

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

Table with 3 columns: Matter Name, Separator, and Docket Number. Rows include Schools and Libraries Universal Service Support Mechanism, Establishing the Emergency Connectivity Fund to Close the Homework Gap, Rural Health Care Universal Support Mechanism, COVID-19 Telehealth Program, Universal Service Contribution Methodology, Lifeline and Link Up Reform and Modernization, and Affordable Connectivity Program.

ORDER

Adopted: September 22, 2022

Released: September 22, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, certain E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and Affordable Connectivity Program rules and deadlines to assist participants and service providers, including Universal Service Fund contributors, located in the areas affected by Hurricane Fiona, which struck Puerto Rico on September 18, 2022.

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

2 Derek Lacey, Engineering News Record (ENR), Fiona Slams Puerto Roc, Bringing Floods, Landslides, Power Outages (Sept. 19, 2022), https://www.enr.com/articles/54822-fiona-slams-puerto-rico-bringing-flooding-landslides-power-outages.

3 Associated Press, PBS, Puerto Rico suffers 'catastrophic' damage from Hurricane Fiona, governor says (Sept. 19, 2022), https://www.pbs.org/newshour/nation/puerto-rico-suffers-catastrophic-damage-from-hurricane-fiona-governor-says.

4 Reuters, Some 1.3 million customers without power in Puerto Rico after Hurricane Fiona (Sept. 20, 2022), https://www.reuters.com/business/environment/some-13-million-customers-without-power-puerto-rico-after-hurricane-fiona-2022-09-20/.

cause to waive certain rules and deadlines to assist program participants, service providers, and USF contributors in the affected areas.<sup>5</sup>

## II. BACKGROUND

2. On Sunday, September 18, 2022 Hurricane Fiona struck Puerto Rico, causing significant landslides, road closures, widespread flooding, and power outages throughout the island.<sup>6</sup> More than 1.5 million people have lost power and the remaining residents are relying on a fragile infrastructure that is still recovering from the impact of Hurricane Maria.<sup>7</sup> As the storm travels its way through other Caribbean islands, the immediate effects in Puerto Rico are expected to continue for several days or weeks.<sup>8</sup> In response, the President has declared a state of emergency for the island, allowing authorities to provide disaster relief.<sup>9</sup>

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Universal Service Fund (USF) Program deadlines for areas affected by natural disasters.<sup>10</sup> For the

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<sup>5</sup> See *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted 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 02-6, WC Docket Nos. 02-60 and 03-109, Order 20 FCC Rcd 16883 (2005) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>6</sup> Elsa Maishman, BBC News, *Hurricane Fiona knocks out Puerto Rico Electricity* (Sept. 19, 2022), <https://www.bbc.com/news/world-us-canada-62947900>.

<sup>7</sup> Julianne McShane and Dennis Romer, NBC News, *All of Puerto Rico without power after Hurricane Fiona makes landfall*, (Sept. 19, 2022) <https://www.nbcnews.com/news/us-news/tropical-storm-fiona-upgraded-hurricane-puerto-rico-braces-arrival-rcna48232>.

<sup>8</sup> Politico, *Hurricane Fiona rips through powerless Puerto Rico* (Sept. 19, 2022), <https://www.politico.com/news/2022/09/18/hurricane-fiona-knocks-out-puerto-ricos-power-00057387>.

<sup>9</sup> See FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Puerto Rico (Sept. 18, 2022), <https://www.fema.gov/press-release/20220918/president-joseph-r-biden-jr-approves-emergency-declaration-puerto-rico> (last visited Sept. 22, 2022); The White House, President Joseph R. Biden, Jr. Approves Puerto Rico Emergency Declaration, <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/09/18/president-joseph-r-biden-jr-approves-puerto-rico-emergency-declaration/> (last visited Sept. 22, 2022).

<sup>10</sup> See, e.g., *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization; Connect America Fund; Federal-State Joint Board on Universal Service High-Cost Universal Service Support; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefits Program*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, Order, DA 21-1107, 36 FCC Rcd 13405 (WCB 2021) (*Hurricane Ida Order*); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, Order, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Support Mechanism*, WC Docket No. 02-6, Order, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission's Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support*

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purposes of the waivers we grant today, we define “Affected Disaster Areas” as the areas in Puerto Rico the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the date of release of this Order.<sup>11</sup>

### III. DISCUSSION

4. In response to the damage caused by Hurricane Fiona, we waive various provisions of the E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and Affordable Connectivity Program rules for those Federal Communications Commission (FCC or Commission) programs’ participants and for Universal Service Fund (USF) contributors located in the Affected Disaster Areas.<sup>12</sup> Generally, the Commission’s rules may be waived for good cause shown.<sup>13</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>14</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>15</sup>

#### A. E-Rate Program

5. *E-Rate Program Deadlines.* For schools and libraries located in Affected Disaster Areas,<sup>16</sup> we waive, on an emergency interim basis, the following deadlines that may occur after the effective date of this Order,<sup>17</sup> and provide those affected with up to 150 calendar days from the effective date of this Order to submit the required filing:<sup>18</sup>

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.<sup>19</sup>

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*Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

<sup>11</sup> Currently, all of Puerto Rico is covered within the Disaster Areas designated by FEMA. See FEMA, Puerto Rico Tropical Storm (Sept. 18, 2022), <https://www.fema.gov/disaster/3583>.

<sup>12</sup> We recognize that entities in the Affected Disaster Areas may need additional relief relating to E-Rate, ECF, RHC, COVID-19 Telehealth, Lifeline, and ACP obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief to address these individualized circumstances from the Bureau.

<sup>13</sup> 47 CFR § 1.3.

<sup>14</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>15</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>16</sup> E-Rate-eligible entities located outside the Affected Disaster Areas that have experienced similarly catastrophic damage from Hurricane Fiona may request similar, narrowly-tailored relief from these or other requirements from the Bureau.

<sup>17</sup> Program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by Hurricane Fiona may submit the required filings up to 150 calendar days from the release date of this Order.

<sup>18</sup> We note that Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

<sup>19</sup> 47 CFR § 54.720; 47 CFR § 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.

- Filing FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act (CIPA) Certification Form).<sup>20</sup>
- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and Form 474 (Service Provider Invoice Form).<sup>21</sup>

6. *Service Implementation Deadline Extensions.* Additionally, we find that good cause exists to waive the service implementation for special construction, subject to the limitations herein, for applicants located in the Affected Disaster Areas that have a deadline of June 30, 2023. We find that the extensive damage to property, facilities, and resources resulting from Hurricane Fiona will make it impossible for some applicants in the Affected Disaster Areas to complete special construction and light the new fiber by this date, and that service installation and construction efforts may continue to be delayed or impaired in communities in the Affected Disaster Areas work to recover and rebuild. Accordingly, we extend this deadline to June 30, 2024, subject to the applicant filing a valid FCC Form 500 certifying that construction for the special construction project was unavoidably delayed due to damage caused by Hurricane Fiona.<sup>22</sup> Pursuant to the Bureau’s recent *Service Delivery Deadline Waiver Order*, we also clarify that applicants in the Affected Disaster Areas have until September 30, 2023 (rather than September 30, 2022) to complete the installation of internal connections and other non-recurring services for Funding Year 2021.<sup>23</sup>

7. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Fiona. We waive section 54.516(a) of our rules with respect to such destroyed records, 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

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<sup>20</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>21</sup> 47 CFR § 54.514(a). Given the significant damage inflicted by Hurricane Fiona, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoice filing deadline. *See Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, 11-42, and 06-122, Order, 32 FCC Rcd 7456, 7458, n.13 (WCB 2017) (*Hurricanes Harvey, Irma and Maria Order*) (waiving E-Rate invoice deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Service Support Mechanism; Lifeline and Link Up Reform and Modernization; Connect America Fund; High-Cost Universal Service Support Mechanism; Establishing Emergency Connectivity Fund to Close the Homework Gap; Emergency Broadband Benefit Program*, CC Docket No. 02-6, WC Docket Nos. 02-60, 11-42 10-90, 05-337, 21-93, and 20-445, Order, 36 FCC Rcd 13405, 13407-08, at para. 5 (WCB 2021) (*Hurricane Ida Order*) (waiving the E-Rate invoice filing deadline for areas impacted by Hurricane Ida); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

<sup>22</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014). The applicant may file the FCC Form 500 any time before June 30, 2023.

<sup>23</sup> The implementation deadline for non-recurring services, other than special construction, for Funding Year 2021 was September 30, 2022. However, the Bureau recently extended the deadline for non-recurring services for certain Funding Year 2020 and 2021 requests in light of delays experienced by applicants due to the ongoing COVID-19 pandemic. 47 CFR § 54.507(d)(4); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 22-976 (WCB rel. Sep. 19, 2022) (*Service Delivery Deadline Waiver Order*) (waiving section 54.507(d)(4) of the Commission’s rules and extending the service implementation deadline to September 30, 2023 for certain Funding Year 2020 and 2021 applicants with non-recurring service deadlines that expire on September 30, 2022).

for the funding request.<sup>24</sup> Applicants and service providers will not be penalized for failure to retain records destroyed by Hurricane Fiona. 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 Hurricane Fiona. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by Hurricane Fiona, including records relating to any relief granted by this Order.

8. *Service and Equipment Substitutions.* Consistent with precedent, we also provide increased flexibility for service substitutions in the Affected Disaster Areas.<sup>25</sup> Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;<sup>26</sup> (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.<sup>27</sup> For applicants located in Affected Disaster Areas that need to replace a service or product that has been disrupted, destroyed, or rendered unusable by Hurricane Fiona, we waive this rule to exclude the requirement that the substituted service or product must have the same functionality as the service or product that it is replacing.<sup>28</sup> This will allow applicants in the Affected Disaster Areas the maximum flexibility to substitute services based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),<sup>29</sup> so that they may use already approved E-Rate funding to replace damaged or destroyed equipment and restore services, subject

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<sup>24</sup> 47 CFR § 54.516(a).

<sup>25</sup> See, e.g., *Hurricanes Harvey, Irma, and Maria Order*, 32 FCC Rcd at 9543-44, para. 10 (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria); *Hurricane Ida Order*, 36 FCC Rcd at 13409, para. 8 (providing increased flexibility for E-Rate program service substitutions following the aftermath of Hurricane Ida).

<sup>26</sup> The Commission previously determined that a service or equipment change request does not have the same functionality if it “changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service).” *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

<sup>27</sup> 47 CFR § 54.504(d)(1)(iv).

<sup>28</sup> 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service substitutions if the implementation deadline for the service or product to be replaced has not passed. See, e.g., 47 CFR §§ 54.507(d)(1), (d)(4); see also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014).

<sup>29</sup> In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. See *Schools and Libraries Universal Service Support Mechanism, et al.*, CC Docket Nos. 02-6, et al., Sixth Report and Order, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (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 and 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

to the limitations stated herein.<sup>30</sup> We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission's rules for applicants while keeping the remaining aspects of our service substitution rule intact. Applicants must continue to ensure that a service substitution: (a) does not violate any contract provisions;<sup>31</sup> (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.<sup>32</sup> Applicants must also request approval of service substitutions by submitting a service substitution request to USAC.

9. We find that the significant property damage, power outages, and disruptions in services caused by Hurricane Fiona in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by Hurricane Fiona, while continuing to protect program integrity. Applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

## **B. Emergency Connectivity Fund Program**

10. *Emergency Connectivity Fund Program Deadlines.* For Emergency Connectivity Fund (ECF) program participants located in the Affected Disaster Areas,<sup>33</sup> we first waive, on an emergency interim basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the effective date of this Order to submit their filing.<sup>34</sup> Section 54.1718(b) of the ECF rules requires an affected party requesting review of a decision by USAC or waiver to submit such request within 30 days from the date of USAC's decision, which is shorter than the timeframe permitted under the E-Rate program rules.<sup>35</sup> Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of Hurricane Fiona, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.<sup>36</sup> For the same reason, we also direct USAC to extend its administrative deadlines associated with

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<sup>30</sup> Effective in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. *See Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019); 47 CFR § 54.513(d). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission's rules. *Id.*

<sup>31</sup> The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by Hurricane Fiona is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested service substitutions are permitted under their agreements with service providers.

<sup>32</sup> 47 CFR § 54.504(d). In the event that a service substitution results in a change in the pre-discount price for the supported service, support is based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. 47 CFR § 54.504(d)(2).

<sup>33</sup> *See supra* note 12. ECF-eligible entities located outside the Affected Disaster Areas that have experienced similarly catastrophic damage from Hurricane Fiona may request similar, narrowly-tailored relief from these or other requirements from the Bureau.

<sup>34</sup> 47 CFR § 54.1718(b); 47 CFR § 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>35</sup> 47 CFR § 54.1718(b).

information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days to respond to such requests.<sup>37</sup>

11. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Fiona, we next waive section 54.1715(b) of our rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.<sup>38</sup> As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain records destroyed by Hurricane Fiona. 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 hurricane. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by Hurricane Fiona, including records relating to any relief granted by this Order.

12. *Service and Equipment Substitutions.* Additionally, in light of the destruction to equipment and services destroyed by Hurricane Fiona, we provide additional flexibility to ECF program applicants to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Fiona.<sup>39</sup> Section 54.1710(b) of the ECF rules allows USAC to grant a request by an applicant to substitute equipment or service for another where (i) the equipment or service has the same functionality and (ii) the substitution does not violate any contract provisions or state, local, or Tribal procurement law.<sup>40</sup> For applicants in the Affected Disaster Areas that need to replace equipment or services that have been disrupted, destroyed, or rendered unusable by Hurricane Fiona, we waive this rule to exclude the requirement that the substituted equipment or service must have the same functionality as the equipment or service that it is replacing.<sup>41</sup> This will allow applicants in the Affected Disaster Areas the maximum flexibility to substitute much needed equipment or services (including service providers, where necessary) as quickly as possible, particularly where the availability of such items may be limited given the pandemic's impact on the global supply chain. The flexibility conferred by this measure effectively waives section 54.1710(b)(2)(i) of the Commission's rules for affected applicants while keeping the remaining aspects of the ECF service

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<sup>36</sup> We anticipate that some affected applicants will need more time to submit appeals of USAC's decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

<sup>37</sup> See, e.g., *Hurricane Ida Order*, 36 FCC Rcd at 13413, para. 23 (waiving USAC's ECF administrative deadlines associated with information requests in the aftermath of Hurricane Ida).

<sup>38</sup> 47 CFR § 54.1715(b); see also 47 CFR § 54.720.

<sup>39</sup> See, e.g., *Hurricane Ida Order*, 36 FCC Rcd 13414, para. 25 (providing ECF applicants greater flexibility to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ida).

<sup>40</sup> 47 CFR § 54.1710(b).

<sup>41</sup> 47 CFR § 54.1710(b)(2)(i). While we waive the requirement that the substituted equipment or service have the same functionality as the equipment or service being replaced, we remind applicants that the substituted equipment or service must still be eligible for support under the ECF rules. Therefore, an applicant cannot request to replace a laptop computer destroyed in the hurricane with an ineligible smartphone. See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, FCC 21-58, 2021 WL 1921632, \*11, para. 32 (May 11, 2021) (*Emergency Connectivity Fund Report and Order*). In addition, we remind applicants that if an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. 47 CFR § 54.1710(b)(3).

substitution rule intact, including the requirement that the service substitution request be in writing and that the substitution not violate any contract provisions or state, local, or Tribal procurement law.

### C. Rural Health Care Program

13. For health care providers and service providers located in the Affected Disaster Areas, we waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the September 30, 2022 deadline for Healthcare Connect Fund Program participants to file Annual Reports; (4) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by Hurricane Fiona; and (5) the invoice deadline.

14. *Deadline for Appeals and Requests for Waiver.* We waive and extend the 60-day deadlines in section 54.720(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.<sup>42</sup> We find that waiving the deadline for health care providers and service providers in the Affected Disaster Areas for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by Hurricane Fiona. We understand that the disruptions caused by Hurricane Fiona will continue to impact health care providers and service providers in the affected areas and find that any harm in giving petitioners additional time to submit their filings is outweighed by the significant public interest benefits. To reduce the burden on petitioners, we direct USAC to automatically provide petitioners with an additional 60 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from September 18, 2022 through 150 calendar days from the release of this Order.

15. *Response Time for USAC Information Requests.* We waive the 14-day deadline for applicants in the affected areas to respond to information requests from USAC.<sup>43</sup> This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by program participants. We understand that in response to Hurricane Fiona, health care providers in the Affected Disaster Areas may have diverted their administrative resources or be unable to access facilities, which would impede their ability to respond timely to USAC information requests. This waiver will apply to all information requests issued on or after September 4, 2022 regardless of the funding year for which those requests relate. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to respond to information requests from USAC.

16. *Health Care Connect Fund Program – Annual Reporting.* We also waive the September 30, 2022 deadline in section 54.618 of the Commission's rules for Healthcare Connect Fund Program participants located in the Affected Disaster Areas to file Annual Reports for funding year 2021.<sup>44</sup> We find that the property damage, personal injury, and disruptions in services caused by Hurricane Fiona warrant a waiver of the deadline for the annual reporting requirement. All affected Program participants will have up to 150 calendar days from the effective date of this Order to file Annual Reports for funding year 2021.

17. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Fiona. With respect to such destroyed records, we waive section 54.631(b) of the Commission's RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a

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<sup>42</sup> 47 CFR § 54.720(a)-(b).

<sup>43</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015) (*FCC Form 466 Documentation Order*).

<sup>44</sup> 47 CFR § 54.618.

given funding year.<sup>45</sup> Program participants will not be penalized for failure to retain records destroyed by the Hurricane. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants 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 Hurricane Fiona. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the Hurricane, including records relating to any relief granted by this Order.

18. *Invoice Deadline.* We next waive section 54.627(a) to automatically grant a 120-day extension of the invoice deadline for all funding year 2021 funding requests from health care providers in Affected Areas. Section 54.627(a) requires that RHC Program participants submit invoices to USAC within 120 days after the later of: (1) the service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request.<sup>46</sup> Program participants may request a one-time extension of the invoice filing deadline.<sup>47</sup> If the extension is timely requested, USAC is required to grant a 120-day extension.<sup>48</sup> We find that waiving the invoice deadline is an appropriate measure to accommodate the extraordinary circumstances caused by Hurricane Fiona. We also understand that the disruptions caused by Hurricane Fiona will continue to impact health care providers and service providers in the affected areas and find that any harm in giving program participants additional time to submit their invoices is outweighed by the significant public interest benefits. To reduce the burden on participants, we direct USAC to automatically provide participants with an additional 120 days to submit their invoices.

#### **D. Lifeline Program**

19. We next, on our own motion, waive the Lifeline non-usage, recertification, and reverification requirements for subscribers residing in Puerto Rico. We find that good cause exists to waive sections 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), and 54.410(f) of the Commission's rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in Puerto Rico through November 30, 2022.<sup>49</sup> Given the damage caused by Hurricane Fiona to Puerto Rico's infrastructure, strict compliance with these rules would be impracticable and would risk harm to Lifeline subscribers who may be inappropriately de-enrolled during the recovery efforts.<sup>50</sup>

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<sup>45</sup> 47 CFR § 54.631(b).

<sup>46</sup> 47 CFR § 54.627(a).

<sup>47</sup> 47 CFR § 54.627(b).

<sup>48</sup> *Id.*

<sup>49</sup> See 47 CFR §§ 54.405(e)(3), 54.405(e)(4), 54.407(c)(2), 54.410(f). This Order does not impact the Lifeline COVID-19 waiver order issued in June 2022. See *Lifeline and Link Up Reform and Modernization*, Order, WC Docket No. 11-42, DA 22-691, 2022 WL 2399681 (WCB June 30, 2022) (partially extending Lifeline program recertification and reverification requirements for subscribers residing on Tribal lands).

<sup>50</sup> See *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, Order, 32 FCC Rcd. 7456 (2017) (waiving certain E-rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd. 6846 (2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd 11236 (2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost*

(continued....)

20. To promote the maintenance and rebuilding of communities affected by Hurricane Fiona and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission's rules.<sup>51</sup> Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their Lifeline-supported service and do not use that service for 30 consecutive days.<sup>52</sup> Waiving these rules will help low-income consumers retain access to emergency communications services during this natural disaster, and allows ETCs to continue providing Lifeline service to disaster victims in the affected areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to work through the damage of the Hurricane.<sup>53</sup>

21. We also find that good cause exists to waive sections 54.405(e)(4) and 54.410(f) of the Commission's rules, which require Lifeline subscribers to demonstrate continued eligibility for the program, through November 30, 2022.<sup>54</sup> This waiver will prevent the de-enrollment of any Lifeline subscribers who would otherwise have been required to certify their continued eligibility to the National Verifier during the waiver period.<sup>55</sup> Waiver of these rules will allow USAC and ETCs serving Lifeline subscribers in Puerto Rico additional time to complete the recertification process. Disruptions to telephone and Internet service resulting from the hurricane will make it difficult, if not impossible, for Lifeline subscribers to receive and respond to recertification requests and reminders. At the expiration of the waiver period, recertification efforts will resume and subscribers who were subject to the waiver will have an additional 60 days to respond to recertification notices.

22. Where USAC has already conducted recertification outreach, we direct USAC to not conduct de-enrollments for any subscriber who would have been de-enrolled after September 20, 2022. USAC should send new outreach to these subscribers at the end of this waiver period, as is practicable, and give such subscribers an additional 60 days to complete their recertification activity. Moreover, because this relief will extend Lifeline recertification efforts in Puerto Rico beyond calendar year 2022 for some impacted subscribers, we also waive the annual recertification requirement for such subscribers.<sup>56</sup> Impacted subscribers will only have to recertify their eligibility to participate in the Lifeline program once in 2023. Any subscriber who has already recertified their eligibility is not required to undergo an additional recertification at the end of the waiver period, and any subscriber who had previously de-enrolled from the program must re-enroll pursuant to the Commission's rules.

23. USAC also conducts a one-time reverification of eligibility for each existing Lifeline subscriber to confirm that all existing Lifeline subscribers meet the National Verifier's eligibility

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*Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida).

<sup>51</sup> 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

<sup>52</sup> *See id.*

<sup>53</sup> As noted above, the waiver period is through November 30, 2022. At the end of the waiver period, the subscriber will have 30 days (beginning on December 1, 2022) to use their Lifeline-supported service. If the subscriber does not use their Lifeline-supported service during that 30-day timeframe, the 15-day notice period will begin on December 31, 2022.

<sup>54</sup> 47 CFR §§ 54.405(e)(4), 54.410(f).

<sup>55</sup> See 47 CFR § 54.405(e)(4) (requiring 60 days' notice to subscribers to respond to recertification efforts prior to de-enrollment).

<sup>56</sup> *See* 47 CFR § 54.410(f).

standards. We direct USAC not to de-enroll any Lifeline subscriber residing in Puerto Rico for failure to successfully respond to a pending reverification request with documentation deadlines that will occur before November 30, 2022. We also direct USAC not to open any new reverification requests requiring documentation for Lifeline subscribers or ETCs in Puerto Rico until after November 30, 2022 and to provide impacted subscribers a new opportunity to provide any necessary eligibility documentation after the end of the waiver period.

24. ETCs in the affected areas that are unable to comply with the Lifeline non-usage, recertification, and reverification requirements at the end of this waiver period may request additional, narrowly tailored relief from these requirements from the Bureau. Additionally, if the Hurricane has significantly impacted an ETC's ability to complete an ongoing Lifeline audit, the Bureau will consider requests for extension of any relevant deadlines on a case-by-case basis.

#### **E. Affordable Connectivity Program**

25. In order to promote continued access to broadband service for Affordable Connectivity Program (ACP) households in Puerto Rico that are affected by Hurricane Fiona, we find that it is in the public interest to temporarily waive through November 30, 2022, for ACP households in Puerto Rico, sections 54.1808(c)(1) and (2) and 54.1809(c) of the Commission's rules<sup>57</sup> concerning the non-usage requirement and de-enrollment for non-usage, and sections 54.1806(f)(1) and (5) and 54.1809(d) of the ACP rules concerning the annual recertification and de-enrollment for failure to recertify.<sup>58</sup> Given the widespread power outages and flooding caused by Hurricane Fiona, strict compliance with these rules would be impracticable and would risk harm to ACP subscribers who may be de-enrolled during the rebuilding and recovery efforts in the aftermath of Hurricane Fiona.<sup>59</sup>

26. Under the ACP rules in sections 54.1808(c)(1) and (2) and 54.1809(c), participating providers offering an ACP service for which the household does not pay a monthly fee are required to certify that every such household has used its supported service at least once every consecutive 30 days, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim ACP reimbursement for discounted ACP service for a specific subscriber in a given service month.<sup>60</sup> Providers cannot claim support for and must de-enroll subscribers who do not cure their non-usage during the 15-

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<sup>57</sup> 47 CFR §§ 54.1808(c)(1), (2), and 54.1809(c). We make clear that the temporary waiver of these rules does not waive the language in section 54.1808(c)(2) that allows providers to seek reimbursement only after the subscriber activates their ACP service.

<sup>58</sup> 47 CFR §§ 54.1806(f)(1), (5), 54.1809(d).

<sup>59</sup> See *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, Order, 32 FCC Rcd 7456 (WCB 2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (WCB 2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd. 11236 (WCB 2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael); *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Connect America Fund, Federal and State Joint Board on Universal Service High Cost Universal Service Support, Establishing Emergency Connectivity Fund to Close the Homework Gap, Emergency Broadband Benefit Program*, CC Docket No. 02-06, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 10-90, WC Docket No. 05-337, WC Docket No. 21-93, WC Docket No. 20-445, 36 FCC Rcd 13405 (WCB 2021) (waiving certain E-Rate, Rural Health Care, Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida).

<sup>60</sup> 47 CFR § 54.1808(c)(1) and (2).

day cure period.<sup>61</sup> We recognize that the widespread power outages and flooding caused by Hurricane Fiona will likely interfere with a household's ability to use their ACP-supported service, perhaps for an extended period of time. Allowing participating providers in Puerto Rico to maintain service for these ACP households as they experience the aftermath of the hurricane, and claim reimbursement for the service provided to them, helps to ensure that these households are not de-enrolled from the program during the limited waiver period when it may be impossible for them to use their ACP-supported service. It will also ensure that subscribers who lose service due to the hurricane will be able to regain access to their ACP-supported service when it again becomes available to them. After the expiration of the waiver period, Affordable Connectivity Program subscribers who are subject to the non-usage rule will have thirty days to use their ACP service for the purposes of sections 54.1808(c)(1) and (2) of the Commission's rules, and fifteen days to cure any non-usage.<sup>62</sup> ACP providers in Puerto Rico that are unable to comply with the ACP non-usage and related de-enrollment requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

27. We find it is also in the public interest to temporarily waive sections 54.1806(f)(1) and (5), and 54.1809(d), of the Commission's rules for ACP subscribers in Puerto Rico who would have been required to respond to recertification outreach during the waiver period.<sup>63</sup> Waiver of these rules will allow USAC and providers serving ACP subscribers in Puerto Rico additional time to complete the annual recertification process for affected ACP subscribers for which the recertification process has not already been completed. Disruptions to electricity and communication services resulting from Hurricane Fiona could make it difficult, if not impossible, for ACP subscribers in Puerto Rico to receive and respond to recertification requests and reminders during the waiver period. After the waiver period ends on November 30, 2022, pursuant to section 54.1809(d) of the ACP rules, ACP-only households will have sixty days to respond to recertification outreach by USAC or their service provider as applicable.<sup>64</sup> Where USAC or the participating provider has already conducted recertification outreach to an ACP subscriber in Puerto Rico, after the end of the waiver period, new outreach should be sent to these subscribers as soon as practicable, and such subscribers should have an additional 60 days to complete their recertification activity.<sup>65</sup> We recognize that as a result of this waiver, the ACP recertification efforts in Puerto Rico will go beyond calendar year 2022 for impacted subscribers in Puerto Rico; as such we waive the annual recertification requirement for such subscribers to the extent necessary to effectuate the

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<sup>61</sup> 47 CFR § 54.1808(c)(1) and (2) and 54.1809(c).

<sup>62</sup> As noted above, the waiver period is through November 30, 2022. At the end of the waiver period the subscriber will have 30 days (beginning on December 1, 2022), to use their ACP-supported service. If the subscriber does not use their ACP-supported service during that 30-day timeframe, the 15-day notice period will begin on December 31, 2022.

<sup>63</sup> During the waiver period, USAC may continue to check the continued eligibility of ACP households in Puerto Rico using the database connections through the National Verifier to the extent that access to those databases has not been impacted by the Hurricane. For these automated database checks, USAC is able to verify the continued eligibility of households enrolled in the Affordable Connectivity Program without any action on the part of the subscriber. During the waiver period, participating providers that are required to recertify their ACP subscribers under the ACP rules may similarly use any permitted eligibility confirmation mechanisms or methods that do not require affirmative action on the part of the subscribers. During the temporary waiver period, participating providers and USAC should otherwise cease any recertification measures that require affirmative action from ACP-households. USAC and participating providers may resume such recertification measures steps after the end of the waiver period.

<sup>64</sup> 47 CFR § 54.1809(d).

<sup>65</sup> For the Affordable Connectivity Program, unlike Lifeline, in certain circumstances participating provider and not USAC are responsible for conducting the required ACP annual recertification. *See* 47 CFR § 54.1806(f)(1) (outlining when USAC and when service providers, respectively, conduct ACP recertifications).

relief granted in this waiver.<sup>66</sup> To the extent that an ACP subscriber (whether enrolled in the Affordable Connectivity Program only or in both the Affordable Connectivity Program and Lifeline) successfully completes their recertification process in 2023, they would not be required to undergo ACP recertification again in 2023. Any Affordable Connectivity Program subscriber who was previously de-enrolled due to failed ACP recertification must re-enroll pursuant to the Commission's rules. After the end of the waiver period, we expect USAC and participating providers to resume recertification efforts for calendar year 2022 for ACP-only households in Puerto Rico as soon as practicable.

28. Under the ACP rules, qualifying households that are enrolled in both the Affordable Connectivity Program and Lifeline may rely on a successful Lifeline recertification to satisfy the annual ACP recertification requirement.<sup>67</sup> Households that are enrolled in both programs who do not pass Lifeline recertification still have an opportunity to demonstrate that they qualify for the Affordable Connectivity Program, if required, after completion of the Lifeline recertification process.<sup>68</sup> Households that are enrolled in both Lifeline and the Affordable Connectivity Program and do not pass their Lifeline recertification for calendar year 2022, will be afforded time to demonstrate their continued eligibility for the Affordable Connectivity Program even if this extends into 2023.<sup>69</sup> We expect USAC and participating providers to start the recertification process for such subscribers in Puerto Rico as soon as practicable. To the extent that an ACP subscriber (whether enrolled in the Affordable Connectivity Program only or in both the Affordable Connectivity Program and Lifeline) successfully completes their recertification process in 2023, they would not be required to undergo ACP recertification again in 2023.

#### **F. COVID-19 Telehealth Program**

29. For Round 2 COVID-19 Telehealth Program awardees in the Affected Disaster Areas, the Bureau grants an extension to February 28, 2023, of the deadline<sup>70</sup> for purchases and implementation of service. To comply with the purchase/implementation of services deadline, awardees must have entered into a purchase agreement for eligible devices or eligible services by this date. We find that the widespread and extensive property damage, as well as power outages and the disruption of normal societal functions, provide good cause to waive the purchase and implementation of services deadline. We also recognize that awardees in the disaster area may have lost records, particularly records stored on paper and those not backed up to a remote storage facility, and we waive Telehealth program

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<sup>66</sup> See 47 CFR § 54.1806(f)(1).

<sup>67</sup> 47 CFR § 54.1806(f)(1).

<sup>68</sup> As explained in the *Affordable Connectivity Program Order*, there are a few differences in the eligibility criteria between the Lifeline Program and the Affordable Connectivity Program. See *Affordable Connectivity Program, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 21-450, 20-445, FCC 22-2, at 43, para.86, & n. 248 (2022) (*Affordable Connectivity Program Order*). Accordingly, if a household enrolled in both programs does not pass Lifeline recertification, this would not automatically render that household ineligible for the Affordable Connectivity Program. See *id.*

<sup>69</sup> See *Affordable Connectivity Program Order*, at 44, para. 86 (“Where a household enrolled in both Lifeline and the Affordable Connectivity Program does not respond or fails recertification for Lifeline, the subscriber will still have an opportunity to demonstrate their continued eligibility for the Affordable Connectivity Program.”); 47 CFR § 54.1809(d) (giving ACP subscribers a 60-day deadline to respond to recertification efforts).

<sup>70</sup> Recently, the Bureau announced a revised deadline of October 31, 2022, for all purchases and for the implementation of services. Wireline Competition Bureau Extends Deadlines for the COVID-19 Telehealth Program Round 2, WC Docket No. 20-89, Public Notice, DA 22-805 (WCB July 29, 2022). To comply with the purchase/implementation of services deadline, awardees must have entered into a purchase agreement for eligible devices or eligible services by this date. The deadline for delivery of devices is later and is not being waived; all devices must be received in time to submit invoices and Request for Reimbursement forms no later than October 31, 2023.

requirements<sup>71</sup> that records necessary to demonstrate compliance with program rules be retained for six years past the last date of delivery of services or connected devices. Telehealth awardees will not be penalized for failure to retain records destroyed by Hurricane Fiona. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records will be required, upon request from USAC or the Commission, to certify that the records, and any copies of such records, were destroyed by Hurricane Fiona. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party, upon request by USAC or the Commission. We note that the regular record retention requirements continue to apply to all records not destroyed by Hurricane Fiona, including records relating to any relief granted by this Order.

### G. Contributions

30. To provide further relief for affected companies, we waive additional rules and requirements for affected contributors to the USF. We find that good cause exists to waive these rules and requirements, subject to the limitations herein, for providers serving the Affected Disaster Areas. The extensive damage to property and facilities caused by Hurricane Fiona has rendered many providers unable to serve the Affected Disaster Areas. We find that these extremely unusual circumstances warrant a temporary waiver of the contributions rules and requirements described below. We have taken similar action under extreme circumstances in the past,<sup>72</sup> and find that granting this emergency relief will help to temporarily alleviate burdens on service providers in the Affected Disaster Area.

31. *Form 499-Q Deadlines and Late Fees.* First, we extend the 45-day revision deadline for Form 499-Q filings made on August 1, 2022, by contributors serving the Affected Disaster Areas. Extending this deadline will allow USAC to recalculate the contribution obligations for affected providers to immediately reflect the effect of Hurricane Fiona on contributor revenues rather than having to wait until next year's Form 499-A true-up process. We direct USAC to accept revisions to these filings until January 2, 2023.

32. We next temporarily waive sections 54.713(b)-(c) of the Commission's rules for providers located in the Affected Disaster Areas.<sup>73</sup> We direct USAC to refrain from assessing late fees on Form 499-Q filings made by these providers after the upcoming November 1 filing deadline until January 2, 2023.<sup>74</sup> We extend this temporary waiver to consultants and third-party preparers that are based in Affected Disaster Areas and whose operations have sustained damage due to Hurricane Fiona, thus preventing them from meeting the November 1 Form 499-Q deadline. We find that this temporary waiver will prevent these groups whose operations have been substantially impacted by Hurricane Fiona from being unfairly penalized for missing this filing deadline. We additionally direct USAC to refrain from assessing interest and penalties incurred by affected contributors until after January 2, 2023.<sup>75</sup> Finally, we

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<sup>71</sup> C19TH record-retention requirements were established in the Round 2 Report and Order; *Promoting Telehealth for Low-Income Consumers, COVID-19 Telehealth Program*, WC Docket Nos. 18-213, 20-89, Report and Order and Order on Reconsideration, 36 FCC Rcd 7141, 7176-7, paras. 79-80 (2021).

<sup>72</sup> *Schools and Libraries Universal Service Support Mechanism, et al*, Order, 32 FCC Rcd 7456 (2017) (waiving certain E-rate, Rural Health Care, Lifeline, and contribution rules and deadlines to assist schools, libraries, healthcare providers, Lifeline Program participants, and contributors affected by Hurricanes Harvey, Irma, and Maria).

<sup>73</sup> 47 CFR § 54.713(b)-(c).

<sup>74</sup> 47 CFR § 54.713(c). We direct USAC to utilize Line 109 of the Form 499-A to determine whether a provider's headquarters is located in an Affected Disaster Area.

<sup>75</sup> 47 CFR 54.713(b). *See also* 31 CFR § 901.9(g) (permitting an agency to waive interest, penalties, and administrative costs on debts owed to the United States "if the agency determines that collection of these charges is against equity and good conscience or is not in the best interest of the United States").

direct USAC to temporarily suspend certain collection activities for providers in the Affected Disaster Area, as described below.

33. *Red Light Rule.* We waive the red light rule for providers in the Affected Disaster Area. Collections and disbursement rules associated with the Debt Collection Improvement Act (DCIA),<sup>76</sup> stated in Part 1 of the Commission's rules, describe specific provisions which include a rule commonly referred to as the red light rule.<sup>77</sup> The red light rule requires that action be withheld on any application or other request for benefits made by an entity that is delinquent in debts owed to the Commission and dismissal of such applications or requests if the delinquent debt is not resolved.<sup>78</sup> With respect to universal service, when an entity's account becomes delinquent by one day, that entity, as well as any other entity associated with it through a shared taxpayer identification number, will be subject to the red light rule and considered to be in red light status.<sup>79</sup> USAC will withhold all program support payments to that entity and any associated entities until the delinquency has been satisfied.<sup>80</sup> Although entities owing debts to the government generally should not receive further benefits from it, we find that the disruption caused by Hurricane Fiona constitutes extremely unusual circumstances and justifies an exception in this case. We find that it is in the public interest and good cause exists to waive the red light rule until January 2, 2023 for providers in the Affected Disaster Area.

34. *Transfer to Treasury.* Once a debt with USAC becomes 91 days delinquent, the full amount of the outstanding debt is eligible for a DCIA transfer to the United States Department of Treasury for debt collection.<sup>81</sup> Consistent with the additional relief provided for contributors impacted by Hurricane Fiona, any debts incurred by providers located in the Affected Disaster Area will not be transferred to Treasury for collection activities between the effective date of this Order and January 2, 2023.<sup>82</sup>

35. We expect that suspending collection activities along with the extensions of filing deadlines and waivers of late fees may help affected providers to continue operations and enable them to accurately file or revise their projected revenues for the Fourth Quarter of 2022 and the First Quarter of 2023. Accordingly, the contribution obligations for those quarters will account for the impact of Hurricane Fiona on the business of these providers. Thus, we do not find it necessary to extend relief beyond January 2, 2023. However, we note that any provider that is unable to comply with the Commission's contributions rules and requirements after January 2, 2023 may request additional, narrowly-tailored relief from the Bureau.<sup>83</sup>

## H. Preventing Waste, Fraud, and Abuse

36. We are committed to guarding against waste, fraud, and abuse in the E-Rate, Emergency Connectivity Fund, Rural Health Care, COVID-19 Telehealth, Lifeline, and Affordable Connectivity programs (collectively, FCC programs). Although we grant the limited waivers described herein,

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<sup>76</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

<sup>77</sup> *Amendment of Parts 0 and 1 of the Commission's Rules/Implementation of the Debt Collection Improvement Act of 1996 and Adoption of Rules Governing Applications or Requests for Benefits by Delinquent Debtors*, Report and Order, 19 FCC Rcd 6540 (2004).

<sup>78</sup> See 47 CFR § 1.1910(b).

<sup>79</sup> See USAC, Late Payments, DCIA, Red Light, <https://www.usac.org/service-providers/making-payments/late-payments-dcia-red-light/> (last visited Sept. 22, 2022).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*; see also 31 U.S.C. § 3711(g); 31 CFR §§ 285.12(c) and 901.1; 47 CFR § 1.1917.

<sup>82</sup> See 31 U.S.C. § 3711(a)(3); 31 CFR § 903.2(a)(2).

<sup>83</sup> 47 CFR § 1.3.

program participants, service providers, and USF contributors remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC 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 including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

37. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 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 sections 47 CFR §§ 54.405(e)(3)-(4), 54.407(c)(2), 54.410(f), 54.504(d)(1)(i), 54.507(d)(4), 54.514(a), 54.516(a), 54.618, 54.627(a), 54.631(b), 54.720(a)-(b), 54.1710(b)(2)(i), 54.1715(b), 54.1718(b)(1)-(2), 54.1806(f)(1) and (5), 54.1808(c)(1)-(2), and 54.1809(c) and (d), and the COVID-19 Telehealth Program purchase and implementation deadline are waived to the extent provided herein.

38. 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