

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

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

ORDER

Adopted: May 12, 2023

Released: May 12, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant, in part, the Request for Waiver filed by the Schools, Health & Libraries Broadband (SHLB) Coalition and the Consortium for School Networking (CoSN) (collectively, the Petitioners). First, we waive and extend the service delivery date for certain applicants who applied for Emergency Connectivity Fund (ECF) support for equipment, other non-recurring services, and recurring services during the first, second, and third filing windows, recognizing that some did not receive a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) approving an appeal, waiver, or post-commitment change request early enough to make full use of the commitment.¹ Next, we waive and extend the service delivery date for recurring service requests for first, second, and third filing window applicants that were approved for new construction services, but were unable to use the full amount of their approved funding for monthly recurring services associated with the construction.

2. We find that because of the timing for processing ECF applications and other factors beyond ECF applicants’ and service providers’ control, some ECF applicants may not be able to use all of their approved committed funding to the fullest extent possible without an additional waiver and extension of the service delivery date. Therefore, in providing this relief, we make it easier for ECF applicants to use their full approved funding commitments and ensure applicants are treated fairly and equitably regardless of when their ECF applications are processed and funding commitment decision letters are issued. At the same time, we also seek to de-obligate funding that applicants do not need as soon as possible to make additional funds available for the ECF funding applications that otherwise could not be funded because demand received during the third application filing window exceeded the amount of available funds. Accordingly, we grant, in part, the Petitioners’ request and waive and modify section 54.1711(e) of the Commission’s rules, and we direct the Universal Service Administrative Company (USAC or Administrator) to extend the service delivery date for all the relevant funding requests, as discussed further below.

II. BACKGROUND

3. 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 Petition of Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 21-93, at 1 (filed Apr. 5, 2023), <https://www.fcc.gov/ecfs/search/search-filings/filing/104051359207045> (SHLB/CoSN Petition).

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

4. 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 To address instances where the service delivery date for equipment or other non-recurring services may not be known at the time of the funding request submission, on July 22, 2021, the Wireline Competition Bureau (Bureau) issued a *Public Notice and Order* clarifying that applicants could use June 30, 2022 as the service delivery date for equipment and other non-recurring services for their ECF FCC Form 471 funding requests if the equipment or services have not been ordered or received at the time that the applicant submitted their funding request(s).⁷ 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.⁸ 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.⁹ Because the total demand received during the third filing window exceeded the amount of support available, the Commission and USAC are prioritizing funding for the third window requests submitted by schools and libraries entitled to higher discount rates until the funds are

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 *Wireline Competition Bureau Sets Service Delivery Date for Emergency Connectivity Fund Program Initial Application Filing Window and Modifies Funding Application Certification Language*, WC Docket No. 21-93, Public Notice, DA 21-881, 2021 WL 3128232, at *1-2 (WCB July 22, 2021) (*ECF Service Delivery Date Public Notice*) (extending the date for windows one and two if equipment or services have not been ordered or received at the time that the applicant submitted their funding requests); see *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Order, DA 21-1499, 2021 WL 5759736, at *4 (WCB Dec. 2, 2021) (*ECF Service Delivery Date Clarification Order*) (extending the date for all recurring and non-recurring funding requests to reduce confusion and minimize administrative burdens for windows one and two).

⁸ *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 22-176, 2022 WL 544369 (WCB Feb. 22, 2022).

⁹ *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, DA 22-309, 2022 WL 867322, at *1 (WCB Mar. 23, 2022) (*Third ECF Application Window PN*).

exhausted.¹⁰ At this time, despite denials and cancellations, there are insufficient funds to commit funding to all of the ECF third window funding requests, and de-obligation of previously committed and unused funding is needed to process and fund the remaining ECF funding requests and allow applicants time to complete their purchases of eligible equipment and services.¹¹

5. 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,¹² 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.¹³ The COVID-19 public health emergency expired at the end of the day on May 11, 2023,¹⁴ and therefore ECF funding will only be available for purchases of eligible equipment and services made by June 30, 2024.

6. The Commission also established an invoice filing deadline rule for the program in the *Emergency Connectivity Fund Report and Order*.¹⁵ Section 54.1711(d) of the Commission's rules provides that "[i]nvoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later."¹⁶ After the invoice filing deadline has expired, unused funds remaining on these committed funding requests may be de-obligated and used to issue commitments for the remaining ECF third filing window funding requests.¹⁷

7. On April 5, 2023, the Petitioners requested a waiver of section 54.1711(e) of the Commission's rules and an extension of the current service delivery dates for equipment, non-recurring services, and recurring services submitted during the first, second, and third application filing windows.¹⁸ Specifically, the Petitioners explain that the extension is necessary due to timing of the issuance of funding commitments, the ongoing nature of the COVID-19 emergency, and deployment delays experienced by some applicants and their service providers.¹⁹ For the first and second window ECF

¹⁰ News Release, FCC, FCC Announces Over \$2.8 Billion in Funding Requests for Final Window in Ongoing Work to Close the Homework Gap (May 25, 2022), <https://docs.fcc.gov/public/attachments/DOC-383685A1.pdf> (*Third ECF Application Window News Release*).

¹¹ When funding modifications or denials are appealed or waivers are requested, the funds at issue remain on reserve pending final resolution to ensure the limited appropriated funds are available if the appeal or waiver is granted. Unlike the E-Rate Program, there are not any rollover funds that could be made available, if needed.

¹² 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.

¹³ H.R. 1319, tit. VII, § 7402(d)(5)(B); see also 47 U.S.C. § 247d.

¹⁴ 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 May 12, 2023).

¹⁵ *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8743, para. 98.

¹⁶ 47 CFR § 54.1711(d).

¹⁷ *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8743, para. 98.

¹⁸ SHLB/CoSN Petition at 1.

¹⁹ *Id.* at 1.

funding requests, the Petitioners request that the Bureau extend the service delivery date to June 30, 2024 for applicants that received an FCDL or RFCDL on or after March 1, 2022.²⁰ For the third window ECF funding requests, the Petitioners request that the service delivery date be extended to June 30, 2024 for all applicants.²¹

III. DISCUSSION

8. Generally, the Commission's rules may be waived for good cause shown.²² The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²³ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁴

9. To ensure the first and second filing window ECF applicants can fully use their approved funding, we find that good cause exists to waive and extend the service delivery date if an FCDL or RFCDL approving an appeal, waiver, or post-commitment change was issued after a certain date, depending on funding request type. For recurring service funding requests with an FCDL or approved RFCDL dated on or after July 1, 2022, the service delivery date is 14 months after the date of the FCDL or approved RFCDL, but not to extend beyond June 30, 2024. For eligible equipment funding requests with an FCDL or approved RFCDL dated on or after January 1, 2023, we extend the service delivery date to 180 days after the date of the FCDL or RFCDL, not to extend beyond June 30, 2024. We provide 14 months and 180 days, respectively, because we recognize that receiving a commitment decision after a specific date that then does not allow the applicant to use the full 12 months of approved recurring services, or receive its approved equipment, presents special circumstances that merit a waiver of our rules. This means that applicants receiving an FCDL or RFCDL will have time to purchase equipment or up to 12 months of recurring services delivered after the FCDL or approved RFCDL, but not to extend beyond the ECF Program's sunset date of June 30, 2024.²⁵

10. For equipment funding requests submitted in the first and second filing windows, we find that six months is sufficient time for delivery after an FCDL or RFCDL. In this regard, we note that connected devices, hotspots, and other eligible equipment are commercially available through multiple service providers and that supply chain issues that may have existed during the pandemic have lessened.²⁶ Given our goal of ensuring that ECF funds are used expeditiously for their intended purpose, and that any unused funding is available for the pending third application filing window ECF requests, we expect schools and libraries to timely place orders for eligible equipment, and for service providers to timely fulfill them. Further, if the requested equipment is no longer needed, we also expect applicants will take action to return the unneeded funds to the program so the funds may be made available to other ECF applicants whose students, school staff, or library patrons have continuing unmet needs. Accordingly, we are providing a shorter period of time for the receipt and delivery of eligible equipment to ensure this funding is being used expeditiously, and for the intended purposes of this emergency program.

²⁰ *Id.* at 2.

²¹ *Id.* at 2.

²² 47 CFR § 1.3.

²³ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁴ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁵ Once the COVID-19 emergency period ends, the Commission cannot waive or extend the date to provide applicants with additional time to purchase eligible equipment and/or services beyond June 30, 2024. This is a statutorily set date, and the statutory language requires that purchases be made before this date to be eligible for reimbursement through the ECF program. *See* H.R. 1319, tit. VII, § 7402(d)(5)(B).

²⁶ *See, e.g.,* Michael S. Deby, *NY Fed Says Supply Chain Pressures Normalized in February*, Reuters (Mar. 6, 2023), <https://www.reuters.com/business/ny-fed-says-supply-chain-pressures-normalized-february-2023-03-06/>.

11. The Petitioners request that we extend the service delivery date for all first and second window applicants that did not receive the FCDL or approved RFCDL until on or after March 1, 2022.²⁷ We find that, on balance, a blanket waiver is not appropriate for these funding requests and that it is better to target the waiver relief to the ECF applicants that are more likely to have issues being able to use their full funding commitment before the service delivery date. We must balance our efforts to de-obligate unused ECF funding and make it available to the remaining third window ECF applications that otherwise cannot be funded because of insufficient available funds. If there are applicants that received funding commitment decisions before the dates outlined in this Order or other applicants that fall outside of the relief provided in this Order, and are unable to fully use their committed ECF support due to special circumstances, they may file a waiver with the Commission to request to extend their current service delivery date.²⁸ This will allow the Bureau to grant relief to those applicants that may need additional time without delaying the Commission's ability to de-obligate unused ECF funding for the majority of first and second window ECF applicants that have fully used their funding and do not need additional time. For similar reasons, we also elect to extend the service delivery date for first and second window applicants that received an FCDL or RFCDL on or after July 1, 2022, for recurring services, and on or after January 1, 2023, for equipment, by 14 months and 180 days, respectively, rather than extending all these ECF first and second window funding requests' service delivery dates to June 30, 2024, in order to de-obligate unused funds and make them available for remaining timely-filed ECF third window requests. Fourteen months provides schools and libraries with time to deploy equipment and provide up to 12 months of recurring service, and 180 days provides schools and libraries with time to purchase and distribute equipment and devices to students, school staff, and library patrons with unmet need.

12. Next, we extend the current December 31, 2023 service delivery date to June 30, 2024 for all third application filing window equipment, non-recurring, and recurring service requests. We recognize that due to circumstances beyond the control of the ECF applicants and service providers, additional time is needed for applicants to be able to fully use their approved funding for these third window requests. Receiving a commitment decision or an approved appeal or waiver after a specific date that then does not allow the applicant time to purchase and receive the approved eligible equipment and services, presents special circumstances that merit a waiver of our rules. Unlike for the funding requests from the first and second filing windows, on balance, we find that a single service delivery date for the majority of third window funding requests provides administrative simplicity and reduces confusion given that these funding requests with a current December 31, 2023 service delivery date will likely not be de-obligated and committed in time to allow additional third filing window applicants enough time to purchase and receive eligible equipment and services before the program's funding sunsets on June 30, 2024. This extension is limited to the number of months requested and approved in the third application filing window, and is not to exceed 12 months.

²⁷ SHLB/CoSN Petition at 2.

²⁸ Examples of special circumstances for which the Bureau may grant a waiver in the *Streamlined Monthly Appeals Public Notice* and extend the service delivery date include: (1) applicants that were unable to fully use their commitment in the first and second windows because the FCDL or approved RFCDL was not received until on or after March 1, 2022; (2) applicants that received a commitment for new construction, but were unable to fully use their commitment for recurring services due to the one-year service delivery date for such funding requests; (3) applicants that need additional time due to a long deployment of equipment before services could start. *See also, e.g., Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, et al., Public Notice, DA 23-333, at 24 (WCB Apr. 28, 2023) (extending the service implementation deadline for special construction finding the delays were outside the control of the applicant and service provider and the petitioner made good faith effort to comply with the rules). If the relief requested falls outside the scope the actions taken in this Order, parties may file a petition and demonstrate how the waiver standard is met and the relief requested is consistent with the public interest. *See, e.g., Letter from Gene Stone, Superintendent, Lower Yukon School District, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed May 5, 2023).*

13. Recognizing that there are some recurring services associated with new construction funding requests that may need additional time, we also extend relief to ECF applicants receiving a commitment for recurring services associated with a new construction request approved during the first, second, or third filing windows that received an FCDL or approved RFCDL on or after July 1, 2022. Unlike requests for equipment or commercially available services, applicants seeking support for new construction are provided one year from the date of their funding commitment decision letter to demonstrate that construction is completed and the services have been provided.²⁹ The one-year deadline for new construction was established to ensure the greatly needed services were provided as quickly as possible to these students, school staff, and library patrons with continuing unmet needs.³⁰ We now recognize that, due to special circumstances, some applicants are unable to fully use the months of service for which funding was approved because funding commitments were issued close to the service delivery date for these recurring service funding requests. We therefore extend the service delivery date to June 30, 2024 for approved recurring services associated with a new construction funding request if the FCDL or approved RFCDL for the new construction services was received on or after July 1, 2022. However, we do not otherwise extend or waive the current one-year deadline to complete the special construction services from the date of the FCDL.

14. We find that waiving and extending the service delivery date for the ECF applicants discussed above will not lead to any additional funding being made available to these applicants, but rather it allows the applicants to use their approved and committed ECF funding pursuant to the Commission's rules. In addition, we find that the public interest would not be served if these applicants are not able to fully use the approved and committed ECF support for the eligible equipment and broadband services needed for these students, school staff, and library patrons with unmet needs who otherwise are not able to fully engage in remote learning. Rather, the actions we take today will allow applicants to provide and use the ECF-supported equipment and services beyond the current service delivery dates, thereby enhancing the availability of off-campus connectivity to students, school staff, and library patrons with continuing unmet needs consistent with the goals of the ECF Program.

15. We are mindful that these ECF funds are limited and have adopted safeguards to ensure the funds are fully used for their intended purpose.³¹ We conclude that waiving and extending the service delivery date for these ECF funding requests will allow for the greater provision of affordable devices and connectivity to students, school staff, and library patrons in need and, therefore, furthers the mission of the ECF.³² We encourage applicants and service providers, who agree to invoice on behalf of the applicant, to continue to submit timely requests for reimbursement after receiving the requested eligible equipment or services, to allow the unused ECF support to be made available to for the remaining ECF third window funding requests so that other students, school staff, and library patrons with continuing unmet needs can also be served before the June 30, 2024 sunset date of the ECF Program.

16. We also modify section 54.1711(e) of the Commission's rules as reflected in Appendix A to reflect the updated service delivery deadlines adopted herein. We make this change without notice and

²⁹ *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41.

³⁰ *Id.* at 8717, para. 41, n.125 (finding that additional construction time is inconsistent with the goals of this emergency program).

³¹ For example, we note that USAC has appropriate review procedures and internal controls to ensure applicants will not be able to request and receive duplicative support for Emergency Connectivity Fund-supported equipment and services.

³² *See Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8703, para. 16.

comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.³³ The updated rule will become effective upon publication of this Order in the Federal Register.³⁴

17. Finally, we find no evidence of waste, fraud, or abuse is presented by waiving and extending the service delivery date in this manner. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the ECF Program are used for their intended purposes to provide broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs. Although we grant a waiver of and extend the service delivery date for certain ECF funding requests, these actions do not affect the authority of the Commission or USAC to conduct audits and other reviews and investigations to verify compliance with ECF Program rules and requirements.³⁵ The Commission is also required to recover funds disbursed in violation of statutory and/or rule requirements.³⁶

IV. ORDERING CLAUSES

18. 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 54.1711 of the Commission's rules IS WAIVED and AMENDED to the extent provided herein.

19. 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.

20. The amended rule adopted in this Order and contained in Appendix A constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements.³⁷ Accordingly, this amended rule is EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

³³ 5 U.S.C. § 553(b)(3)(A). This amended rule is not subject to the APA requirements because it is a procedural rule setting a service delivery date for eligible equipment, non-recurring, and recurring services purchased between July 1, 2021 and June 30, 2024.

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

³⁵ 47 CFR § 54.1714.

³⁶ 31 U.S.C. § 3711(a)(1); *see also* 31 CFR § 901.1 (requiring aggressive collection actions).

³⁷ 5 U.S.C. § 553(b)(3)(A).

APPENDIX A**Final Rule**

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

(e) *Service delivery date.*

- (1) Except as provided in paragraphs (i) and (ii), for the initial filing window set forth in § 54.1708(b) and second application filing window, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.
 - (i) If the funding commitment decision letter or a revised funding commitment decision letter approving an appeal, waiver, or post-commitment request for equipment, is received on or after July 1, 2022, the service delivery date for service funding requests is 14 months from the date of that letter or June 30, 2024, whichever date is earlier.
 - (ii) If the funding commitment decision letter or a revised funding commitment decision letter approving an appeal, waiver, or post-commitment request for equipment, is received on or after January 1, 2023, the service delivery date for equipment is 180 days from the date of that letter or June 30, 2024, whichever date is earlier.
- (2) For the third application filing window and any subsequent filing windows covering funding for purchases made between July 1, 2022 and June 30, 2024, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2024.