

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

In the Matter of)	
)	
Request for Waiver by Lower Yukon (Alaska))	Application Nos. ECF202115135 and
School District)	ECF202207603
Mountain Village, AK)	
)	
Request for Waiver by Northwest Arctic Borough)	Application Nos. ECF202103608 and
School District and OTZ Remote Villages Home)	ECF202200110
Internet Support)	
Kotzebue, AK)	
)	
Establishing Emergency Connectivity Fund to)	WC Docket No. 21-93
Close the Homework Gap)	

ORDER

Adopted: November 29, 2023

Released: November 29, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the two Requests for Waiver filed by Lower Yukon School District and Northwest Arctic Borough School District and OTZ Remote Villages Home Internet Support (collectively, the Petitioners).¹ Located in remote, rural Alaska, accessible only by plane or boat, these two school districts requested funding from the Emergency Connectivity Fund (ECF) program in accordance with program rules. Due in part to delays in the approval of their first window funding requests, which resulted in delays in installation and the start of services, both school districts have been left with unspent ECF commitments and seek a waiver of the rules in order to use those funding commitments to extend the recurring services provided to students and school staff in their school districts. Accordingly, and due to the unique circumstances described in the petitions and below, we grant the Petitioners’ requests and waive section 54.1710(b) of the Commission’s rules. We direct the Universal Service Administrative Company (USAC) to implement the requested service substitutions and extend any necessary deadlines for all the relevant funding requests, as discussed further below.

II. BACKGROUND

2. As part of the American Rescue Plan Act of 2021 (Act), Congress appropriated \$7.171 billion and directed the Commission to promulgate rules for distributing 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

¹ Request for Waiver by Lower Yukon School District, WC Docket No. 21-93 (filed June 1, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/106012267114108> (Lower Yukon Request for Waiver); Request for Waiver by Northwest Arctic Borough School District and OTZ Remote Villages Home Internet Support, WC Docket No. 21-93 (filed July 5, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/1070544415737> (Northwest Arctic Request for Waiver).

locations that include locations other than a school or library.² On May 10, 2021, the Commission adopted the *Emergency Connectivity Fund Report and Order* establishing rules for the ECF program to distribute the funding to eligible schools and libraries.³

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁴ and a second 15-day application filing window from September 28, 2021 to October 13, 2021, in which applicants requested a combined \$6.4 billion in support.⁵ During these two application filing windows, applicants could request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.⁶ Subsequently, the Bureau acted on a petition for waiver and extended the service delivery date for all ECF equipment, recurring, and non-recurring funding requests submitted during the first and second filing windows to June 30, 2023, but leaving the service delivery date for new construction services requests without change.⁷ The Bureau then opened a third 15-day application filing window from April 28, 2022 to May 13, 2022 to allow applicants to request eligible equipment and services purchased and delivered between July 1, 2022 and December 31, 2023. During the third filing window, the Commission received timely filed requests for over \$2.8 billion for purchases of eligible equipment and services.⁸

4. For purposes of the Emergency Connectivity Fund, section 7402 of the Act defines the COVID-19 emergency period as beginning on the date the Secretary of Health and Human Services determined that a public health emergency exists as a result of COVID-19 pursuant to section 319 of the Public Health Service Act,⁹ and ending on the June 30 that first occurs after the date that is one year after the Secretary of Health and Human Services determines that a public health emergency no longer exists.¹⁰ The COVID-19 public health emergency expired at the end of the day on May 11, 2023,¹¹ and therefore

² 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).

³ 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*).

⁴ 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*).

⁵ 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*).

⁶ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

⁷ *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915 (WCB 2022).

⁸ *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, 37 FCC Rcd 3985 (WCB 2022) (*Third ECF Application Window PN*).

⁹ See H.R. 1319, tit. VII, § 7402(d)(5)(A). The Secretary of Health and Human Services determined that a public health emergency has been in existence since January 27, 2020 as a result of COVID-19 pursuant to section 319 of the Public Health Service Act. 47 U.S.C. § 247d.

¹⁰ H.R. 1319, tit. VII, § 7402(d)(5)(B); see also 47 U.S.C. § 247d.

¹¹ News Release, Department of Health and Human Services (HHS), HHS Secretary Xavier Becerra Statement on End of the COVID-19 Public Health Emergency (May 11, 2023), <https://www.hhs.gov/about/news/2023/05/11/hhs-secretary-xavier-becerra-statement-on-end-of-the-covid-19-public-health-emergency.html>; Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited Nov. 21, 2023).

ECF funding will only be available for purchases of eligible equipment and services made on or before June 30, 2024. In May 2023, the Bureau extended the service delivery deadlines for funding requests submitted in the third application filing window to align with the sunset of the ECF program on June 30, 2024, and to ensure applicants could make full use of their ECF funding commitments.¹² As such, the ECF service delivery deadline for the third window funding requests was extended from December 31, 2023 to June 30, 2024.¹³

5. Pursuant to the Commission's rules, applicants must file the ECF FCC Form 471 application requesting eligible equipment or services.¹⁴ After a commitment is received, an applicant may request to substitute equipment or services requested on its approved ECF FCC Form 471 application.¹⁵ The ECF program rules only permit such substitutions when the equipment or service has the same functionality and the change does not increase the amount of support originally approved.¹⁶

6. On June 1, 2023, Lower Yukon School District requested a waiver of the ECF program rules to allow the District to use its remaining committed ECF funding for recurring services and distribute it among its 10 villages and use leftover funding for nonrecurring services from its first window ECF application to fund recurring services for additional time.¹⁷ Lower Yukon School District serves 10 remote villages spread across 22,000 square miles, accessible only by plane.¹⁸ The District filed an ECF application during the first application window to provide satellite service connectivity to its students and teachers with unmet need, requesting funding for non-recurring installation and equipment costs, as well as seven months of recurring service.¹⁹ USAC issued a funding commitment decision letter on April 19, 2022.²⁰ During the third application filing window, which initially permitted requests for up to twelve months of services delivered between July 1, 2022 and December 31, 2023, Lower Yukon School District requested and received a commitment for an additional nine months of service to cover recurring charges through the end of December 2023.²¹ Lower Yukon School District requests a waiver to allow its committed funding to not be limited to the specific months of funding requested in its funding applications; to shift funding requested for one village to provide service to students in other villages; and the ability to bill USAC for partial months of service.²² Through this request, Lower Yukon School District states that it can extend service to its off-campus students and teachers for a longer period of time.²³

7. On July 5, 2023, Northwest Arctic Borough School District (Northwest Arctic) and OTZ Remote Villages Home Internet Support (OTZ) filed a request for waiver seeking to use the ECF funding

¹² *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192 (WCB May 12, 2023).

¹³ *Id.*

¹⁴ 47 CFR § 54.1710(a).

¹⁵ *Id.* § 54.1710(b).

¹⁶ *Id.*

¹⁷ Lower Yukon Request for Waiver at 6-10.

¹⁸ *Id.* at 4.

¹⁹ *Id.* at 4.

²⁰ Letter from USAC, to Lower Yukon School District, concerning ECF Application No. 202115135 (April 19, 2022) (Lower Yukon First Window Funding Commitment Decision Letter).

²¹ Lower Yukon Request for Waiver at 5.

²² *Id.* at 6.

²³ *Id.* at 7-10.

commitments to extend its services to students and teachers for an additional two months.²⁴ Northwest Arctic serves 11 remote communities spread across more than 35,000 square miles of tundra and scrub.²⁵ During the first application filing window, Northwest Arctic requested funding for non-recurring installation, equipment, and 10 months of service, broken into separate funding requests.²⁶ USAC issued a funding commitment on March 23, 2022.²⁷ Northwest Arctic now requests that the funding period be extended to twelve months and some of the funding be shifted from one recurring service funding request to another.²⁸ During the third application filing window, like Lower Yukon, Northwest Arctic requested and received commitments for an additional ten months of recurring service to cover recurring service for its students and school staff through the end of December 2023.²⁹ Northwest Arctic requests that some of the funding be shifted from one funding request to another in order to extend the service for an additional partial month of service.³⁰

8. The Petitioners both explain that the requests for waiver would not extend service beyond June 30, 2024, nor would they exceed 12 months of service in each application window.³¹ In both cases, the requests do not increase the overall amount of funding originally committed to the school district, but the Petitioners seek a waiver to allow substitutions of different types of service and different funding requests.³² The Petitioners further explain that these waivers allow them to provide recurring service to two of the most remote and economically disadvantaged school districts, both serving high percentages of Alaska Native students.³³

III. DISCUSSION

9. Generally, the Commission's rules may be waived for good cause shown.³⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.³⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁶

10. Here, we find that there are unique circumstances that merit a waiver of ECF program rules in order to extend the recurring services to students and teachers in these remote portions of Alaska. Both school districts took steps to connect their students and teachers during the COVID-19 emergency period in an area of the country that is extremely rural, remote, and lacking commercially available home Internet services. The Petitioners each requested and received ECF funding commitments based on the information they had available to them at the time, and then worked to connect students' and teachers'

²⁴ Northwest Arctic Request for Waiver at 8-12.

²⁵ *Id.* at 4.

²⁶ *Id.* at 5.

²⁷ Letter from USAC, to Northwest Arctic Borough School District, concerning ECF Application No. ECF202103608 (Mar. 23, 2022) (Northwest Arctic Funding Commitment Decision Letter).

²⁸ Northwest Arctic Request for Waiver at 9-10.

²⁹ *Id.* at 7.

³⁰ *Id.* at 11-12.

³¹ Letter from Gina Spade, Broadband Legal Strategies, LLC, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 2 (filed Nov. 16, 2023).

³² *Id.* at 2-3.

³³ *Id.* at 1-2.

³⁴ 47 CFR § 1.3.

³⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

homes with unmet need for the approved amount of time. Their third window applications did not request twelve months of recurring service because of the timing of their first window funding commitments, but subsequently, the Bureau extended the funding period for the third application filing window, allowing applicants that had been able to submit funding requests for 12 months of service a longer period of time for which to receive services. Due to these special circumstances, these Petitioners are unable to fully use the ECF funding commitments that they requested, in part because funding commitments were issued close to the service delivery date for these recurring service funding requests.

11. Allowing these changes for the Petitioners will not lead to any additional funding being made available, but rather will allow these rural, remote school districts to use their approved and committed ECF funding to extend the service they have offered to students and teachers. In addition, we find that the public interest would not be served if these two remote Alaska school districts are not able to fully use the approved and committed ECF support for the eligible broadband services needed for these students and school staff with unmet needs who otherwise are not able to fully engage in remote learning. We conclude that waiving section 54.1710(b) of the Commission's rules to provide this relief for these two remote school districts furthers the mission of the ECF program by extending connectivity to these students and teachers with unmet need.³⁷

12. We therefore waive section 54.1710(b) of the Commission's rules to allow the Petitioners to receive the requested substituted service. We also direct USAC to reallocate the funding requests as requested by the Petitioners and to make changes to allow for partial months of service, provided that the revised funding requests do not exceed the overall funding commitment from the original commitments for each petitioner.³⁸ While it is rare that the Commission would waive the service substitution rules in the E-Rate program,³⁹ we emphasize that this relief is limited to this factual scenario in the ECF program, a program designed by Congress to provide emergency connectivity to students and teachers in light of the COVID-19 emergency.

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 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 section 54.1710(b) of the Commission's rules, 47 CFR § 54.1710(b), IS WAIVED as 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.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

³⁷ See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8703, para. 16.

³⁸ Northwest Arctic also states that it has a pending post-commitment request to extend the number of months on its first window application, which we direct USAC to grant consistent with this order. Northwest Arctic Request for Waiver at 11.

³⁹ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order 32 FCC Rcd 9538 (2017) (providing increased flexibility for service substitutions after a series of hurricanes).