



Federal Communications Commission
Washington, D.C. 20554

MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL COMMUNICATIONS
COMMISSION AND THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY
REGARDING THE EMERGENCY CONNECTIVITY FUND

I. PURPOSE AND PARTIES

On March 11, 2021, as part of the recently enacted American Rescue Plan Act of 2021 (the Act), Congress established in the United States Treasury an Emergency Connectivity Fund and appropriated \$7.171 billion to the Emergency Connectivity Fund for the purpose of providing support to eligible schools or libraries, for the purchase during a COVID-19 emergency period of eligible equipment or advanced telecommunications and information services (or both), for use by – (1) in the case of a school, students, and staff of the school at locations that include locations other than the school; and (2) in the case of a library, patrons of the library at locations that include locations other than the library.¹ Amounts appropriated to the Emergency Connectivity Fund for fiscal year 2021 are to remain available until September 30, 2030.² Congress directed the Federal Communications Commission (Commission or FCC) to, no later than May 10, 2021, promulgate rules for the provision of support from the Emergency Connectivity Fund to eligible schools or libraries as described in the Act. The Act further provides that the Commission adopt, and the Commission and the Universal Service Administrative Company (USAC) administer the regulations adopted pursuant to the Act and specifies that not more than two percent of the \$7.171 billion appropriation may be used for the purposes of adopting and administering the required regulations.³

The Commission is exercising the authority provided in the Act to use USAC's services to assist the Commission with the implementation and administration of the Emergency Connectivity Fund. Accordingly, the Commission and USAC are entering into this Memorandum of Understanding (MOU) to facilitate the efficient implementation, management, oversight, administration, and execution of the Emergency Connectivity Fund. This MOU is not intended to and does not in any way limit the Commission's authority over the Emergency Connectivity Fund. The Commission is responsible for the effective and efficient adoption, implementation, management, administration and oversight of the Emergency Connectivity Fund, including all policy and rule interpretation decisions. As will be further articulated in the course of relevant Commission orders, public notices and directives, as part of administering the underlying program adopted by the Commission for the Emergency Connectivity Fund, USAC's responsibilities include, but are not limited to, accepting and reviewing applications, working with

¹ American Rescue Plan Act of 2021, H.R. 1319, 117th Cong., Tit. VII, § 7402 (2021); *see also* 47 U.S.C. §§ 254(h)(1)(B), (h)(2). The COVID-19 emergency period is defined as beginning on January 27, 2020 and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists. January 27, 2020 is the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act.

² American Rescue Plan Act of 2021, H.R. 1319, 117th Cong., Tit. VII, § 7402(c)(2) (2021).

³ American Rescue Plan Act of 2021, H.R. 1319, 117th Cong., Tit. VII, § 7402(c)(2)-(3) (2021) (explaining that the Act also provided \$1,000,000 to the Inspector General of the Federal Communications Commission to conduct oversight of support provided).

the FCC to commit funds, accepting and reviewing invoices, supporting the FCC to ensure timely reimbursement, administering any required audit and reporting requirements, producing timely and relevant data and analysis to inform the Commission in its policy-making and oversight, educating stakeholders to promote successful participation and operational efficiency, and advising the Commission on any business and/or operational requirements to effectuate any changes resulting from Commission decisions. To the extent USAC has any questions regarding its functions or duties pursuant to this MOU which are not fully addressed herein or in the Commission's orders, public notices or directives, it should address its questions to the FCC's Managing Director.

The Act imposes an overall cap of \$143.42 million on the administrative costs associated with the Emergency Connectivity Fund for the duration of the program. USAC and the Commission will therefore incur administrative costs that are less than the \$143.42 million cap and controls need to be implemented to ensure that this cap is not exceeded, including the regular reporting by USAC of its costs to the Commission. In reporting its costs, USAC should use fully allocated costs for tracking and accounting for expenses for which USAC seeks reimbursement from the Commission. Under no circumstances shall USAC incur total expenses under this MOU that exceed \$107.56 million, and under no circumstances shall the Commission be liable to USAC for total expenses in excess of \$107.56 million. Amounts disbursed from the Emergency Connectivity Fund to program participants are not considered administrative costs associated with the Emergency Connectivity Fund and do not count against the \$143.42 million and \$107.56 million caps referred to in this paragraph. Commitments and disbursements to Emergency Connectivity Fund participants shall be made by the Commission out of the Emergency Connectivity Fund in the Treasury, and notification of such funding actions may be sent to program participants by USAC.

While the Universal Service Fund (USF) is currently exempt from the Antideficiency Act,⁴ the Emergency Connectivity Fund is fully subject to the Antideficiency Act. Accordingly, USAC shall not enter into any contract that constitutes open-ended commitments of monies related to the Emergency Connectivity Fund, or any other commitments or obligations in violation of the Antideficiency Act. In addition, in connection with any monies related to the Emergency Connectivity Fund, USAC shall: (a) establish USAC's maximum legal commitment at the time of award, either by establishing a firm fixed price or a not-to-exceed price that the contractor exceeds at its own risk; (b) not include any commitment by USAC to provide indemnification of any other party unless such indemnification has a stated not-to-exceed amount and such amount is considered a part of the total contract price for approval by the USAC Board of Directors and, if applicable, Managing Director; and (c) not include any provision authorizing any party to unilaterally increase the contract price, and not include any provision authorizing automatic renewal or extension of the contract without prior written authorization of USAC. When used in this paragraph, "commitment" refers to obligations USAC incurs to its own staff and its contractors, not to commitments made to Emergency Connectivity Fund program participants.

II. APPLICABLE PROVISIONS

The Commission and USAC currently have a Memorandum of Understanding, dated December 19, 2018, which governs the relationship between the Commission and USAC as it pertains to USAC's work as the Commission's designated administrator of the USF (USF MOU).⁵ The Commission and USAC agree to leveraging the existing agreed upon clauses in the USF MOU to apply to USAC's administration of the

⁴ Codified as amended at 31 U.S.C. §§ 1341, 1342, 1351, and 1517. Guidance is provided by OMB Circular A-11, Section 145 (Dec. 23, 2020) and OMB Memorandum M-13-10, Antideficiency Act Implications of Certain Online Terms of Service Agreements (April 4, 2013).

⁵ Memorandum of Understanding between the Federal Communications Commission and the Universal Service Administrative Company, Dec. 19, 2018, is available online at: <https://www.fcc.gov/sites/default/files/usac-mou.pdf>.

Emergency Connectivity Fund. As such, for the purposes of USAC’s work for the Commission on the Emergency Connectivity Fund, the selected USF MOU clauses listed below that apply to USAC’s work as USF administrator are incorporated by reference herein to USAC’s work on the Emergency Connectivity Fund.⁶

- IV.A.1 – Coordination and Communication
- IV.A.3 – Conflicts of Interest
- IV.A.4 – Claims Involving the USF [to include the Emergency Connectivity Fund]
- IV.A.5 – Potential Loss of Service
- IV.A.6 – Forms Approval
- IV.A.7 – Stakeholder Engagement and Program Outreach [if directed by the Commission]
- IV.A.8 – Notification of Rule Violations and Potential Waste, Fraud and Abuse
- IV.A.9 – Enforcement Referrals
- IV.A.10 – USAC Website Changes
- IV.B.1 – Annual Procurement Plan
- IV.B.2 – Quarterly Procurement Reporting
- IV.B.3 – Procurement Advance Review
- IV.B.4 – Transparency
- IV.B.5 – Annual Procurement Report
- IV.B.6 – Procurement Standards and Procedures
- IV.B.8 – Transferability of Property Rights
- IV.B.9 – Contract Administration
- IV.B.10 – Conflicts of Interest
- IV.B.11 – Performance-Based Contracting
- IV.B.12 – Training
- IV.B.13 – Competition Advocate
- IV.C – Treatment of Non-Public Information
- IV. D – Reporting Requirements
- IV.D.1 – Financial and Programmatic Reports
- IV.D.2 – Commission Access to USF Analytics and Data
- IV.D.3 – Performance Measures [except for the “Contributor Performance” measure]
- IV.D.4 – Customer Service Standards
- IV.D.5 – Expenditure Records and Reporting

⁶ The FCC intends that the phrase “Emergency Connectivity Fund” be used in lieu of “universal service fund” or “USF” in each of the USF MOU clauses listed in this letter.

- IV.F – Statutes and Agency Directives Applicable to the USF [and to the Emergency Connectivity Fund]
- IV.G – USF Audits and Assessments [if requested by the FCC’s Managing Director and subject to the availability of funds]
- IV.G.1 – Beneficiary and Contributor Audits [if requested by the FCC’s Managing Director and subject to the availability of funds; except provision that the audit program shall be designed to verify that all audited contributors are making the appropriate contributions in accordance with the Commission’s rules does not apply to the Emergency Connectivity Fund]
- IV.G.2 – Improper Payment Estimates, Identification, and Recovery. USAC shall also follow OMD’s June 15, 2020 Letter to USAC regarding the Payment Integrity Information Act (PIIA), Pub. L. No.116-117 with respect to the Emergency Connectivity Fund IV.G.4 – Audit Follow-up
- IV.G.5 – Internal Control
- IV.G.6 – Employing the Audit Program to Advance Program Goals Adopted by the Commission
- IV.H.1 – Information Technology (IT) Requirements - General Coordination
- IV.I – Freedom of Information Act Submissions [as needed and subject to the availability of funds]
- IV.J – USAC Requests for Guidance
- VI. – Revision and Duration
- VII. – No Private Cause of Action and Disclaimer
- VIII. – Severability
- Attachment A (USAC Confidentiality Agreement) (including Appendix A) [the definition of Personally Identifiable Information in Appendix A will be updated by mutual agreement by USAC and the FCC]

SIGNATURES

Date: _____

Date: March 18, 2021 _____

 Mark Stephens
 Managing Director
 Federal Communications Commission



 Radha Sekar
 Chief Executive Officer
 Universal Service Administrative Company