

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

In the Matter of
Requests for Waiver of Decisions of the
Emergency Connectivity Fund Program
Administrator by
Toms River Regional School District
Toms River, NJ, et al.
Establishing Emergency Connectivity Fund to
Close the Homework Gap
ECF202104625, et al.
WC Docket No. 21-93

ORDER

Adopted: July 27, 2022

Released: July 27, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address three requests for waiver seeking to restore Emergency Connectivity Fund (ECF) Program support for recurring service funding requests where the petitioners explain that they reduced the number of requested months of service based on the former June 30, 2022 service delivery date for these services. On February 22, 2022, the Wireline Competition Bureau (Bureau) waived and extended to June 30, 2023 the service delivery date for applicants who applied for ECF Program support for equipment, other non-recurring services, and recurring services during the first and second application filing windows. Consistent with that action, we find that the special circumstances facing two of the petitioners, who modified their recurring service funding requests based on the former June 30, 2022 service delivery date, warrant a waiver of the Commission's rules. We also deny a request for waiver because we find that the petitioner is seeking to add more months of service than were originally approved and committed for their first window recurring service funding request. Accordingly, we remand the underlying ECF FCC Form 471 applications in Appendix A to the Universal Service Administrative Company (USAC), the Administrator of the ECF Program, for further actions consistent with this Order. To ensure an expeditious resolution of these matters, we direct USAC to recommend revised funding commitment decisions consistent with this Order no later than 60 days from the release date of this Order.

2. We also find it to be in the public interest to grant a waiver, on our own motion, to similarly situated applicants who modified a first or second window recurring service funding request before the Bureau had extended the applicable service delivery date to June 30, 2023 (Affected Applicants). We will provide 30 days from the release date of this Order to these Affected Applicants to

1 See Establishing the Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93, Order, DA 21-1499, 2021 WL 5759736 (WCB Dec. 2, 2021) (ECF Service Delivery Date Order).

2 See Establishing the Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93, Order, DA 22-176, 2022 WL 544369, para. 8 (WCB Feb. 22, 2022) (ECF Service Delivery Date Extension Order).

3 The Petitioners and Requests for Waiver are listed in the Appendices.

file requests with USAC asking to restore the voluntarily reduced months of service for their first or second window recurring service funding request(s). We also direct USAC to expeditiously review and to apply the June 30, 2023 service delivery date to these ECF funding requests. Lastly, we find good cause exists to waive section 54.1718(b) of the Commission's rules for the petitioners listed in Appendix A and the Affected Applicants, and direct USAC to waive any other procedural deadlines that might be necessary to effectuate our ruling.<sup>4</sup>

## II. BACKGROUND

3. As part of the American Rescue Plan Act of 2021, Congress appropriated \$7.171 billion to the Emergency Connectivity Fund and directed the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of funding 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 library.<sup>5</sup> On May 10, 2021, the Commission adopted a Report and Order establishing the rules for the ECF Program to distribute the funding to eligible schools and libraries.<sup>6</sup> The Commission and the USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,<sup>7</sup> and a second 15-day application filing window from September 28, 2021 to October 13, 2021.<sup>8</sup>

4. During the first two application filing windows, applicants could request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.<sup>9</sup> On December 2, 2021, the Bureau established June 30, 2022 as the service delivery date for all ECF requests for equipment, other non-recurring services, and recurring services submitted for the July 1, 2021 through June 30, 2022 funding period.<sup>10</sup> Subsequently, on February 22, 2022, the Bureau released the *ECF Service Delivery Date Extension Order*, which extended the service delivery date from June 30, 2022 to June 30, 2023 for funding requests for equipment, other non-recurring services, and recurring services submitted during the first and second application filing windows, recognizing that multiple factors outside of the applicants' control resulted in them having less time to use the funded equipment and services.<sup>11</sup> In extending the service delivery date, the Bureau also acknowledged that certain applicants may have already modified their recurring service funding requests to reflect the dates of service that could be delivered between the July 1, 2021 and June 30, 2022 funding period, and encouraged these applicants to

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<sup>4</sup> 47 CFR § 54.1718(a)-(b) (requiring an affected party requesting a waiver or review of a USAC decision to submit such request within 30 days from the date of USAC's decision).

<sup>5</sup> 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).

<sup>6</sup> 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*).

<sup>7</sup> 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 ECF Application Window News Release*).

<sup>8</sup> 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-emergencyconnectivity-fund-requests> (*Second ECF Application Window News Release*).

<sup>9</sup> See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

<sup>10</sup> See *ECF Service Delivery Date Order*, 2021 WL 5759736, at \*3, para. 10.

<sup>11</sup> See *ECF Service Delivery Date Extension Order*, 2022 WL 544369, at \*4, para. 8.

submit a waiver with the Commission asking that any voluntarily reduced months of service be restored for those funding requests and subject to the updated June 30, 2023 service delivery date.<sup>12</sup>

5. In October 2021, the West Virginia Department of Education (WVDE) requested that USAC reduce the months of service for five ECF funding applications from the approved 11 months to nine months to align with the dates that the services could be delivered between the July 1, 2021 and June 30, 2022 funding period, based on the date of the funding commitment decision letters.<sup>13</sup> These post-commitment changes resulted in WVDE losing approximately \$747,689.40 in requested ECF Program support for these approved services.<sup>14</sup> After the Bureau extended the service delivery date for requests in the *ECF Service Delivery Date Extension Order*, WVDE filed a petition for waiver on April 6, 2022, requesting that the 11 months of service originally requested and approved be restored and the funding requests be subject to the updated June 30, 2023 service delivery date.<sup>15</sup>

6. In November 2021, Toms River Regional School District (TRRS) similarly requested that USAC reduce the months of service for its first window application from 10 months to seven months to reflect the dates that the services could be delivered before the June 30, 2022 service delivery date, based on the date of the funding commitment decision letter.<sup>16</sup> TRRS filed the instant petition for waiver on May 18, 2022 requesting that the 10 months of service originally requested and approved be restored and that the funding request be subject to the updated June 30, 2023 service delivery date.<sup>17</sup>

7. During the first application filing window, Wellpinit School District 49 (Wellpinit) submitted an ECF FCC Form 471 requesting nine months of service and received a commitment in May 2022 approving nine months of service.<sup>18</sup> Wellpinit filed a petition for waiver on May 26, 2022 requesting that the Commission modify their funding request from nine to 12 months of service based on the service start and end dates used on their ECF FCC Form 471 application, which reflected the start and end dates of the relevant funding period at the time, July 1, 2021 through June 30, 2022, the former service delivery date.<sup>19</sup>

### III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.<sup>20</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>21</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>22</sup>

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<sup>12</sup> *Id.* at \*6, para. 12.

<sup>13</sup> Petition of West Virginia Department of Education for Waiver, WC Docket No. 21-93, at 2 (filed Apr. 6, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10406464425785> (WVDE Petition).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1-2.

<sup>16</sup> Petition of Toms River Regional School District for Waiver, WC Docket No. 21-93 (filed May 18, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/1051867670146> (TRRS Petition).

<sup>17</sup> *Id.*

<sup>18</sup> Petition of Wellpinit School District 49 for Waiver, WC Docket No. 21-93, at 1 (filed May 26, 2022), <https://www.fcc.gov/ecfs/search/search-filings/filing/10526294655021> (Wellpinit Petition).

<sup>19</sup> *Id.*

<sup>20</sup> 47 CFR § 1.3.

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>22</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

9. Based on the facts before us, we find good cause exists to allow WVDE and TRRSB to receive the months of service that were originally requested and approved for their first window ECF FCC Form 471 applications. Specifically, we find that the special circumstances that led the Bureau to extend the service delivery date for first and second window recurring service funding requests to June 30, 2023 also apply to these petitioners' requests for waivers, such as the timing of application reviews and issuance of funding commitment decision letters, which caused applicants to have less time to use funded equipment and/or services during the funding period.<sup>23</sup> Furthermore, we also contemplated that waivers could be appropriate for applicants who had voluntarily reduced the number of months of service based on the initial service delivery deadline and encouraged these applicants to submit a waiver request with the Commission asking that the voluntarily reduced months of service be restored to those funding requests and subject to the updated service delivery date.<sup>24</sup> Consistent with the *ECF Service Delivery Date Extension Order*, we therefore grant WVDE's waiver request to restore the 11 months of service originally requested and approved for their five ECF FCC Form 471 applications and TRRSB's waiver request to restore the 10 months of service originally requested and approved for its ECF FCC Form 471 application.<sup>25</sup> We conclude that these actions are necessary to ensure that WVDE and TRRSB receive the full intended benefit of their committed ECF funding for the broadband services needed for their students, school staff, and library patrons with unmet needs to fully engage in remote learning.

10. We also find that the public interest would not be served if other similarly Affected Applicants lost or were not able to fully use their committed ECF support to meet the immediate connectivity needs of students, school staff, and library patrons with unmet needs because they voluntarily reduced the months of service for their committed first or second window recurring service funding requests based on the former June 30, 2022 service delivery date. Moreover, requiring the Affected Applicants to first file a waiver request with the Commission and subsequently request that USAC reinstate the lost months of recurring services is administratively burdensome to the applicants and contrary to the goal of the ECF Program to quickly provide connectivity to students, school staff, and library patrons with unmet needs during the pandemic. Thus, in the interest of streamlining the process and enabling Affected Applicants to receive the number of months of service originally requested and approved for their committed ECF recurring service funding requests, we therefore grant a waiver for Affected Applicants and permit them to submit requests directly to USAC to restore the voluntarily reduced months of service for these funding requests without first requesting a waiver from the Commission.

11. We also recognize that the 30-day period to request a waiver or review of a decision by USAC has lapsed for the WVDE and TRRSB, as well as for Affected Applicants when the *ECF Service Delivery Date Extension Order* was released. As such, we find good cause to waive section 54.1718(b) of the Commission's rules, which requires applicants to request review within 30 days of a USAC decision.<sup>26</sup> To ensure timely processing of these requests and the ECF third filing window applications, all Affected Applicants must file their requests with USAC within 30 days of the release date of this Order.<sup>27</sup>

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<sup>23</sup> See *ECF Service Delivery Date Extension Order*, 2022 WL 544369 at \*4, para. 8.

<sup>24</sup> See *id.*, 2022 WL 544369 at \*6, para. 12.

<sup>25</sup> See Appendix A.

<sup>26</sup> 47 CFR § 54.1718(b).

<sup>27</sup> Affected Applicants may submit a request through the ECF Portal. Each request should contain a precise explanation of the relief sought, including the application number, the number of months originally requested, and any documentation supporting the modifications made to the months of service on a committed first or second window funding request.

12. We also deny Wellpinit's waiver request because we find that Wellpinit failed to present special circumstances justifying a waiver of the ECF Program rules. First, unlike the other two petitioners in this Order who sought restoration of support that had already been approved (but voluntarily reduced), Wellpinit seeks to increase its support amount beyond what was previously approved and committed. We note that Wellpinit only requested and was approved for nine months of service on their original funding request and Wellpinit never requested to modify that quantity before or after receiving their funding commitment decision. Furthermore, we are not persuaded by Wellpinit's argument that the service start and end dates included on the ECF FCC Form 471 application should be relied upon in determining the months of service requested.<sup>28</sup> As noted in the *ECF Service Delivery Date Extension Order*, many applicants waited until they received a funding commitment decision letter before ordering equipment and/or services.<sup>29</sup> In these instances, since the actual service start and end dates were unknown at the time of the ECF FCC Form 471 submission, applicants used the start and end dates of the funding period as a placeholder on their ECF FCC Form 471 application. As such, relying on the service start and end dates used on an ECF FCC Form 471, as Wellpinit suggests, would permit applicants to receive more months of service than they originally requested and were approved for, which is inconsistent with the intent of the *ECF Service Delivery Date Extension Order*.<sup>30</sup> We also find that the public interest is not served by allowing applicants to receive greater support than they originally requested because it interferes with the fair and efficient administration of the program given the limited emergency funds will not be able to fund all ECF funding requests that have been timely received. Therefore, we deny Wellpinit's request because we find that they did not voluntarily reduce the number of requested and approved months of recurring service, but rather seek to increase the amount of support beyond what was originally requested and committed. In addition, Wellpinit did not present any other circumstances justifying a waiver of the Commission's rules or demonstrating that the public interest would be served by granting its request.

13. We remand the applications included in Appendix A to USAC for actions consistent with this Order and that recommended revised funding commitment decisions be provided no later than 60 days from the release date of this Order. We further direct USAC to expeditiously review timely requests submitted by Affected Applicants seeking to restore the original months of service that were approved and committed and voluntarily reduced for their first and/or second application filing window ECF recurring service funding requests.<sup>31</sup>

#### IV. ORDERING CLAUSES

14. 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 the Requests for Waiver filed by West Virginia Department of Education on April 6, 2022 and Toms River Regional School District on May 18, 2022 are GRANTED and the underlying ECF FCC Form 471 applications listed in Appendix A are REMANDED to USAC for further action in accordance with the terms of this order.

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<sup>28</sup> See Wellpinit Petition at 1.

<sup>29</sup> See *ECF Service Delivery Date Extension Order*, 2022 WL 544369 at \*3, para. 5 (citing Letter from John Windhausen, Jr., Executive Director, SHLB, et al., to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93, at 1 (filed Jan. 28, 2022) (SHLB Petition)).

<sup>30</sup> See *id.* at \*6, para. 12.

<sup>31</sup> We note that this relief is limited to the months of service that were originally approved and committed for the Affected Applicants' ECF FCC Form 471 applications. Applicants are not permitted to request greater months of service than what was originally approved and committed for their ECF first and second window funding applications.

15. IT IS FURTHER 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 the Request for Waiver filed by Wellpinit School District 49 on May 26, 2022 listed in Appendix B is DENIED.

16. IT IS FURTHER 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 § 54.1718(b) of the Commission's rules IS WAIVED to the limited extent provided herein.

17. 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

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

## APPENDIX A

## ECF FCC Forms 471 Remanded to USAC

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Date Request(s) for Waiver Filed</b>
Toms River Regional School District Toms River, NJ	ECF202104625	May 18, 2022
West Virginia Department of Education Charleston, WV	ECF202108360, ECF202108478, ECF202109392, ECF202110536, ECF202113720	April 6, 2022

**APPENDIX B**  
**Waiver Requests Denied**

<b>Petitioner</b>	<b>Application Number(s)</b>	<b>Date Request(s) for Waiver Filed</b>
Wellpinit School District 49 Wellpinit, WA	ECF202104956	May 26, 2022