

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

In the Matter of)
Request for Waiver by T-Mobile USA, Inc.)
Establishing Emergency Connectivity Fund to) WC Docket No. 21-93
Close the Homework Gap)

ORDER

Adopted: August 14, 2023

Released: August 14, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a petition for limited waiver of the Emergency Connectivity Fund (ECF) program’s invoice filing deadline submitted by T-Mobile USA, Inc (T-Mobile).1 Specifically, we waive section 54.1711(d) of the Federal Communications Commission’s (Commission) rules to provide an automatic, one-time extension of the invoicing filing deadline to October 30, 2023 for any funding requests with an invoice filing deadline date occurring before October 30, 2023.2 We recognize that many participants with a service delivery deadline of June 30, 2023 or a service delivery deadline that occurs shortly thereafter as a result of the Wireline Competition Bureau’s (Bureau) May 2023 Service Delivery Deadline Extension Order may require additional time to complete the invoicing process for eligible equipment and services that have already been delivered and provided to students, school staff, and library patrons with unmet needs.3 We find that a one-time extension of the invoice filing deadline for applicants and service providers with an invoice filing deadline that falls before October 30, 2023 (Affected Participants) will provide them with sufficient flexibility to complete and submit their invoicing forms and necessary supporting documentation to the Universal Service Administrative Company (USAC), the Administrator of the ECF program, in order to receive their committed funding. Accordingly, we direct USAC to provide an automatic, one-time extension of the invoice filing deadline to October 30, 2023 for any funding requests with an invoice filing deadline occurring before October 30, 2023, and we modify section 54.1711(d) of the Commission’s rules to provide 60 days to submit invoices from the date of the notification by USAC that a refund request is processed by USAC.4

1 Petition of T-Mobile USA, Inc. for Waiver, WC Docket No. 21-93, at 1 (filed June 29, 2023), https://www.fcc.gov/ecfs/filing/10629461312224 (T-Mobile Petition).

2 See 47 CFR § 54.1711(d) (requiring all invoices to be submitted 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).

3 See Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93, Order, DA 23-405, 2023 WL 3579192, at *4 (WCB May 12, 2023) (May 2023 Service Delivery Deadline Extension Order) (providing varying extensions of the ECF program’s service delivery deadline based on the date of a commitment decision).

4 There are certain circumstances where entities may find they need to submit refund requests to voluntarily return funding that has already been disbursed, such as to correct entity information that was provided on original invoices.

(continued...)

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 locations that include locations other than a school or library.⁵ 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.⁶

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁷ 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.⁸ During these two application filing windows, applicants could initially request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.⁹ The Bureau later 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.¹⁰ 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 exhausted.¹¹

4. The Commission also established an invoice filing deadline rule for the program in the *Emergency Connectivity Fund Report and Order*.¹² 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-

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For the purposes of the ECF program, a refund request will be considered processed on the date that USAC is notified by the U.S. Department of Treasury (Treasury) that the debt (i.e., the full amount being returned by an entity) has been repaid in full. Upon notice of full debt satisfaction, USAC will update the ECF Portal and issue a notification that the refund has been processed to the entity. *See infra* n. 19.

⁵ 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).

⁶ *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*).

⁷ 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*).

⁸ 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*).

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

¹⁰ *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*).

¹¹ 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*).

¹² *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8743, para. 98; 47 CFR § 54.1711(d).

commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.”¹³

5. In recognition of the emergency nature of the program and the evolving needs of participants, the Bureau has taken a number of steps to provide ECF program participants with additional time and flexibility to facilitate the full use of approved and committed ECF support for the eligible equipment and broadband services needed to connect students, school staff, and library patrons who otherwise would not be able to fully engage in remote learning. For example, 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 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).¹⁴ 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.¹⁵ On May 12, 2023, the Bureau issued another *Order* extending the service delivery date for certain first and second window applicants who received funding commitment decisions for services on or after July 1, 2022 and for equipment on or after January 1, 2023, and maintaining June 30, 2023 as the service delivery date for first and second window applicants that received funding commitments before those dates.¹⁶ The *May 2023 Service Delivery Deadline Extension Order* also extended the service delivery deadline for third window funding requests to allow applicants to purchase and receive eligible equipment and services before June 30, 2024, the statutorily required sunset date for the ECF program.¹⁷

¹³ 47 CFR § 54.1711(d).

¹⁴ *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, 36 FCC Rcd 16621, 16624, para. 10 (WCB 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).

¹⁵ *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915 (WCB 2022).

¹⁶ *See May 2023 Service Delivery Deadline Extension Order* at *4, paras. 9-10.

¹⁷ *See id.* at *5, para. 12. 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, 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. *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. The COVID-19 public health emergency expired at the end of the day on May 11, 2023. *See* 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 Aug. 14, 2023). Therefore, ECF funding will only be available for purchases of eligible equipment and services made by June 30, 2024. *See Wireline Competition Bureau and Office of the Managing Director Provide Guidance on Emergency Connectivity Fund Program Upon Termination of the Emergency Period*, WC Docket No. 21-93, Public Notice, DA 23-406, 2023 WL 3579198 (WCB May 12, 2023).

6. On June 29, 2023, T-Mobile requested a limited waiver of section 54.1711(d) of the Commission's rules to provide a one-time extension of the invoice filing deadline until October 30, 2023 or 60 days after USAC processes a refund request submitted.¹⁸ T-Mobile asserts that an extension is warranted due to complexities in the emergency program related to the invoicing process. Specifically, T-Mobile explains that additional time is needed for USAC to process returned funds and allow applicants and service providers time to submit new and revised invoices.¹⁹ T-Mobile further explains that an extension is necessary to address what it describes as the time-consuming process of submitting and reviewing large, complicated invoices with extensive documentation,²⁰ particularly in light of the Bureau's recent extensions of ECF program service delivery dates that required T-Mobile to implement new internal processes to account for the newly adjusted time periods and to ensure that all administrative changes are accurately reflected for school and library participants.²¹ On August 1, 2023, T-Mobile's concerns were echoed in a filing submitted by a coalition comprised of the National Rural Education Association, United States Hispanic Leadership Institute, Kollab Youth Workforce Development Education, and Parents Institute for Quality, who emphasized that the timing of issuing refunds and challenges associated with changing service delivery deadlines for complex invoices have "essentially reduced the amount of time available to submit an invoice."²²

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.²³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁵

8. To ensure ECF program participants can seek reimbursement for all of their approved ECF funding used to connect students, school staff, and library patrons with unmet needs, we find good cause exists to waive and extend the invoice filing deadline until October 30, 2023 for applicants and service providers with invoice filing deadlines occurring before that date. In addition, we also modify section 54.1711(d) of the Commission's rules to allow invoices to be submitted within 60 days from the date that USAC issues a notification that a refund request submitted by an ECF participant has been processed.²⁶ In particular, we recognize that due to the evolving and emergent nature of this program, complexities in the invoicing process, and the impact of recent service delivery deadline extensions provided by the Bureau, some program participants may have difficulty timely submitting invoices by their current invoice filing deadlines that fall before October 30, 2023 despite every attempt to comply with the program's rules. We also understand that at times, ECF funds must be returned (e.g., to correct entity information) and USAC must process the refund request first, before the party is able to submit a

¹⁸ T-Mobile Petition at 1, 2.

¹⁹ *Id.* at 7-8. In the ECF Portal, requests to return funding that has already been disbursed must be processed by USAC before an entity will be able to submit a new or revised invoice to draw on that funding.

²⁰ *Id.* at 8-10.

²¹ *Id.* at 9.

²² Letter from Allen Pratt, Ed.D, Executive Director, National Rural Education Association, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1-2 (filed Aug. 1, 2023) (Coalition Letter).

²³ 47 CFR § 1.3.

²⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁶ *See supra* n.4. Please note that USAC will only issue notifications to entities whose voluntarily returned funds have been repaid in full. To the extent there is any debt remaining, a notification will not be sent and therefore, the invoice filing deadline will not be impacted in the event a debt is still owed.

corrected invoice for a funding request.²⁷ Furthermore, although the Commission leveraged existing E-Rate processes and forms in the ECF program, including invoicing,²⁸ we understand that the ECF program has a shorter invoice filing period than the E-Rate program and that this is the first time some applicants and service providers are submitting invoices using USAC's system, the ECF Portal, altogether.²⁹ We also acknowledge the coinciding timing of the invoicing process for Affected Participants with many schools' summer vacations and start of the school year. Taken together, we find that such factors have contributed to the need for additional time to file invoices and present compelling and unique circumstances that merit a waiver and modification of section 54.1711(d) of the Commission's rules.

9. Moreover, we find that a waiver and modification of section 54.1711(d) will not lead to any undue advantage in funding as the Affected Participants will not receive more funding than allowed under the ECF program rules, and their equipment and services have already been received and delivered. In addition, we find that the public interest would not be served were these otherwise eligible ECF participants to lose ECF funding for eligible equipment and services needed to connect students, school staff, and library patrons with unmet needs who otherwise are not able to fully engage in remote learning because of their inability to submit invoices by their current invoice filing deadline or because of the delay in the processing of their refund request. Thus, we find that providing an automatic, one-time extension of the invoice filing deadline to October 30, 2023 for Affected Participants and a modification of section 54.1711(d) to account for the processing of refund requests strikes the right balance between the need for efficient administration of the ECF program and allowing applicants and service providers adequate time to receive their approved and committed ECF funding pursuant to the Commission's rules. We therefore grant T-Mobile's request for limited waiver and modification of section 54.1711(d) of the Commission's rules, and direct USAC to provide Affected Participants with an automatic, one-time extension to submit their invoices to USAC no later than October 30, 2023.

10. In granting the requested relief, we emphasize that this Order does not extend ECF program participants' service delivery deadlines,³⁰ nor does it alter the obligation of participants to comply with the other program requirements set out in the Commission's rules, including their obligation to certify to receipt of eligible equipment and/or services and that they are not willfully or knowingly requesting reimbursement for equipment or services that are not being used on their ECF FCC Forms 472 and 474 (i.e., the requests for reimbursement).³¹ As such, we remind applicants that all eligible equipment and services, including funding requests for special construction, must be delivered by their service delivery date.³² We also remind applicants that, unlike E-Rate program rules, ECF program rules do not permit any invoice filing extensions.³³ For this reason, any ECF program participant that requires

²⁷ See T-Mobile Petition at 7-8.

²⁸ See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740, para. 90 (leveraging E-Rate processes and forms in the ECF program because schools and libraries are already familiar with the processes and forms).

²⁹ Compare 47 CFR § 54.1711(d) with 47 CFR § 54.514(a) (requiring E-Rate participants to submit invoices within 120 days of receiving service, the FCC Form 486 Notification letter, or a revised funding commitment decision letter approving a post-commitment request or appeal).

³⁰ 47 CFR § 54.1711(e) (establishing the service delivery dates for equipment, other non-recurring services, and recurring services purchased with ECF support).

³¹ See 47 CFR §§ 54.1700-1718; see also 47 CFR § 54.1711(a)(1)(iv), (viii), (a)(2)(iv) (vi).

³² See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41 (providing requests for construction or datacasting one year from the date of the funding commitment decision letter to demonstrate that construction is completed and the services have been provided).

³³ Compare 47 CFR § 54.1711(d) with 47 CFR § 54.514(b) (allowing E-Rate participants to request a one-time extension of the invoice filing deadline).

additional time to submit their requests for reimbursement beyond the relief granted herein must file a request for waiver directly with the Commission and demonstrate good cause.

11. We also modify section 54.1711(d) of the Commission's rules as reflected in Appendix A to reflect the updated invoice filing deadline rule adopted herein. We make this change without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.³⁴ The updated rule will become effective upon publication of this Order in the Federal Register.³⁵

12. Finally, waiving the invoice filing deadline does not increase the risk of waste, fraud, or abuse. We emphasize that the Commission is committed to protecting the integrity of the ECF program and ensuring that funds disbursed through the 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 limited waiver of the Commission's invoice filing deadline for certain ECF funding requests, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with ECF program rules and requirements.³⁶ The Commission is also required to recover funds determined to be disbursed in violation of statutory and/or rule requirements.³⁷

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 54.1711(d) of the Commission's rules, 47 CFR § 54.1711(d), IS WAIVED and AMENDED to the extent provided herein.

14. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

15. The amended rule adopted in this Order and contained in Appendix A constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements.³⁸ Accordingly, this amended rule is EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

³⁴ 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 an invoice filing deadline for the ECF program.

³⁵ 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.").

³⁶ 47 CFR § 54.1714.

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

³⁸ 5 U.S.C. § 553(b)(3)(A).

APPENDIX A

Final Rule

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Amend § 54.1711 by revising paragraph (d) to read as follows:

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

* * * * *

(d) ***Invoice filing deadline.*** Invoices must be submitted to the Administrator within 60 days from the date of a funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of a previously denied or reduced funding; notification by the Administrator of a processed returned funds (or refund) request; or service delivery date, whichever is later.