

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

In the Matter of )
)
Schools and Libraries Universal Service ) WC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: January 3, 2019

Released: January 3, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In October 2017, a series of wildfires occurred in Northern California, resulting in over 40 deaths and causing damage or destruction to over 8,400 structures.1 The fires also caused power outages and damage to communications services, affecting the participation of schools and libraries in the E-Rate program.2 On October 9, 2017, the Governor of California declared a state of emergency in certain counties affected by the wildfires and shortly thereafter, on October 10, 2017, the Federal Emergency Management Agency (FEMA) declared eight counties to be major disaster areas eligible for federal disaster relief.3

2. To assist schools and libraries in these and surrounding counties, on November 27, 2017, the California Department of Education (Department) filed a Request for Waiver of certain E-Rate program rules and requirements on their behalf.4 Based on the record before us, and given the extensive

1 See CAL FIRE, California Statewide Fire Summary (Oct. 30, 2017), http://calfire.ca.gov/communications/communications\_StatewideFireSummary; Jennifer Medina, Scenes of Devastation from California's Latest Wildfire, New York Times (Dec. 5, 2017), https://www.nytimes.com/2017/12/05/us/california-wildfire-ventura.html (describing the impact of the 2017 wildfires on California).

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

3 Office of Governor, Governor Brown Issues Executive Order to Help Cut Red Tape, Expedite Recovery Efforts in Communities Impacted by Wildfires (Oct. 18, 2017), https://www.gov.ca.gov/2017/10/18/news20035/; see also FEMA, California Wildfires (DR-4344), https://www.fema.gov/disaster/4344 (last visited Dec. 3, 2018) (listing the following eight counties as eligible for Individual Assistance: Butte, Mendocino, Napa, Nevada, Sonoma, Lake, Orange, and Yuba). Although FEMA declared these counties eligible for federal disaster relief on October 10, 2017, it reported the incident period as having occurred between October 8, 2017 and October 31, 2017. Id.

4 Request for Waiver filed by the California Department of Education, CC Docket No. 02-6 (filed Nov. 27, 2017) (Request for Waiver). Except where otherwise noted, the Department seeks relief for schools in the following counties and surrounding areas: Butte, Tehama, Plumas, Glenn, Colusa, Sierra, Lake, Yolo, Mendocino, Trinity, Humboldt, Napa, Solano, Marin, Nevada, Placer, Sutter, Orange, Los Angeles, San Bernardino, Riverside, San Diego, Sonoma, and Yuba. Request for Waiver at 4. On January 10, 2018, Sonoma County Office of Education (SCOE) submitted a request for waiver seeking the same relief for Sonoma County as the relief requested by the Department. See Letter from Steven D. Herrington, Superintendent of Schools, SCOE, and Candy Amos, Informational Systems Support Analyst, SCOE to FCC, WC Docket 02-6 (filed Jan. 10, 2018). Because SCOE requests the same relief for Sonoma County as the Department, we address SCOE's request concurrently with the Department's Request for Waiver.

damage and disruption in service caused by the October 2017 wildfires, we grant in part and deny in part the Department's Request for Waiver and find good cause to temporarily waive certain rules and deadlines,<sup>5</sup> as provided herein, to assist schools and libraries in the "affected areas."<sup>6</sup> In addition, we note that E-Rate-eligible entities that have experienced similarly catastrophic damage from the October 2017 wildfires, but that are not located in one of the affected areas may request similar, narrowly-tailored relief from these or other E-Rate program requirements.

## II. BACKGROUND

3. In its Request for Waiver, the Department seeks a waiver of: (a) the deadline to seek an extension of the September 30, 2017 service implementation deadline for non-recurring services other than special construction;<sup>7</sup> (b) the deadlines to request service substitutions and SPIN changes;<sup>8</sup> (c) deadlines for filing FCC Forms 486,<sup>9</sup> 472, and 474;<sup>10</sup> (d) the deadline to file requests for review or waiver of decisions by the Universal Service Administrative Company (USAC);<sup>11</sup> and (e) the requirement to retain records related to E-Rate applications for a period of at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.<sup>12</sup> Additionally, the Department requests that USAC provide additional time for schools affected by the wildfires to respond to Program Integrity Assurance (PIA) requests<sup>13</sup> and seeks additional category two funds for schools and libraries that have suffered damage and are located in the affected areas.<sup>14</sup>

4. On December 11, 2017, the Wireline Competition Bureau (Bureau) released a Public Notice seeking comment on the Department's Request for Waiver.<sup>15</sup> On January 11, 2018, Funds for Learning (FFL) filed a comment in support of the Department's Request and further requested that the same broad relief provided to applicants impacted by Hurricanes Harvey, Irma, and Maria be provided to applicants impacted by the wildfires.<sup>16</sup> In addition, FFL requests that the review of any post-window E-Rate applications for funding year 2017 from schools and libraries affected by the wildfires be prioritized

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<sup>5</sup> See 47 CFR §§ 54.720, 1.106, 54.516(a), and 54.514(a).

<sup>6</sup> We define "affected areas" as the counties located in California that have been designated as Major Disaster Areas eligible for Individual Assistance for purposes of federal disaster relief by FEMA. See *supra* note 3.

<sup>7</sup> 47 CFR § 54.507(d)(4).

<sup>8</sup> 47 CFR § 54.504(d) (establishing requirements for service substitutions); *Schools and Libraries Universal Service Support Mechanism et al.*, Sixth Report and Order, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (establishing the conditions under which E-Rate applicants may switch service providers)).

<sup>9</sup> Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; see also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

<sup>10</sup> 47 CFR § 54.514.

<sup>11</sup> 47 CFR §§ 54.720, 1.106.

<sup>12</sup> 47 CFR § 54.516. The Department seeks this relief only for schools and libraries that have suffered significant damage and are located in the affected areas. Request for Waiver at 4.

<sup>13</sup> The Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC), the administrator of the E-Rate program, suspended many of its administrative deadlines for applicants in the affected areas pursuant to its natural disaster procedures, providing applicants with additional time to respond to certain SLD information requests such as PIA requests. See *Requests for Waiver of Decisions of the Universal Service*

over other applications.<sup>17</sup> The Bureau did not receive additional comments in response to its Public Notice.

### III. DISCUSSION

5. Based on the facts and circumstances presented here, and consistent with our precedent, we find good cause exists to waive certain E-Rate rules and deadlines to assist the schools and libraries located in the affected areas.<sup>18</sup> Generally, the Commission's rules may be waived for good cause shown.<sup>19</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>20</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>21</sup> As discussed in further detail below, we find that the extensive damage and disruption in service caused by the October 2017 wildfires present compelling and unique circumstances that merit a waiver of certain rules. We therefore grant, in part, the Department's Request for Waiver.<sup>22</sup> For those portions of the Department's Request we deny, and to the extent individual applicants are able to demonstrate good cause to justify a waiver of our rules, we note that applicants may still seek narrowly-tailored relief from these or other requirements from the Bureau.

6. Specifically, with respect to the Department's request that we waive certain E-Rate rules and deadlines to assist the schools and libraries impacted by the wildfires,<sup>23</sup> we waive the following deadlines that occurred on or after October 8, 2017 (i.e., the first day on which the wildfires were reported as having occurred)<sup>24</sup> and provide those schools and libraries located in the affected areas with up to 90 calendar days from the effective date of this Order to submit the following filings:

- Requests for review or waiver of decisions by USAC, directed to USAC or the

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*Administrator by Alpaugh Unified School District, et al.*, CC Docket No. 02-6, Order, 22 FCC Rcd 6035, 6035-36, para. 3 (2007) (noting that USAC has an administrative procedure that allows it to request additional information from applicants and require responses within a specified time period). As a result, we find that no additional relief from the FCC is needed to address this request.

<sup>14</sup> 47 CFR § 54.502(b). See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8899, para. 77 (2014) (*2014 First E-Rate Order*) (designating services needed for broadband connectivity within schools and libraries as "category two" services).

<sup>15</sup> See *Wireline Competition Bureau Seeks Comment on California Department of Education Request for Waiver*, CC Docket No. 02-6, Public Notice, 32 FCC Rcd 1282 (WCB 2017).

<sup>16</sup> See FFL PN Comments at 1 (requesting that the Bureau grant the same type of broad relief for the Department as it did for applicants impacted by the hurricanes, including: (1) targeted support to schools and libraries located in the most severely impacted areas to help them restore services and replace equipment damaged by the hurricanes; (2) increased flexibility to request service substitutions; (3) support for schools incurring additional costs for eligible services because they are serving students displaced by the hurricanes; (4) extensions of program deadlines; and (5) a limited waiver of the recordkeeping requirements for records destroyed by the hurricanes). With the exception of FFL's request that we provide support for schools serving displaced students, we grant these requests to the extent provided herein. See *infra* paras. 5-7. E-Rate eligible entities that incurred additional costs for eligible services serving students or patrons displaced by the wildfires may request similar, narrowly-tailored relief from these or other requirements from the Bureau.

<sup>17</sup> FFL PN Comments at 2. Because there was sufficient funding available to fully fund category one and category two requests for E-rate supported services for funding year 2017, we find FFL's request to prioritize certain applications for funding moot. See Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC

Commission.<sup>25</sup>

- FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act Certification (CIPA) Form).<sup>26</sup>
- FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and FCC Form 474 (Service Provider Invoice Form).<sup>27</sup>

7. Recognizing that applicants and service providers in the affected areas may have lost records in the destruction caused by the wildfires, we also grant the Department’s request that we waive the applicable document retention requirements with respect to such records and waive section 54.516(a) of our rules, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.<sup>28</sup> Accordingly, applicants and service providers in the affected areas will not be penalized for failure to retain records destroyed by the wildfires. However, applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the wildfires. Additionally, applicants and service providers are responsible for obtaining such records that are available from a third party upon request by USAC or the Commission. We note that the record retention requirements set forth in the Commission’s rules continue to apply to all records that were not destroyed by the wildfires, including records relating to any relief granted by this Order.

8. With respect to the Department’s request that we waive the deadline for seeking an extension of the September 30, 2017 service implementation deadline for non-recurring services and the associated deadline to request a service substitution, we deny these requests.<sup>29</sup> The deadline to seek an extension of the service implementation deadline for non-recurring services, other than special construction, for funding year 2016 was September 30, 2017.<sup>30</sup> Because this deadline was prior to the

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to Kris Monteith, Acting Bureau Chief, Wireline Competition Bureau, WC Docket 02-6 (filed May 17, 2017) (finding that USAC’s estimates of demand for Schools and Libraries Universal Service Support Mechanism discounts for funding year 2017 was approximately \$3.2 billion); USAC Schools and Libraries, Search Commitments 2017, <https://data.usac.org/publicreports/SearchCommitments/Search/SearchByYear/2017> (last visited Dec. 10, 2018) (finding the total amount committed for Schools and Libraries Universal Service Support Mechanism discounts for funding year 2017 was approximately \$2.3 billion); *see also Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, CC Docket No. 02-6, Public Notice, DA 18-861 (WCB 2018).

<sup>18</sup> *See, e.g., 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, DA 18-1101 (WCB Oct. 26, 2018) (providing relief in areas devastated by Hurricane Michael) (*Hurricane Michael Order*); *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket Nos. 02-6 et al., Order, 32 FCC Rcd 7456 (WCB 2017) (providing relief in areas devastated by Hurricanes Harvey, Irma and Maria) (*WCB Hurricane Relief Order*); *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 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883 (2005) (providing relief in areas devastated by Hurricane Katrina) (*Hurricane Katrina Order*).

<sup>19</sup> 47 CFR. § 1.3.

<sup>20</sup> *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>21</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>22</sup> Because SCOE requests the same relief for Sonoma County as the Department, we also grant, in part, SCOE’s Request for Waiver and provide relief to the extent provided herein. *See* Letter from Steven D. Herrington, Superintendent of Schools, SCOE, and Candy Amos, Informational Systems Support Analyst, SCOE to FCC, WC Docket 02-6 (filed Jan. 10, 2018).

time period during which the wildfires were reported by FEMA as having occurred in the affected areas (i.e., beginning October 8, 2017),<sup>31</sup> we do not find good cause to waive this deadline for schools and libraries located in these areas.<sup>32</sup> Notwithstanding, to the extent individual applicants may have been impacted by the wildfires prior to October 8, 2017 and were consequently not able to meet this deadline, we note that such applicants may still seek a waiver of the extension of the service implementation deadline for non-recurring services and make the required showing under the Commission's rules for such relief.<sup>33</sup>

9. Lastly, we deny the Department's request for additional category two funds for the schools and libraries in the affected areas.<sup>34</sup> While we recognize the challenges associated with rebuilding internal connections under the circumstances presented in the aftermath of the wildfires, based on the record before us, we find that the Department has not presented evidence to demonstrate that the internal connections in the affected schools and libraries have been damaged or destroyed and that applicants have expended a significant amount of their category two budgets leaving limited to no funds to replace these connections.<sup>35</sup> Thus, we do not find good cause to deviate from the Commission's rules to provide additional category two funds for schools and libraries located in the affected areas absent additional evidence demonstrating a need for additional funds due to the wildfires.<sup>36</sup>

10. We emphasize that the collective actions we have taken in response to the Department's Request for Waiver were guided by the specific requests and record before us. We nonetheless note that the Commission's E-Rate program rules explicitly provide program participants with specific requirements for requesting extensions of deadlines or waivers of certain Commission rules due to the occurrences of unforeseen events such as the October 2017 California wildfires.<sup>37</sup> Thus, we emphasize

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<sup>23</sup> See *supra* note 4.

<sup>24</sup> See FEMA, California Wildfires (DR-4344), <https://www.fema.gov/disaster/4344> (last visited Dec. 4, 2018).

<sup>25</sup> 47 CFR §§ 54.720, 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

<sup>26</sup> Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; see also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

<sup>27</sup> 47 CFR § 54.514(a). Given the damage inflicted by these wildfires, we find that extraordinary circumstances exist warranting a waiver of the invoicing deadline. See *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40. By waiving the invoicing deadline, we hereby also extend the deadline to submit a SPIN Change request and address the Department's request that we "waive" that deadline since the deadline to submit a SPIN change request is the last day to submit an invoice. Request for Waiver at 4; USAC Schools and Libraries, SPIN Change requests, <https://www.usac.org/sl/applicants/before-youre-done/spin-changes/default.aspx> (last visited Dec. 10, 2018).

<sup>28</sup> Request for Waiver at 5; 47 CFR § 54.516(a).

<sup>29</sup> Request for Review at 4.

<sup>30</sup> 47 CFR § 54.507(d)(4).

that the actions taken here may not represent the entirety of relief that may be available to E-Rate program participants in the affected areas. Consequently, E-Rate-eligible entities that have experienced similarly catastrophic damage from the October 2017 wildfires, but that are not located in one of the affected areas may request similar, narrowly-tailored relief from E-Rate program requirements.

11. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in Universal Service Fund (USF) programs. Although we grant the limited waivers described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF Program rules and requirements. We will require USAC to recover funds that we discover were not used properly through its normal processes. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF Programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the E-Rate program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

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<sup>31</sup> See FEMA, California Wildfires (DR-4344), <https://www.fema.gov/disaster/4344> (last visited Dec. 3, 2018) (listing the incident period as October 8, 2017 to October 31, 2017).

<sup>32</sup> 47 CFR § 54.507(d)(4). Applicants may only request service substitutions if the implementation deadline for the service or product to be replaced has not passed. See USAC Schools and Libraries, Service Substitutions, <https://www.usac.org/sl/applicants/before-youre-done/service-substitutions.aspx> (last visited Dec. 10, 2018). Because we deny the Department's request for waiver of the September 30, 2017 service implementation deadline, we also deny the Department's request to "waive" the associated deadline to request a service substitution.

<sup>33</sup> An applicant may request an extension of the service implementation deadline for non-recurring services from USAC if, for example, the applicant's service provider is unable to complete implementation for reasons beyond the service provider's control. 47 CFR § 54.507(d)(4)(iii); see, e.g., *Hurricane Katrina Order* at 16904, para. 40, n.110 (stating that a program applicant may request an extension of the implementation deadline for funding requests when the applicant's service provider is unable to complete implementation for "reasons beyond the service provider's control" such as Hurricane Katrina); see also *Request for Review/Waiver of the Decision of the Universal Service Administrator by Accelerated Charter et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 13652, 13652-53, para. 2 (WCB 2014) (allowing extensions of the deadline for service implementation when applicants demonstrated they were unable to complete implementation on time for reasons beyond the service providers' control).

<sup>34</sup> Request for Waiver at 5.

<sup>35</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9548, paras. 18-19 (2017) (*2017 Hurricane Relief Order*) (increasing category two budgets for schools and libraries that had expended all or most of their category two budgets by the time the hurricanes hit in August and September 2017, leaving little to no funds remaining in their budgets to replace internal connections destroyed by the hurricanes). While the Department states that twelve schools were damaged by the wildfires (i.e., Hidden Valley Elementary (satellite campus and main campus), Anova, Redwood Adventist, Riebli Elementary, Roseland Collegiate Prep, Cardinal Newman High School, St. Rose, Schaefer Elementary, Rincon Valley Middle, Dunbar Elementary, and Rincon Valley Christian)), it does not present any evidence to demonstrate damage or destruction to these schools' internal connections and that they have limited to no funds available to replace these connections. See generally Request for Waiver.

<sup>36</sup> Schools and libraries that can provide evidence of any damage or destruction to their internal connections and can demonstrate that they have expended a significant amount of their category two budgets, leaving limited to no funds to replace their internal connections, may request narrowly-tailored relief from the Bureau.

<sup>37</sup> See e.g., *supra* note 33.

**IV. ORDERING CLAUSES**

12. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, and 54.722(a) that sections 47 CFR §§ 54.720, 1.106, 54.516(a), and 54.514(a)-(b) of the Commission's rules are waived to the limited extent provided herein.

13. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Request for Waiver filed by California Department of Education IS GRANTED IN PART AND DENIED IN PART to the extent provided herein.

14. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 151-154 and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the request for waiver filed by Sonoma County Office of Education IS GRANTED IN PART AND DENIED IN PART to the extent provided herein.

15. 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