The Emergency Connectivity Fund (“ECF”), Sec. 7402 of the recently signed $1.9 trillion American Rescue Plan Act of 2021 (see our E-rate Central newsletter of March 15th) is on an FCC fast-track with rules to be promulgate no later than May 10th. Last week, the FCC issued a Public Notice (DA 21-317) with a request for comments due April 5th and reply comments due April 23rd. The requested comments cover the following topics:

1. Funds distribution: What rules should the FCC adopt to distribute funding most efficiently and effectively (more on this later)?
2. Program goals and assessment: Should the FCC adopt “specific broadband adoption goals for students, school staff, and library patrons?” What assessment data is available to establish a baseline against which to measure the impact of ECF?
3. Applicant eligibility: Are there any entities besides traditional E-rate applicants that should be eligible for ECF funding? What restrictions, if any, should be placed on off-campus locations?
4. Product and service eligibility: The Public Notice defines Wi-Fi hotspots, modems and/or routers, connected devices, and advanced telecom and information services as eligible. What other products or services need to be made eligible? Do connected devices need to support video conferencing or be accessible to persons with disabilities? Is it correct to exclude mobile phones, dark fiber, and self-provisioned networks? Must equipment and services be used primarily for “educational purposes?” Should funding for eligible products and services be retroactive?
5. Ideally, schools and libraries might like to fund facilities providing broader off-campus services — e.g., LTE networks — that could provide post-pandemic residential services, hopefully without requiring cost-allocations of on-campus internet services.
6. Should the FCC require competitive bidding and, if so, to what degree? How would the FCC determine the “reasonable” cost of products and services?
7. The FCC proposes to leverage the use of current E-rate forms to process ECF applications. “Do commenters agree or have any concerns with this approach?”
8. How should the FCC prioritize funding if total requests exceed the program’s $7 billion cap? In that event, the FCC proposes to “issue funding decision letters starting with the schools and libraries eligible for the highest discount percentage,” much as it had last done with limited Priority 2 funding. What are the advantages or disadvantages of alternative mechanisms?
9. How should invoicing be handled? The FCC is proposing that only the BEAR reimbursement process be used, eliminating service provider discounted billing (i.e., the SPI process).
10. How should eligible ECF-funded equipment be treated after the COVID-19 emergency period?
11. What is the applicability of the Children’s Internet Protection Act (“CIPA”) to ECF-funded products and services? If CIPA compliance is required, should “a CIPA certification made in the traditional E-Rate Program suffice?”
12. How can the FCC best ensure the integrity of ECF, protecting the fund against waste, fraud, and abuse? The FCC proposes to adopt the same document retention requirements of the current E-rate program. Should service providers be required to “report and validate usage of the supported services?” How should existing E-rate gift rules be applied for ECF purposes?
13. How may the FCC “impose administrative forfeitures and other penalties on program participants found to be in violation of the program rules and requirements?”

Finally, the FCC seeks comment on the costs and benefits of the approaches we have proposed for oversight and administration of the Emergency Connectivity Fund.”

Given that reimbursements are to be at the 100% level, the following request for comment on funding caps is particularly important:

If the Commission were to establish any funding cap, we seek comment on whether and how a cap could assist the Commission in targeting the Emergency Connectivity Fund support to those students, school staff, and library patrons that are most in need and how to determine which students, school staff, and library patrons have the greatest need.

This issue arises in part from language in the original legislation that “...any reimbursement of a school or library for the costs associated with any eligible equipment may not exceed an amount that the Commission determines, with respect to the request by the school or library, is reasonable.” That could mean only that the cost of any equipment or service must be reasonable in the same sense that E-rate has always required equipment and services to be cost-effective.

However, when read in light of funding cap language quoted above, it could mean that the total amount of reimbursement to any school or library of all equipment and services requested must be reasonable. Under that interpretation, (a) a big school could request more than a small school, (b) a poor school could request more than a richer school and/or (c), a rural school could request more than an urban school. That would lead to a form of ECF budgets for all applicants could provide a measure of NSLP and rural/urban equality. Although there is no specific request for comments on applicant budgets in the FCC’s Public Notice, we expect that a number of parties will suggest this approach.