

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Petitions For Emergency Relief to Allow the) WC-Docket No. 21-31
Use of E-Rate Funds to Support Remote)
Learning During the COVID-19 Pandemic)

Comments of ITIF

The recent COVID-19 pandemic has thrown existing connectivity gaps into sharp relief, galvanizing support for much-needed efforts to close the digital divide.¹ The FCC and various petitioners have rightly identified the E-Rate program as an opportunity to help young students who may not have adequate connectivity tools to learn at home.² The Information Technology and Innovation Foundation (ITIF) appreciates the opportunity to comment on emergency modifications to this program.³

ITIF strongly supports the intent of the E-Rate program, to connect schools and students, and believes the current exceptional circumstances require a modification of existing practice to ensure the E-Rate program meets the original intent. The Commission should act expeditiously to leverage E-Rate funds for hotspots, modems, devices, and subscriptions to existing network facilities for qualifying students. As an established and active program, schools and libraries are familiar with the processes to request E-Rate funding, providing an ideal launch point to quickly alleviate one of the painful realities of the pandemic. However, the Commission should be realistic about limitations on the E-Rate funding mechanism—this is not a good long-term solution to connecting students. To ensure limited funds can help as many needy students as possible, this E-Rate

¹ See Doug Brake, “Lessons From the Pandemic: Broadband Policy After COVID-19,” (ITIF, July 2020), <https://itif.org/publications/2020/07/13/lessons-pandemic-broadband-policy-after-covid-19>.

² *Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to Allow the Use of E-rate Funds to Support Remote Learning During the COVID-19 Pandemic*, WC Docket No. 21-31, Public Notice (February 1, 2021), available at <https://www.fcc.gov/ecfs/filing/0201056792385>.

³ Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF’s goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytic rigor, policy pragmatism, and independence from external direction or bias. See About ITIF: A Champion for Innovation, <http://itif.org/about>.

expansion should be not used to build new network facilities, and instead provide the tools needed to connect students at home to existing networks.

THE COMMISSION SHOULD EXPAND E-RATE TO ADDRESS PANDEMIC-RELATED INEQUITIES

For over a decade, various government efforts have attempted to address the growing education access gap. In 2010, the U.S. Department of Education outlined key goals to achieve by 2015, one of which included to “provide broadband connectivity for all students, everywhere—in schools, throughout communities and in students’ homes.”⁴ The Commission initiated the E-Rate Deployed Ubiquitously (EDU) pilot program in an attempt to test the possibility of expanding E-Rate funding to provide connectivity off-campus.⁵ Following the EDU pilot program, despite positive results, E-Rate funds were not deployed to further support student connectivity at home.⁶ The impacts of the “homework gap,” however, continued to grow and while more schools came online, individual students were left behind.⁷ Five years later, in 2018, analysis by the Pew Research Center indicated close to 15 percent of homes with children lack broadband.⁸ With the pandemic forcing many to attend school online, this gap has grown from a “homework gap” to an attendance gap.

ITIF supports efforts to increase access to broadband for students. The E-Rate program should support mobile hotspots or other modems to connect students to their virtual classrooms. Mobile hotspots may not be feasible in some locations, and the Commission should aim to keep its support neutral in terms of access technology, allowing for those closer to students determine the most cost-effective and practical solutions. Allowing flexibility for teachers and librarians to help source devices will help encourage end-user choice and innovation, hopefully spurring new growth in e-learning opportunities and devices.

⁴ “U.S. Department of Education Releases Finalized National Education Technology Plan,” *U.S. Department of Education* (November 9, 2010), <https://www.ed.gov/news/press-releases/us-department-education-releases-finalized-national-education-technology-plan>.

⁵ *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 12-184, Notice of Proposed Rulemaking (August 20, 2013), *synopsis available at* <https://www.federalregister.gov/documents/2013/08/20/2013-19491/modernizing-the-e-rate-program-for-schools-and-libraries>.

⁶ See U.S. Gov. Accountability Office, “Wireless Internet: FCC Should Assess Making Off-School-Premises Access Eligible for Additional Federal Support,” Report to Congressional Committees (July 2019), <https://www.gao.gov/assets/710/700629.pdf>.

⁷ “Statement of FCC Commissioner Jessica Rosenworcel on Pew Research Center Homework Gap Findings,” *Federal Communications Commission* (April 20, 2015), *available at* <https://www.fcc.gov/document/commissioner-rosenworcel-statement-pew-homework-gap-findings>.

⁸ Monica Anderson and Andrew Perrin, “Nearly one-in-five teens can’t always finish their homework because of the digital divide,” *Pew Research Center* (October 26, 2018), <https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>.

The FCC has the Legal Authority to Temporarily Expand E-Rate

Traditionally the E-Rate program has only used funds for activities that occur in a library or a classroom, but the Commission has the legal authority to expand its existing interpretation of eligible services.⁹ The statute arguably constrains the Commission to only supporting services that are “for educational purposes” and in “nonprofit elementary and secondary school classrooms.”¹⁰ During a pandemic where students are expected to learn online from home, the Commission is reasonable in temporarily expanding its definition of “classroom” to support students in their new, at-home classroom. The Commission previously allowed for limited offsite services in a 2003 ruling, where the Commission concluded “that in certain limited instances, the use of telecommunications services offsite would also be integral, immediate, and proximate to the education of students...and thus, would be considered to be an educational purpose.”¹¹

The Colorado petition persuasively lays out the legal authority for the Commission to expand the current list of approved services for E-Rate funding.¹² Colorado highlights that “the Commission may amend or waive its rules for good cause,” and outlines the precedent in place to allow for modification during “special circumstances.”¹³ ITIF agreed with Chairwoman Rosenworcel when she explained that “the FCC has the authority to support, for educational purposes, connectivity to the classroom...the statute suggests that we can support additional services if they are for educational purposes.”¹⁴ The Commission has the legal authority to modify the list of eligible services in order to better serve connectivity needs during the pandemic, but it should do so judiciously to be effective with limited funds.

⁹ Of note, section 254(a)(2) calls the Commission to “initiate a single proceeding” and that “[t]he rules established by such proceeding shall include a definition of the services that are supported by Federal universal service support.” 47 USC § 254(a)(2).

¹⁰ 47 USC § 254(h)(2); 254(b)(6); 254(h)(1)(B).

¹¹ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Final Rule (June 20, 2003), summary available at <https://www.federalregister.gov/documents/2003/06/20/03-14928/schools-and-libraries-universal-service-support-mechanism>.

¹² “Petition for Waiver on Behalf of The State of Colorado,” *State of Colorado* (September 2, 2020), available at <https://www.fcc.gov/ecfs/filing/10902218280692>.

¹³ “Petition for Waiver on Behalf of The State of Colorado,” *State of Colorado* (September 2, 2020), available at <https://www.fcc.gov/ecfs/filing/10902218280692>.

¹⁴ Comments by Commissioner Jessica Rosenworcel, “How to Close the Homework Gap and Boost Online Education,” *ITIF* (April 21, 2020), <https://itif.org/events/2020/04/21/how-close-homework-gap-and-boost-online-education>.

The Commission Should Use E-Rate Funds Effectively

The E-Rate program is budget-constrained, requiring the Commission to ensure the funds efficiently used. E-Rate does not have the funds to completely close the gap. A recent letter led by Senator Edward Markey put it well: “the funds currently available through the E-Rate will not be enough to connect every student,” although it is an “essential down payment.”¹⁵ The most efficient use of the limited resources is to rely on existing networks and use low-cost devices to get as many students connected as possible. While the Commission is right to seek to limit duplication of other federal funding, such as that available through the Emergency Broadband Benefits program, this may be difficult to achieve without spending a significant amount of time, slowing the benefits to students. Also, students often need their own separate device from other family members to engage during the full school day.

Ideally funds would be targeted to students who are most in need. To the extent possible, the Commission should rely on the judgement of teachers and librarians who often know best which students require help getting online. The Commission should offer schools guidance on qualifying services and the amount that would be reimbursed. The Commission should adjust allowable reimbursement for schools based on the poverty rate of the student population, similar to the existing E-Rate mechanism, potentially prioritizing support for schools where an increased number of students are participating in the national school lunch program.

While ITIF supports the expansion of eligible services to include connectivity tools for students during the pandemic, the Commission should not allow for an expanded E-Rate program to fund new access deployments. Funding should leverage existing networks through mechanisms such as mobile hotspots or cable modems. Calls for funding of unique infrastructure or municipal networks, whose primary beneficiaries exist outside the educational community and its target audience, are not sustainable uses of limited E-Rate funding. Reimbursement for the construction of new network infrastructure, such as wireless towers, should not be permitted.¹⁶ Different funding mechanisms exist to provide for the building of networks in high-cost and hard-to-reach areas.¹⁷

¹⁵ Senator Markey et al., “Letter to the Honorable Jessica Rosenworcel,” *U.S. Senator Ed Markey* (February 4, 2021), available at <https://www.markey.senate.gov/news/press-releases/senators-markey-cantwell-van-hollen-bennet-hassan-and-schatz-lead-colleagues-in-urging-new-fcc-to-use-its-emergency-authority-to-connect-students-to-online-learning>.

¹⁶ While ITIF supports much of the SHLB petition, its call to expand eligible services to include “fixed or mobile wireless towers” goes too far and would be an inefficient use of E-Rate funding. See “Petition for Expedited Declaratory Ruling and Waivers Allowing the Use of E-rate Funds for Remote Learning During the COVID-19 Pandemic,” *Schools, Health & Libraries Broadband Coalition* (January 26, 2021), available at <https://www.fcc.gov/ecfs/filing/101260036427898>.

¹⁷ “Connecting Millions to Broadband Services,” Universal Service Administrative Company, accessed February 11, 2021, <https://www.usac.org/>.

Similar to the Emergency Broadband Benefit program, the Commission should aim to make this program easy to turn on and off.¹⁸ Ideally Congress would incorporate these sorts of emergency changes to USF programs as funded automatic stabilizers. To the extent the Commission can design changes to the E-Rate program to be easily incorporated into a future, more effective universal service system, the better.

CONCLUSION

As the Commission continues to adapt and refine the E-Rate program to better connect schools across the country, they should look to maximize the positive impact to students and get students online as quickly as possible. ITIF commends the Commission for its work thus far to ensure all students can participate in the new virtual classroom.

Doug Brake
Director, Broadband and Spectrum Policy

Alexandra Bruer
Policy Analyst

Information Technology and Innovation Foundation
700 K Street NW, Suite 600
Washington, D.C. 20001

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¹⁸ See Comments of ITIF on the Emergency Broadband Benefit Program, WC-Docket No. 20-445 (Jan. 2021), available at <https://itif.org/publications/2021/01/22/comments-federal-communications-commission-regarding-emergency-broadband>.