

February 23, 2021

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NW
Washington, D.C. 20002

RE: Addressing the Homework Gap through the E-Rate Program, WC Docket 21-31

Dear Secretary Dortch:

We the undersigned organizations submit these comments pursuant to the Federal Communications Commission's rules (47 C.F.R. §§ 1.415 & 1.419) in response to the above-referenced proceeding that the FCC announced in its Public Notice DA 21-98 ("Notice") of February 1, 2021.¹

In its Notice, the FCC focuses on specific areas of inquiry, including on page 6 where it asks for comments addressing "Funding and Prioritization," stating that "substantially more funding might be needed than is potentially available to support remote learning through the E-Rate program."² Our comments seek to illustrate how:

1. Additional funding for the E-Rate program is currently unnecessary because of the availability of more than \$60 billion in public funding still unspent from other congressionally created programs. The FCC should assist in these disbursements before considering E-Rate expansion.
2. Ongoing and well-documented inefficiencies in the Universal Service Fund make the E-Rate program an inappropriate vehicle to deliver effective relief to students while maintaining the solvency of the fund. The FCC should work with Congress on contribution and distribution reforms, if the USF is to continue.

The CARES Act (Pub.L. 116–136) established the Elementary and Secondary School Emergency Relief (ESSER) Fund³ as well as the Governor's Emergency Education Relief

¹Emergency Relief to Allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic, DA 21-98 Available at: <https://docs.fcc.gov/public/attachments/DA-21-98A1.pdf>.

² Ibid.

³ Department of Education, "Elementary and Secondary School Emergency Relief Fund," <https://oese.ed.gov/offices/education-stabilization-fund/elementary-secondary-school-emergency-relief-fund/>.

(GEER) Fund, providing for an initial funding of \$12.8 billion and \$3 billion respectively.⁴ Of the \$12.8 billion appropriated for the ESSER fund,⁵ only \$3 billion has been spent.⁶ Congress appropriated an additional \$54 billion for the ESSER fund and an additional \$4 billion for the GEER fund in the Consolidated Appropriations Act of 2021 (Pub.L. 116–260). **This makes a total of \$68 billion currently available to support remote learning for students, including helping schools equip students with broadband connectivity, laptops, and tablets. Before moving to expand the E-Rate program, which is not statutorily able to support at-home devices and connectivity,⁷ the FCC should assist states and the Department of Education in disbursing these funds more effectively to better help students hit hardest by the pandemic.**

The USF program provides funding to provide communications to areas of the country that are hard to reach (high-cost); rural health care; schools and libraries (E-Rate); and low-income support (Lifeline and Linkup). The companies paying into USF funding include wireline phone companies, wireless phone companies, paging service companies, and certain Voice over Internet Protocol (VoIP) providers. These fees or contributions are typically passed on to the consumer in the form of a USF fee. As many of these pools of contributors shrink, mobile customers increasingly take the brunt of these fees.

The contribution factor for USF has been on an upward trajectory for the last decade where it increased from 20% to 31.8% in just the last two years,⁸ putting exceedingly regressive fee percentages on individuals' voice service.⁹ At the current contribution rate, if everyone eligible for Lifeline services signed up for the program, billions of dollars in funding could be exhausted in only just a few months.¹⁰ Simply expanding the E-Rate program, which also draws on USF, under current conditions is unsustainable.

⁴ Department of Education, "Governor's Emergency Education Relief Fund," <https://oese.ed.gov/offices/education-stabilization-fund/governors-emergency-education-relief-fund/>.

⁵ *Ibid.*, p. 3.

⁶ Department of Education, "CARES Act: Education Stabilization Fund," <https://covid-relief-data.ed.gov/>; Dan Lips, "Unspent Federal COVID Education Relief Funds Exceed \$50 Billion", (February 1, 2021), <https://freopp.org/states-have-between-53-and-63-billion-in-unspent-k-12-emergency-education-relief-funds-a971ca1d45ce>.

⁷ 47 U.S.C. §254(h)(1)(B); H.Rept. 104–458, at 132-133 (1996); Section 254(h)(1)(B) of the Telecommunications Act of 1996 authorizes the use of universal services funds for services to "elementary schools, secondary schools, and libraries for educational purposes." This support was intended for classrooms and libraries and was designed to fulfill commission-designated purposes in those classrooms and libraries, not providing services directly to individuals.

⁸ See Federal Communications Commission, "Proposed First Quarter 2021 USF Contribution Factor is 31.8 Percent," (December 14, 2020), <https://www.fcc.gov/document/proposed-first-quarter-2021-usf-contribution-factor-318-percent>.

⁹ Scott Mackey, Ulrik Boesen, "Wireless Tax Burden Remains High Due to Federal Surcharge Increase," Tax Foundation, November 17, 2020, <https://taxfoundation.org/wireless-taxes-cell-phone-tax-rates-by-state-2020/>.

¹⁰ Joan Marsh, "New Year, New Solutions: Reforming Universal Service Contributions," (January 14, 2021), <https://www.attpublicpolicy.com/universal-service/new-year-new-solutions-reforming-universal-service-contributions/>.

Both the E-Rate and Lifeline program distribution processes should be examined for reforms. It is likely that distributions at the customer level will be more efficiently disbursed and utilized than distribution at the carrier level. **Expansion of the E-Rate program before reassessing the contribution factor and distribution mechanisms will endanger all of the four programs that are part of USF** including rural healthcare and the high-cost programs. The FCC should continue to work with Congress to use existing funds to support home-based connectivity during the COVID-19 pandemic. And, if USF programs are to continue, the FCC should work with legislators to develop the most cost-effective contribution and distribution reforms that reduce the strain on consumers and taxpayers before expanding any programs within the USF to protect its solvency.

The COVID-19 pandemic has created extraordinary challenges that require extraordinary efforts to solve. While the government works to ensure that students remain connected with their education, **the FCC should continue its policy to support the work of the Department of Education¹¹ and states instead of endangering the sustainability of the Universal Service Fund and all of the programs that it supports.**

Sincerely,

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¹¹ Federal Communications Commission, “FCC and U.S. Department of Education Promote Remote Learning So Students Can Continue Learning,” (April 27, 2020) <https://docs.fcc.gov/public/attachments/DOC-364006A1.pdf>.

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