

# United States Senate

WASHINGTON, DC 20510

February 12, 2021

The Honorable Jessica Rosenworcel  
Acting Chairwoman  
Federal Communications Commission  
45 L Street NE  
Washington, DC 20554

Dear Acting Chairwoman Rosenworcel:

After nearly one year of health restrictions and lockdowns, the COVID-19 pandemic continues to disrupt American lives. Many of us now regularly rely on the internet to connect with loved ones, receive health care, and access educational services for our children. Throughout this public health emergency, access to a broadband connection has been critical in enabling life to continue as normally as possible.

The Federal Communications Commission's (FCC or Commission) Universal Service Fund (USF) has played a pivotal role in expanding broadband access to more and more Americans. However, we are concerned about the USF's long-term sustainability as a mechanism to close the nation's digital divide.

The USF is funded through an assessment on voice service providers that is usually passed onto consumers as a fee in their monthly telephone bill. Providers are required to pay a percentage of their revenue from interstate and international telecommunications services to the USF, known as the contribution factor. In December 2020, the Commission announced another increase in the USF contribution factor, setting a new record at 31.8 percent.<sup>1</sup> In addition, the FCC recently issued a Public Notice seeking comment on potentially reinterpreting Section 254 of the Telecommunications Act of 1996 to allow a potentially drastic expansion of one of the USF programs, E-Rate, in order to spend more money on remote learning.<sup>2</sup> As you are aware, the E-Rate program already had more than \$2.3 billion<sup>3</sup> in funding commitments for FY 2019 under a reading of Section 254 that only permits funding to be used for "services" to "classrooms," as expressly stated in the Telecommunications Act.<sup>4</sup>

If the FCC expands the E-Rate program to allow recipients to use funds for remote learning, such a spike in demand would likely result in a further increase in the contribution factor. The Public Notice acknowledges this reality, stating that "[p]ublicly available information strongly suggests

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<sup>1</sup> *Proposed First Quarter 2021 Universal Service Contribution Factor*, Public Notice, CC Docket No. 96-45, DA 20-1480 (OMD Dec. 14, 2020). <https://docs.fcc.gov/public/attachments/DA-20-1480A1.pdf>

<sup>2</sup> *Wireline Competition Bureau Seeks Comment Petitions for Emergency Relief to Allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic*, Public Notice, WC Docket No. 21-31, DA 21-98 (WCB Feb. 1, 2021) (Public Notice) <https://docs.fcc.gov/public/attachments/DA-21-98A1.pdf>.

<sup>3</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report 2020*, Table 4.1, (rel. Jan. 5, 2021) <https://docs.fcc.gov/public/attachments/DOC-369262A1.pdf>

<sup>4</sup> 47 U.S.C. §§ 254(b)(6), 254(h)(2)(A).

that substantially more funding might be needed than is potentially available through the E-Rate program.”<sup>5</sup>

The USF contribution methodology is widely considered to be regressive, since the same rate is applied to all consumers regardless of income. Indeed, the Government Accountability Office recently issued a report stating that a high contribution factor places a greater burden on low-income and older Americans, since they “may be more likely to rely solely on voice connections than other demographic groups.”<sup>6</sup> Thus, in addition to requiring a larger share of their income, the USF contributions target services that low-income and elderly Americans disproportionately rely upon.

As the Committee continues its oversight of the FCC and weighs the viability of the USF, we ask that you respond to the following questions, which will help inform our work and perhaps guide the Commission’s own deliberations:

1. Has the Office of Economics and Analytics (OEA) calculated the amount of additional funding that would be required to support distance learning? Although the Public Notice anticipated that more funding would be required, it failed to estimate a specific figure. Has the Commission calculated the impact on the contribution factor if these petitions are granted? If OEA has not made this calculation, we ask that it be done and an answer provided to the Committee.
2. Over the course of the pandemic, Congress has provided tens of billions of dollars in aid for K-12 education, often expressly allowing the funds to be used to support distance learning. Given that the Commission has worked with the Department of Education to allocate those funds,<sup>7</sup> please provide an update on the implementation of those initiatives. Have you determined that these funds will be insufficient? With the bulk of COVID-related education funding recently provided in the Coronavirus Response and Relief Supplemental Appropriations Act of 2021, are you coordinating with the Department of Education to ensure available funding is used before increasing the burdens on the USF?
3. In addition to funding expressly for schools, the billions of dollars made available through the Emergency Broadband Benefit Program are intended to help connect families that could otherwise not afford broadband.<sup>8</sup> Is there any reason to believe this program will fail to connect families with school-aged children? If so, please explain how E-Rate expansion could succeed where the Emergency Broadband Benefit Program fails. In

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<sup>5</sup> Public Notice at 6.

<sup>6</sup> FCC Should Enhance Performance Goals and Measures for its Program to Support Broadband Service in High-Cost Areas, United States Government Accountability Office Report to the Chairman, Committee on Energy and Commerce, House of Representatives, GAO-21-24, at 17 (Oct. 2020). <https://www.gao.gov/assets/710/709953.pdf>

<sup>7</sup> *FCC and U.S. Department of Education Promote Remote Education So Students Can Continue Learning: Agencies to Collaborate on Efforts to Keep America’s Students Connected During Coronavirus Pandemic*, News Release, (Apr. 27, 2020) <https://docs.fcc.gov/public/attachments/DOC-364006A1.pdf>

<sup>8</sup> *Wireline Competition Bureau Seeks Comment on Emergency Broadband Connectivity Fund Assistance*, Public Notice, WC Docket No. 20-445, DA 21-6 (WCB Jan. 4, 2021) <https://docs.fcc.gov/public/attachments/DA-21-6A1.pdf>

addition, how will you account for the funding provided by this program when making decisions regarding E-Rate expansion?

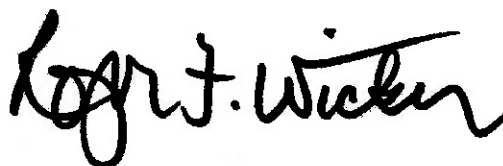
4. In order to constrain skyrocketing expenses, would funding to now-empty schools be reduced and redirected to their remote students? If not, please explain why the Commission continues to spend money on broadband to shuttered schools while expanding the E-Rate program to fund connections to students whose schools have not yet reopened.
5. The Centers for Disease Control and Prevention currently advises that schools may begin to reopen with certain safety precautions in place.<sup>9</sup> The ongoing rollout of vaccines should also lead to schools reopening at a faster pace. If the Commission chooses to reinterpret Section 254 of the Telecommunications Act, how quickly do you anticipate the E-Rate program could be transformed to support spending for internet services outside of traditional classrooms? Additionally, how quickly do you anticipate the funding could be disbursed by the Universal Service Administrative Company, and students obtain access to broadband services in their homes? How would the Commission prioritize the funding and would schools that have safely reopened be eligible for the additional spending? Will a potential expansion of the E-Rate program meaningfully help manage the impact of the pandemic in a timely manner as schools reopen across the country? As this expansion is intended to respond to the COVID-19 pandemic, what is your plan for winding down this additional spending once the pandemic has been brought under control and students and teachers return to classrooms?
6. With the contribution factor climbing to an all-time high, are you considering safeguards such as a cap on the contribution factor to ensure that the burdens of these programs do not fall on those who can least afford them? If not, please explain how you would protect Americans from ever-increasing fees.
7. Given the inherent differences of providing service to students' homes instead of classrooms, what rules would you need to implement in order to prevent waste, fraud, and abuse? Do you plan on following current Commission precedent of making any proposed rules available to the public prior to a vote?

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<sup>9</sup> Centers for Disease Control and Prevention (Margaret A. Honein, PhD, Lisa C. Barrios, DrPH, John T. Brooks, MD), *Data and Policy to Guide Opening Schools Safely to Limit the Spread of SARS-CoV-2 Infection*, (Jan. 26, 2021), <https://jamanetwork.com/journals/jama/fullarticle/2775875>; Cory Turner, *CDC Makes the Case for Schools Reopening*, NPR (Jan. 26, 2021 5:46 PM), <https://www.npr.org/2021/01/26/960885936/cdc-makes-case-for-school-reopening>

We would ask that you please provide responses in writing as soon as possible, but by no later than February 26, 2021. Thank you in advance for your reply. We look forward to working with you to preserve the USF and the critical programs it supports for years to come.

Sincerely,

Handwritten signature of Roger F. Wicker in black ink.

Roger F. Wicker  
Ranking Member  
Senate Committee on Commerce, Science,  
and Transportation

Handwritten signature of John Thune in black ink.

John Thune  
United States Senator