library. In such instances, the library would still be the ECF applicant and need to provide proper documentation to support reimbursement.

The *Notice* indicates that schools and libraries that already have contracts to purchase eligible equipment and services do not need to bid for these as part of the ECF application process. We agree with this, but the contract exemption must be extended to allow any reasonably-priced service or equipment to be eligible for ECF funding without the applicant needing to complete a

competitive bidding process. Even with a no-bid requirement, there are sufficient safeguards to address any possible waste, fraud and abuse. The following are examples of these safeguards:

- If applicants already have a contract for services (e.g., internet) and equipment for in-building needs, they can use that contract for services and equipment to provide off-campus connectivity.
- Applicants must still comply with applicable state and local procurement policies.[15] (We note that libraries routinely purchase goods and services far in excess of what they receive in E-rate funds. These purchases are made using state and local procurement policies.)
- Libraries (and schools) are subject to regular audits.
- Applicants should have the option to purchase ECF-eligible services and equipment using other library or school contracts, assuming all parties agree.
- The Commission has the authority to rule that the cost of any service or equipment is too high.
- The Commission should authorize USAC to conduct audits and establish reasonable procedures and safeguards to verify support amounts.[16]
- We support the Commission's use of its existing enforcement powers.[17]

ALA does not support the Commission establishing price caps on services or equipment. For the cost of services and other equipment, the statutory language gives the Commission clear authority to review any costs it believes are too high and to adjust or even deny funding if necessary. [18]

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[15] On page 6 in our *Remote Learning Public Notice* comments we stated: "ALA supports efforts to minimize wasteful spending but not at the expense of program simplicity. We note that libraries routinely are required to adhere to state and local procurement requirements, which should address issues with waiving the Commission's competitive bidding rules for this program. We encourage the Commission to allow applicants to self-certify that they have followed relevant procurement requirements."

[16] *Notice*, p. 17.

[17] *Notice*, p. 17.

[18] American Rescue Plan Act, section 7402(b) states: "Any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library for the reimbursement is reasonable."

Administration and oversight of the Emergency Connectivity Fund should leverage lessons learned through applicant experience in the E-rate program to minimize applicant burden, and balance concerns for waste, fraud, and abuse. (*Notice* p. 12-15)

Historically about one-third of libraries report they do not participate in the E-rate program because of program complexity. This is especially true for small and rural libraries, as well as eligible tribal libraries. We remain concerned that as the Commission establishes rules and guardrails for the ECF, it not inadvertently discourage these libraries from applying by introducing program requirements that add to the administrative burden of applicants. On the contrary, because of the emergency nature of this program, ALA encourages efforts to simplify and streamline the process for applicants who are significantly challenged by the current E-rate program's complexity. One idea is to offer a greatly simplified application for lower-dollar requests.

We encourage the Commission to minimize tangential processes that do not directly provide 1) surety against waste, fraud, and abuse, 2) essential program data to help the Commission measure progress toward program goals, and 3) expeditious funding awards to connect as many unconnected students and others in need.

We are in general agreement with most of the proposals the Commission makes in the Application Process section of the *Notice.* However, one proposal we strongly oppose is requiring applicants "to conduct an assessment of their need for eligible equipment and services and to align the funding requests that they file during the second and subsequent filing windows with their needs assessment".[19] Such an assessment is not required in the regular E-rate program and should not be required for the ECF program either. While it is a good practice for libraries to conduct a needs assessment, such a mandate by the Commission adds another requirement and another layer of complexity to the program.[20] We also request the Commission include the option for libraries to request service providers submit invoices in addition to the proposal to

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[19] *Notice*, p. 12.
[20] In an analogous situation, libraries should have technology plans but long opposed this requirement in the E-rate program. (The technology plan requirement for category 1 was removed in the *Sixth Report and Order*, September 28, 2010. The category 2 plan requirement was removed in the first *E-rate Modernization Order,* July 11, 2014.)

require applicants to submit invoices to accommodate state and local regulations for library reimbursement procedures.

The Children's Internet Protection Act is out of scope for the Emergency Connectivity Fund. (*Notice* p.14-15)

We recognize that the Commission may feel the need to address the applicability of the Children's Internet Protection Act (CIPA) in the ECF program. However, we believe there is adequate reason to determine that CIPA does not apply to the ECF program.

The CIPA language says "A library having one or more computers with Internet access may not receive services at discount rates…" unless it filters. The phrase "a library" clearly means inside a library building. Acknowledging this, it is critically important to note that the ECF program is *not funding the library's internet connectivity*, it is funding connectivity to households and other locations *outside of the library*. Because of this critical difference in the locations where the regular E-rate funds are used and where the ECF will be used, we contend that CIPA does not apply to the ECF program.

Mitigating opportunities for waste, fraud, and abuse must balance administrative burden for the applicant. (*Notice* p.15-17)

While we understand the Commission's concerns about waste, fraud and abuse, some of its proposals go too far in mandating the retention of certain information. One of the proposals is that libraries record the individuals to whom a particular device was loaned and the dates the device was loaned and returned by the individual.[21] As noted above, this type of information is normally retained as part of the libraries integrated library system. However, retention of this information is often for several months and nowhere near the 10-year retention the Commission proposes. Another major concern is the proposed requirement that libraries present this information to the Commission and USAC whenever it is requested. As we stated earlier,

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[21] *Notice*, p. 16. We have no idea why ten years from now the Commission would want to know that a particular patron checked out a Wi-Fi hotspot from their local library.

providing information on what a patron has checked out of the library is protected by state library privacy laws. Such information can only be obtained by a court order. We ask that in its final regulations on the ECF that the Commission acknowledge the issue of library patron privacy. Another concern is the proposal that applicants record upload and download speeds for each supported device. Rather than placing this burden on applicants, it is far more likely that more accurate data can be obtained by the provider. Thus, we propose that service providers be responsible for this.

There is merit in requiring service providers to provide information to libraries on usage of services supported via the ECF program. For example, such information could be useful to libraries in refining their Wi-Fi hotspot lending policies. However, if a service or device (e.g., hotspot) is not used in a given month we are adamantly opposed to a service provider removing the cost for the service or device from the invoice provided to the library. This proposal is arbitrary and places considerable burdens on the provider and library. Also, many of the services and equipment funded by the ECF will be purchased under a contract that often covers many months or a year or more. As such, the library may not get monthly invoices for contracted services.

Once the emergency period is determined over, libraries should be able to use the equipment purchased with ECF program funds to continue to ensure patrons are able to connect at the library, at home, or wherever they may need to access the internet for work, learning, and other purposes. Libraries have developed a wide range of services during the pandemic that include virtual programs, increasing access to their digital resources. As they re-open to the public, many anticipate continuing virtual programming creating a hybrid of virtual and in-person services. Devices and other equipment purchased with ECF program funds will continue to help libraries connect resources and programming to their patrons post-pandemic. It will be no less critical to ensure library patrons have access to the internet and a device to use it. Libraries should also have the flexibility to determine where the equipment provides the greatest value to their patrons and the ability to transfer equipment to different branches depending on where there is demand. Further, the library should have the flexibility to determine when the equipment has reached the

end of its useful lifespan and dispose of it according to its normal procedures. However, we agree with the Commission that the program should not allow applicants to resell equipment.

In conclusion, libraries welcome the opportunities afforded by the Emergency Connect Fund to close connectivity and device gaps for unserved and underserved library patrons. To fulfill the promise of the new Fund, the Commission must leverage the strengths of the current E-rate program while maximizing applicant flexibility. To accomplish this, ALA recommends the Commission carefully balance program goals related to protections against waste, fraud, and abuse; expediency, equitable distribution of funds; and minimal administrative burdens on applicants. Finally, the Commission should find that the Children's Internet Protection Act (CIPA) does not apply to the use of the ECF.

The ALA looks forward to providing additional input and details through the Reply Comments period.

Respectfully submitted,

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