

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Waiver of Section 54.514 of the
Commission's Rules by
Florida Department of Management Services
Schools and Libraries Universal Service Support
Mechanism
CC Docket No. 02-6

ORDER

Adopted: October 26, 2018

Released: October 26, 2018

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants a waiver of the Commission's E-Rate program invoicing rules to assist schools and libraries affected by Hurricane Michael, which made landfall in early October 2018. As explained in the Request for Waiver filed by the Florida Department of Management Services (the Department), entities located in counties in Florida impacted by Hurricane Michael may be unable to meet the October 29, 2018 invoice deadline for recurring services provided in funding year 2017 or request a timely extension due to the devastating effects of the hurricane. On our own motion, we conclude that such waiver relief would also be appropriate for entities located in counties in Georgia that were similarly impacted by Hurricane Michael. Based on the record before us, we find good cause to waive the invoice deadline extension rule and provide participants in the Hurricane Michael "affected areas" with an automatic 120-day extension of the October 29, 2018 invoice deadline to February 26, 2019.

1 E-Rate is more formally known as the schools and libraries universal service support mechanism.

2 Request for Waiver filed by Lyell Walker and Devin Boyd, Florida Department of Management Services, CC Docket No. 02-6 (filed Oct. 17, 2018) (Request for Waiver) (seeking a waiver of the invoice deadline rule for the counties in Florida affected by Hurricane Michael).

3 47 CFR § 54.514.

4 We define "affected areas" as the counties in Florida and Georgia that have been designated as Major Disaster Areas eligible for Individual Assistance for the purposes of federal disaster relief by the Federal Emergency Management Agency (FEMA). See generally FEMA, Florida Hurricane Michael (DR-4399), https://www.fema.gov/disaster/4399 (last visited Oct. 26, 2018); FEMA, Georgia Hurricane Michael (DR-4400), https://www.fema.gov/disaster/4400 (last visited Oct. 26, 2018). E-Rate-eligible entities that have experienced similarly catastrophic damage from Hurricane Michael, but that are not located in an area eligible for FEMA individual disaster assistance, may request similar, narrowly-tailored relief from these or other requirements from the Wireline Competition Bureau.

5 See, e.g., Schools and Libraries Universal Service Support Mechanism et al., CC Docket Nos. 02-6 et al., Order, 32 FCC Rcd 7456 (WCB 2017) (waiving, inter alia, the invoicing deadline for entities affected by Hurricanes Harvey, Irma and Maria); Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up, CC Docket Nos. 96-45 and 02-

## II. BACKGROUND

2. *E-Rate Invoicing Rules.* In the *2014 First E-Rate Order*, the Commission codified the invoice deadline established by Universal Service Administrative Company's (USAC's) procedures,<sup>6</sup> and adopted a strict standard for granting extensions of the applicable invoice deadline.<sup>7</sup> Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoice deadline, provided that the applicant or service provider submits the request on or before that invoice deadline.<sup>8</sup> USAC will automatically grant timely filed invoice extension requests.<sup>9</sup> Under section 54.514 of the Commission's rules, the deadline to invoice or seek an automatic 120-day extension of the invoice deadline for recurring services provided in funding year 2017 is October 29, 2018.<sup>10</sup>

3. On October 17, 2018, the Department filed a Request for Waiver on behalf of entities located in counties affected by Hurricane Michael and designated as major disaster areas by FEMA.<sup>11</sup> In its Request, the Department seeks a waiver of the invoice deadline, noting that schools and libraries in these areas have suffered catastrophic damage and may be without power or Internet access for several weeks or months.<sup>12</sup> In addition, the Department states that many of these entities have lost access to E-Rate records and invoices; and, as a result, may be unable to meet the invoice deadline or file a timely extension request.<sup>13</sup>

## III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>14</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>15</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.<sup>16</sup> The Commission has concluded, however, that "it is generally not in the public interest to waive [the] invoicing rules,"<sup>17</sup> and the Bureau should grant waivers of the invoice deadline rules only under "extraordinary circumstances."<sup>18</sup>

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6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (providing relief in areas devastated by Hurricane Katrina). *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>6</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8965-66, paras. 238-39 (2014) (*2014 First E-Rate Order*). The Commission's E-Rate rules require applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later. 47 CFR § 54.514(a).

<sup>7</sup> See *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

<sup>8</sup> 47 CFR § 54.514(b).

<sup>9</sup> *Id.*

<sup>10</sup> 47 CFR § 54.514.

<sup>11</sup> Request for Waiver at 1.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> 47 CFR § 1.3.

<sup>15</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>16</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>17</sup> The Commission has concluded that the its invoice deadline rules are necessary to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused

5. For schools and libraries located in the affected areas,<sup>19</sup> we find that the extensive damage and disruption in service caused by Hurricane Michael, and the close proximity to the October 29, 2018 invoice deadline for recurring services provided in funding year 2017, presents extraordinary circumstances that merit a deviation from the general rule. While these entities would be eligible for an automatic 120-day invoice deadline extension if they requested it, we are concerned that they may be unable to avail themselves of such relief as a direct result of the damage caused by Hurricane Michael. Further, as noted by the Department, participants in the affected areas may have difficulty getting access to the necessary records or invoices before October 29, 2018 due to Hurricane Michael.<sup>20</sup> We, therefore, find that it is in the public interest to provide schools and libraries in these affected areas a 120-day extension of the invoice deadline for funding year 2017 recurring services to February 26, 2019.<sup>21</sup> In this regard, we note that grant of this relief is consistent with waiver relief that the Commission has granted previously under similar circumstances.<sup>22</sup> We direct USAC to make the necessary changes to the associated invoice deadlines consistent with the Bureau's decision.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, section 54.514 of the Commission's rules, 47 CFR § 54.514, IS WAIVED to the extent described above.

7. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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E-Rate funds that may be carried forward to future funding years. *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-39.

<sup>18</sup> *Id.* at 8966, para. 240.

<sup>19</sup> *See supra* note 4.

<sup>20</sup> *See* Request for Waiver at 1.

<sup>21</sup> Applicants and service providers will still be eligible to request a one-time extension of the February 26, 2019 deadline provided in this order, if necessary. 47 CFR § 54.514(b).

<sup>22</sup> *See supra* note 5.