

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

In the Matter of)	
)	
Requests for Waiver by Bluum USA Inc)	ECF222119317 et al.
Phoenix, AZ, et al.)	
)	
Establishing Emergency Connectivity Fund to)	WC Docket No. 21-93
Close the Homework Gap)	

ORDER

Adopted: February 6, 2024

Released: February 6, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address six requests for waiver filed by Emergency Connectivity Fund (ECF) program applicants (collectively, the Petitioners).¹ Specifically, we waive and extend the service delivery date and/or the invoice filing deadline for the Petitioners who applied for ECF support for equipment, non-recurring services, and recurring services during the first and second application filing windows, recognizing the emergency nature of the ECF program as well as the limited, one-time funding opportunity it presents. Earlier this year, the Bureau provided ECF first and second window applicants with additional time to receive services and complete the invoicing process in recognition of the evolving and emergent nature of the ECF program.² Consistent with those actions, we find good cause exists to waive section 54.1711(d) and (e) of the Commission’s rules for the Petitioners, and direct the Universal Service Administrative Company (USAC) to extend any necessary deadlines for the Petitioners’ first and second window ECF funding requests consistent with this Order.³

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 The Petitioners and ECF funding applications are listed in Appendices A and B to this Order.

² 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); *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, DA 23-669, 2023 WL 5262666 (WCB Aug. 14, 2023) (*August 2023 Invoice Deadline Date Extension Order*) (providing first and second window applicants with an extension of the ECF program’s invoice filing deadline date until October 30, 2023).

³ 47 CFR § 54.1711(d)-(e). To the extent any of these funding requests have already been modified, we remand those applications to USAC for review consistent with this order.

locations that include locations other than a school or library.⁴ 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.⁵

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁶ 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.⁷ 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, 2022.⁸ 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.⁹

4. The Commission also established an invoice filing deadline rule for the program in the *Emergency Connectivity Fund Report and Order*.¹⁰ 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."¹¹

5. In recognition of the emergency nature of the program and the evolving needs of participants, the Bureau has also 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

⁴ 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).

⁵ 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*).

⁶ 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*).

⁷ 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 ECF Application Window News Release*).

⁸ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

⁹ *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*). See also 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*).

¹⁰ *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8743, para. 98; 47 CFR § 54.1711(d).

¹¹ 47 CFR § 54.1711(d).

not been ordered or received at the time that the applicant submitted their funding request(s).¹² 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 left the service delivery date for new construction services requests without change.¹³ 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, 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.¹⁴ 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.¹⁵ On August 14, 2023, the Bureau issued an *Order* granting a one-time extension of the invoice filing deadline date for first and second window funding requests to provide applicants and service providers with sufficient flexibility to complete and submit their invoicing forms and necessary supporting documentation.¹⁶

6. Each of the Petitioners submitted timely applications during the first or second application filing windows and subsequently sought to waive and extend the service delivery date and/or the invoice filing deadline date for equipment, non-recurring service, and recurring service requests submitted during the first and second application filing windows. Specifically, the Petitioners explain

¹² *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 first and second window requests 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 the first and second ECF window applicants).

¹³ *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Order, 37 FCC Rcd 1915 (WCB 2022).

¹⁴ See *May 2023 Service Delivery Deadline Extension Order* at *4, paras. 9-10.

¹⁵ 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 began 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 Dec. 20, 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).

¹⁶ See *August 2023 Invoice Deadline Date Extension Order*; see also *Wireline Competition Bureau Extends Emergency Connectivity Fund October 30, 2023 Invoice Deadline*, WC Docket No. 21-93, Public Notice, DA 23-1029, 2023 WL 8591696 (WCB 2023) (extending the October 30, 2023 invoice deadline date to November 3, 2023 due to technical issues with the invoice filing system).

that additional time is necessary due to problems with their service providers,¹⁷ challenges posed by personnel changes and departures,¹⁸ new applicant confusion,¹⁹ and other procedural and administrative issues.²⁰

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.²¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²³

8. We recognize that due to the evolving and emergency nature of this program, complexities in the invoicing process, and the various administrative challenges due to the pandemic, some ECF program participants may have difficulty timely receiving equipment and/or services or submitting invoices by their current service delivery date and/or invoice filing deadline. Therefore, we find good cause exists to waive and extend the service delivery deadline and/or the invoice filing deadline for the Petitioners to ensure these ECF program participants can seek reimbursement for their approved ECF funding used to connect students, school staff, and library patrons with unmet needs.

9. The ECF program is designed to provide schools and libraries with the tools and services that their students, school staff and library patrons need for remote learning in light of the COVID-19 emergency. The Petitioners request waivers in response to various administrative challenges related to remote learning posed by the pandemic, and the ECF program was expressly set up to address such emergency needs. Further, such waivers present a one-time funding opportunity, and are consistent with prior waivers provided by the Bureau for other ECF participants.²⁴ As such, we extend the invoice filing deadline for the Petitioners listed in Appendix A, and direct USAC to extend the invoice filing deadline dates for 60 days from the date of this Order. We also extend the service delivery deadline to June 30, 2024, for the Petitioners listed in Appendix B, and direct USAC to extend the service delivery and invoice filing deadlines accordingly.

10. We find that waiving and extending the service delivery deadline and/or the invoice filing deadlines for these Petitioners will not lead to any additional funding being made available to these Petitioners, but rather it allows the Petitioners to use their approved and committed ECF funding pursuant

¹⁷ See, e.g., Petition of Willits Elementary Charter School for Waiver, WC Docket No. 21-93, at 1 (filed Oct. 26, 2023), <https://www.fcc.gov/ecfs/filing/1026139670650>.

¹⁸ See, e.g., Petition of Las Vegas Adventist Academy for Waiver, WC Docket No. 21-93, at 1 (filed Oct. 30, 2023), <https://www.fcc.gov/ecfs/filing/102991777226>.

¹⁹ See, e.g., Petition of Mescalero Community Library for Waiver, WC Docket No. 21-93, at 1 (filed Oct. 26, 2023), <https://www.fcc.gov/ecfs/filing/102674512912>.

²⁰ See, e.g., Petition of Bluum USA Inc. for Waiver, WC Docket No. 21-93, at 1 (filed Dec. 8, 2023), <https://www.fcc.gov/ecfs/filing/1208830826483> (requesting extension of invoicing filing deadline for timely delivery of equipment); Petition of Fullerton Elementary School District for Waiver, WC Docket No. 21-93, at 2 (filed Nov. 19, 2023), <https://www.fcc.gov/ecfs/filing/1118063497574> (requesting extension of invoicing filing deadline due to additional time it needed to gather invoice documentation); Petition of McArthur Public Library for Waiver, WC Docket No. 21-93, at 1 (filed Oct. 30, 2023), <https://www.fcc.gov/ecfs/filing/1030903602868> (requesting extension of the invoicing filing deadline and the service delivery date due to delay in obtaining the funding commitment decision letter).

²¹ 47 CFR § 1.3.

²² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁴ See *May 2023 Service Delivery Deadline Extension Order*; *August 2023 Invoice Deadline Date Extension Order*.

to the Commission's rules. In addition, we find that the public interest would not be served if these Petitioners 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 these Petitioners to provide and use the ECF-supported equipment and services as intended, 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.

11. Finally, we find that waiving the service delivery and/or the invoice filing deadlines for these Petitioners does not increase the risk of waste, fraud, or abuse in the ECF program. 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. We remind the Petitioners that all other ECF program rules remain in effect and must be complied with. Although we grant the Petitioners a limited waiver of section 54.1711(d) and (e) of the Commission's rules, 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.²⁵ The Commission is also required to recover funds determined to be disbursed in violation of statutory and/or rule requirements.²⁶

IV. ORDERING CLAUSES

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

13. 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

²⁵ 47 CFR § 54.1714.

²⁶ 31 U.S.C. § 3711(a)(1); *see also* 31 CFR § 901.1.

APPENDIX A

Invoice Filing Deadline Waiver Requests Granted

Petitioner	Application Number(s)	Date Request(s) for Waiver Filed
Bluum USA Inc. (Holy Cross Catholic School) Phoenix, AZ	ECF222119317	December 8, 2023
Fullerton Elementary School District Fullerton, CA	ECF222118564	November 19, 2023

APPENDIX B**Service Delivery and Invoice Filing Deadline Waiver Requests Granted**

Las Vegas Adventist Academy Las Vegas, NV	ECF202105159	October 30, 2023
McArthur Public Library Biddeford, ME	ECF222120706	October 30, 2023
Mescalero Community Library Mescalero, NM	ECF202105269	October 26, 2023
Willits Elementary Charter School Willits, CA	ECF202113316	October 26, 2023