

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

In the Matter of)
)
Establishing Emergency Connectivity Fund to) WC Docket No. 21-93
Close the Homework Gap)
)
)
)

ORDER

Adopted: December 2, 2021

Released: December 2, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition for an expedited waiver of the Emergency Connectivity Fund (ECF) Program’s invoice filing deadline submitted by the State E-rate Coordinators’ Alliance (SECA).¹ Specifically, and subject to the limitations stated in this Order, we waive sections 54.1711(d) and (e) of the Commission’s rules to provide relief to applicants that: (a) applied for ECF funding during the first or second application filing windows; (b) incorrectly used June 30, 2022 as the service delivery date on their ECF FCC Form 471 applications for equipment and/or other non-recurring services, rather than the actual service delivery date; and (c) received a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) noting August 29, 2022 as the invoice filing deadline based on the incorrect service delivery date (Affected Program Participants).

2. Accordingly, we direct the Universal Service Administrative Company (USAC), the Administrator of the ECF Program, to continue to use the August 29, 2022 invoice filing deadline noted on the Affected Program Participants’ FCDLs and RFCDLs and allow them to submit their requests for reimbursement on or before this date. To the extent other applicants incorrectly used June 30, 2022 as the service delivery date for equipment and/or non-recurring services, rather than the actual delivery date, but have not yet received an FCDL or RFCDL with an invoice filing deadline, we direct USAC to use June 30, 2022 as the service delivery date for these requests. We also extend this relief to service providers that agreed to file requests for reimbursement on behalf of these applicants. Going forward, to avoid confusion and for administrative ease, we clarify that the service delivery date for all requests for equipment, other non-recurring services, and recurring services submitted in any filing window covering funding for purchases made between July 1, 2021 and June 30, 2022 is June 30, 2022 (i.e., the last date of the funding period) and modify this procedural rule accordingly.²

II. BACKGROUND

3. As part of the American Rescue Plan Act of 2021 (the Act), Congress appropriated \$7.171 billion to the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding from the Emergency Connectivity Fund to eligible schools and libraries for the purchase of eligible equipment and/or advanced telecommunications and information services for use by students, school staff, and library patrons at locations that include locations other than a school or

¹ Petition of State E-rate Coordinators’ Alliance for Waiver, WC Docket No. 21-93, at 1 (filed Nov. 20, 2021), <https://www.fcc.gov/ecfs/filing/112067310772> (SECA Petition).

² See Appendix A.

library.³ On May 10, 2021, the Commission adopted a *Report and Order* establishing the rules for the ECF Program to distribute the \$7.171 billion in funding to eligible schools and libraries.⁴ The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁵ and a second 15-day application filing window from September 28, 2021 to October 13, 2021.⁶ During these application filing windows, applicants could request funding for eligible equipment and services that are received or delivered between July 1, 2021 and June 30, 2022.⁷

4. The Commission also established an invoice filing deadline rule for the ECF Program in the *Report and Order*.⁸ Section 54.1711(d) provides that “[i]nvoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.”⁹ To address instances where the service delivery date for equipment or other non-recurring services may not be known at the time of the funding request submission, on July 22, 2021, the Wireline Competition Bureau (Bureau) issued a Public Notice clarifying that applicants may use June 30, 2022 as the service delivery date for equipment and other non-recurring services on their funding requests if the equipment or services have not been ordered or received at the time that the applicant submits the funding request.¹⁰

5. On November 20, 2021, SECA filed a petition for an expedited waiver requesting that the Bureau waive the invoice filing deadline rule and prescribe that the service delivery date for all funding requests other than special construction requests be the last date of the funding period, or June 30, 2022.¹¹ In their petition, SECA contends that the language of the *Public Notice* and section 54.1711 of the ECF Program rules has resulted in some applicants mistakenly listing June 30, 2022 as their service delivery date despite having received the equipment and/or services prior to submitting an ECF FCC Form 471 application.¹² Based on the incorrectly reported service delivery dates, USAC issued FCDLs with an invoice filing deadline of August 29, 2022 (i.e., 60 days after June 30, 2022) to these Affected Program Participants. As such, SECA argues that providing a waiver of the invoice filing deadline and adopting a uniform service delivery date for equipment, non-recurring services, and recurring services is necessary to

³ American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill).

⁴ See generally *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696 (2021) (*Emergency Connectivity Fund Report and Order*).

⁵ News Release, FCC, *FCC Announces Emergency Connectivity Fund Application Window Will Open on June 29* (June 15, 2021), <https://www.fcc.gov/document/emergency-connectivity-fund-application-window-opens-june-29> (*First Application Window News Release*).

⁶ News Release, FCC, *FCC Announces Over \$5 Billion in Funding Requests Received in Emergency Connectivity Fund Program* (Aug. 25, 2021), <https://www.fcc.gov/document/fcc-announces-over-5-billion-emergency-connectivity-fund-requests> (*Second Application Window News Release*).

⁷ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

⁸ *Id.* at 8743, para. 98.

⁹ 47 CFR § 54.1711(d).

¹⁰ *Wireline Competition Bureau Sets Service Delivery Date for Emergency Connectivity Fund Program Initial Application Filing Window and Modifies Funding Application Certification Language*, WC Docket No. 21-93, Public Notice, DA 21-881, 2021 WL 3128232, at *1-2 (WCB July 22, 2021) (*ECF Service Delivery Deadline Public Notice*).

¹¹ See SECA Petition at 1.

¹² *Id.* at 2 (noting that neither the *Public Notice* nor the rule address the service delivery date for equipment or non-recurring services received prior to filing an application).

minimize administrative burdens and alleviate applicant confusion for those that may not realize that the invoice filing deadline for applicants that already received the equipment and/or services would actually be 60 days from the date of their FCDLs (i.e., the later date). Moreover, SECA asserts that this is particularly urgent for applicants with already committed funds and thus, impending invoice filing deadlines.¹³

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶

7. Given the confusion around the appropriate service delivery date to use for equipment and other non-recurring services, and the reliance on an incorrect invoice filing deadline as a result, we find that granting a limited waiver of the invoice filing deadline for the Affected Program Participants is appropriate and allow them to submit their requests for reimbursement by August 29, 2022. Although the Bureau's *Public Notice* established June 30, 2022 as the service delivery date for equipment and other non-recurring services *if* the equipment or services had not yet been ordered or received at the time of the applicant's funding request submission,¹⁷ some applicants mistakenly used this date as the service delivery date despite having already received the equipment and/or services at the time of their filing, resulting in USAC's issuance of FCDLs and RFCDLs with an incorrect invoice filing deadline of August 29, 2022 (i.e., 60 days after June 30, 2022), rather than an earlier filing deadline based on their actual service delivery date.¹⁸ As a result, these applicants may not know that their requests for reimbursement are in fact due before August 29, 2022, and their requests for reimbursement will be denied as untimely without our action.

8. Moreover, a waiver of the invoice filing deadline will not lead to any undue advantage in funding as the Affected Program Participants will not receive more funding than that allowed under the ECF Program rules, and the equipment and services have already been delivered. In addition, we find that the public interest would not be served were these Affected Program Participants to lose ECF funding for equipment and services needed to connect students, school staff, and library patrons during this unprecedented time.

9. We therefore direct USAC to continue to use the August 29, 2022 invoice filing deadline noted on the FCDLs and RFCDLs and allow the Affected Program Participants to submit their requests for reimbursement on or before this date. To the extent other applicants incorrectly used June 30, 2022 as the service delivery date for equipment and/or other non-recurring services despite having already received them at the time of their application filing, but have not yet received an FCDL or RFCDL, we

¹³ *See id.* (stating that invoice filing deadlines may be as early as November 23, 2021 for applicants that received FCDLs on September 24, 2021).

¹⁴ 47 CFR § 1.3.

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

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

¹⁷ *ECF Service Delivery Deadline Public Notice* at 1-2; *see also* 47 CFR § 54.1711(e) ("the service delivery date for equipment and other non-recurring services *if* the equipment or services have not been received or ordered when the applicant submits the request for funding is June 30, 2022") (emphasis added).

¹⁸ SECA Petition at 2-3 (explaining that because the *ECF Service Delivery Deadline Public Notice* did not explicitly address the service delivery date for equipment or non-recurring services that had been received *prior to* submitting the FCC Form 471 application, some applicants that received FCDLs on September 24, 2021 may not realize that their invoice filing deadline is as early as November 23, 2021 (i.e., 60 days after the issuance of the FCDL)).

direct USAC to use June 30, 2022 as the service delivery date for these requests. We also extend this relief to service providers that agreed to file requests for reimbursement on behalf of these applicants.

10. To avoid confusion and minimize administrative burdens, for the first two application filing windows and any subsequent window the Commission may open for eligible purchases made between the same period (i.e., July 1, 2021 through June 30, 2022), we allow applicants to use June 30, 2022 (i.e., the last date of the funding period) as the service delivery date for all funding requests for equipment, other non-recurring services, and recurring services submitted during these windows. We take this action solely for purposes of establishing an invoice filing deadline for these funding requests and streamlining the process for program participants. We modify section 54.1711(e) accordingly as reflected in Appendix A. We make these changes without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.¹⁹ The updated rule will become effective upon publication of this Order in the Federal Register.²⁰

11. In granting the requested relief, we emphasize that this Order does not alter the obligation of ECF Program participants to comply with the Commission's rules, including their obligation to certify to receipt of eligible equipment and/or services on their ECF FCC Forms 472 and 474 (i.e., the requests for reimbursement).²¹ Nor does it impact funding requests for construction of new networks, and we remind applicants seeking support for future construction that they have one year from the date of a funding commitment decision to show that construction is completed and services have been provided.²² We also remind applicants that, unlike E-Rate program rules, ECF Program rules do not permit any invoice filing extensions.²³ For this reason, any ECF Program participant that requires additional time to submit their requests for reimbursement beyond the relief granted herein must file a request for waiver directly with the Commission and demonstrate good cause.

12. Finally, we find no evidence of waste, fraud, or abuse presented by waiving the invoice filing deadline. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the ECF Program are used for appropriate purposes. Although we grant a waiver of the Commission's invoice filing deadline for the ECF Program, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with ECF Program rules and requirements.²⁴

¹⁹ 5 U.S.C. § 553(b)(3)(A). This amended rule is not subject to the APA requirements because it is a procedural rule setting a service delivery date for equipment, non-recurring and recurring services purchased between July 1, 2021 and June 30, 2022.

²⁰ 47 CFR § 1.427(b) (allowing procedural rules to take effect upon publication in the Federal Register). The APA's requirement that rules must be published in the Federal Register at least 30 days before their effective date, subject to certain exceptions, applies only to "substantive rules." *See* 5 U.S.C. § 553(d); *see also Neighborhood TV Co. v. Federal Commc'ns Comm'n.*, 742 F.2d 629, 637 (D.C. Cir. 1984) (recognizing that "[t]he FCC has maintained . . . that its interim processing procedures are procedural rules, and therefore are not subject to the APA's notice and comment, or advance publication requirements.").

²¹ 47 CFR §§ 54.1700-1718; *see also* 47 CFR §§ 54.1711(a)(1)(iv), (a)(2)(iv) (requiring program participants to certify that "[t]he funds sought in the request for reimbursement are for eligible equipment and/or services that were purchased or ordered in accordance with the Emergency Connectivity Fund Program rules and requirements . . . and received by either the school, library, or consortium, or the students, school, staff, or library patrons as appropriate").

²² *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41.

²³ *Compare* 47 CFR § 54.1711(d) *with* 47 CFR § 54.514(b) (allowing E-Rate participants to request a one-time invoice deadline extension).

²⁴ 47 CFR § 54.1714.

IV. ORDERING CLAUSES

13. 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, that section 47 CFR 54.1711 of the Commission's rules IS WAIVED to the extent provided herein.

14. 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.

15. The amended rule adopted in this Order and contained in Appendix A constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements.²⁵ Accordingly, this amended rule is EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief
Wireline Competition Bureau

²⁵ 5 U.S.C. § 553(b)(3)(A).

APPENDIX A**Final Rule**

For the reasons set forth above, section 54.1711(e) is amended and reads as follows:

Service delivery date. For the initial filing window set forth in § 54.1708(b) and any subsequent filing windows covering funding for purchases made between July 1, 2021 and June 30, 2022, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2022.