

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Essential Network Technologies LLC)	
and MetComm.Net, LLC,)	
Petitioners,)	
)	
v.)	No. 24-1027
)	
Federal Communications Commission)	
and United States of America,)	
Respondents.)	

**OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION
TO PETITION FOR WRIT OF MANDAMUS**

On February 14, 2024, Essential Network Technologies LLC (“ENT”) and MetComm.Net, LLC (“MetComm”) filed a “petition to review, or alternatively, petition for writ of mandamus to compel agency action unreasonably delayed.” By order dated March 25, 2024, the Court directed the Federal Communications Commission to file a response “to the extent the petition seeks mandamus relief based on agency action unlawfully withheld or unreasonably delayed.”¹

Petitioners’ request for a writ of mandamus should be denied. Mandamus is a “drastic” remedy that should be invoked “only in extraordinary circumstances.” *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). A party seeking mandamus must demonstrate “a clear and indisputable right to the particular relief

¹ In the same order, the Court denied petitioners’ motion to expedite and deferred consideration of the FCC’s motion to dismiss the petition for review “pending further order” of the Court.

sought.” *Illinois v. Ferriero*, 60 F.4th 704, 713 (D.C. Cir. 2023). Mandamus is “available only if ‘no adequate alternative remedy exists.’” *In re Al-Nashiri*, 921 F.3d 224, 237 (D.C. Cir. 2019) (quoting *Barnhart v. Devine*, 771 F.2d 1515, 1524 (D.C. Cir. 1985)). And in cases involving claims of unreasonable agency delay, mandamus is “warranted only when agency delay is egregious.” *In re Monroe Commc’ns Corp.*, 840 F.2d 942, 945 (D.C. Cir. 1988). Petitioners have not come close to showing that they are entitled to such extraordinary relief.

This case involves actions taken by the Universal Service Administrative Company (“USAC”), the administrator of the FCC’s universal service subsidy program. For several years, petitioners had received subsidies under that program for providing discounted services to schools pursuant to 47 U.S.C. § 254(h)(1)(B). In the last few years, however, USAC discovered evidence that the schools and petitioners may have had a prohibited pre-existing relationship before the schools awarded their business to petitioners. Such a relationship would have violated an FCC rule requiring the schools to “conduct a fair and open competitive bidding process” before entering into contracts for discounted services. *See* 47 C.F.R. § 54.503(a). In light of this evidence, USAC suspended universal service payments to petitioners pending investigations to determine whether petitioners’ contracts complied with FCC rules.

Although petitioners have never requested intervention by or relief from the FCC concerning USAC's actions, they ask this Court to issue "a writ directing the FCC to" terminate USAC's suspension of petitioners' universal service payments and "promptly issue" the funds that USAC has withheld from petitioners. Petition at 34. They contend that doing so is the Commission's "clear statutory duty under 47 U.S.C. § 254(h)(1)(B)." *Id.* But nothing in the statute requires the Commission to take such action, and it would make little sense for the agency to resume universal service payments to petitioners when there is some doubt whether they are eligible to receive such payments. Furthermore, even assuming that petitioners could show that they are entitled to the funds withheld by USAC, they would not need a writ of mandamus to recover those funds. They could obtain reimbursement in the normal course of litigation. *See Career Educ., Inc. v. Dept. of Educ.*, 6 F.3d 817, 819 (D.C. Cir. 1993) (mandamus "will not issue where there exist other administrative or legal remedies").

Petitioners also claim that USAC has engaged in "unreasonable delay" in conducting its investigations. Petition at 31. They request that the Court "direct the FCC within 90 days to render decisions regarding USAC's investigations and ... to report those decisions in writing." Petition at 35. Such extraordinary relief is wholly unjustified. USAC's investigations implicate a large number of contracts and funding requests. Given the scope and complexity of the investigations—

which USAC formally commenced about two years ago for ENT, and only about one year ago for MetComm—this is not a case of unreasonable delay, let alone delay “so egregious as to warrant mandamus.” *In re Nat’l Nurses United*, 47 F.4th 746, 753 (D.C. Cir. 2022). In any event, USAC expects to complete these investigations next month.

For these reasons, the Court should deny the mandamus petition.

BACKGROUND

A. Universal Service And The E-Rate Program

From its inception in 1934, the FCC has pursued the goal of universal service—*i.e.*, “to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.” 47 U.S.C. § 151; *see AT&T, Inc. v. FCC*, 886 F.3d 1236, 1241-42 (D.C. Cir. 2018).

In 47 U.S.C. § 254, a provision added to the Communications Act in 1996, Congress directed the FCC to expand its universal service program to subsidize service provided to schools and libraries. Pursuant to section 254(h)(1)(B), any telecommunications carrier that offers services designated by the FCC as eligible for universal service support under sections 254(c)(1) and (c)(3) “shall, upon a bona fide request ... , provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts

charged for similar services to other parties.” 47 U.S.C. § 254(h)(1)(B); *see also id.* § 254(c)(1), (c)(3) (authorizing discounts for telecommunications services and “additional services” such as internet access).

The Commission sets the amount of the discount to schools and libraries that purchase such services. *See id.* § 254(h)(1)(B). Any carrier that provides discounted services shall either (1) “receive reimbursement” for the discount from the FCC’s universal service fund or (2) “have an amount equal to the amount of the discount treated as an offset to” the carrier’s “obligation to contribute” to the universal service fund under section 254(d). *See id.* § 254(h)(1)(B)(i)-(ii).

To implement this subsidy program for eligible schools and libraries (commonly known as the E-rate program), the FCC adopted a rule requiring that any school or library seeking to receive discounted services under the program “conduct a fair and open competitive bidding process” before entering into a contract with a service provider. 47 C.F.R. § 54.503(a). A note to this rule provides “an illustrative list of activities or behaviors that would not result in a fair and open competitive bidding process”—for example, when an “applicant for supported services has a relationship with a service provider that would unfairly influence the outcome” of the bidding process, or when “the service provider prepares the applicant’s FCC Form 470” (which the applicant must submit to

USAC to initiate the competitive bidding process). *See* Note to 47 C.F.R.

§ 54.503(a); *see also* 47 C.F.R. § 54.503(c) (describing FCC Form 470).

An applicant requesting discounts under the E-rate program must certify that “[t]he entities listed in the application have complied with all program rules and acknowledge that failure to do so may result in denial of discount funding and/or recovery of funding.” 47 C.F.R. § 54.504(a)(1)(vi). Applicants must also certify that they “carefully considered” all bids and selected “the most cost-effective bid” for the provision of eligible services. *Id.* § 54.504(a)(1)(ix). In adopting this “competitive bidding” requirement, the Commission explained that it felt compelled by “fiscal responsibility”: “Absent competitive bidding, prices charged to schools and libraries may be needlessly high, with the result that fewer eligible schools and libraries would be able to participate in the program or the demand [for] universal service support ... would be needlessly great.” *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9029 ¶ 480 (1997).

The competitive bidding rule “ensur[es] that funds support services that satisfy the precise needs of an applicant and that services are provided at the lowest possible rates.” *Schools and Libraries Universal Service Support Mechanism*, 19 FCC Rcd 15808, 15816 ¶ 21 (2004). The rule thus provides a critical safeguard “against waste, fraud, and abuse in the administration” of the E-rate program. *Id.* at 15809 ¶ 1.

Recognizing the importance of effective enforcement of this rule, the FCC determined years ago that the agency “should recover the full amount disbursed for any funding requests in which [a] beneficiary fail[s] to comply with the Commission’s competitive bidding requirements.” *Id.* at 15815 ¶ 21. Consistent with this policy, USAC has rigorously enforced the competitive bidding rule. For example, after learning of credible allegations that contracts between the Houston Independent School District and its E-rate provider violated the rule, USAC placed a “hold” on E-rate payments under the contracts while it investigated the matter. *Request for Review of Decisions of the Universal Service Administrator by Joseph M. Hill*, 26 FCC Rcd 16586, 16591 ¶ 10 (2011) (*Lakehills*), *pet. for review denied*, *Hill v. FCC*, 496 F. App’x 396 (5th Cir. 2012). Ultimately, USAC determined—and the FCC agreed—that the parties and their contracts violated the competitive bidding rule. *Id.* at 16596-97 ¶¶ 20-21. Having found a violation, USAC rescinded funding commitments to the school district, *id.* at 16593 ¶ 14, and sought full recovery of E-Rate disbursements under the contract, *id.* at 16598-16601 ¶¶ 25-28. *See also Lazo Technologies, Inc.*, 26 FCC Rcd 16661, 16661 ¶ 1 (2011) (declining to pay pending invoices for discounted services provided to the Dallas Independent School District by certain service providers “because the underlying contract for the E-rate services was tainted by a bribery scheme that violated the Commission’s competitive bidding requirements”).

B. USAC's Investigation Of Petitioners

ENT and MetComm, the petitioners in this case, have entered into contracts with a number of schools to provide discounted services under the E-rate program. In recent years, USAC has discovered evidence that these parties and their contracts may have violated the Commission's competitive bidding rule.

On February 3, 2022, USAC sent a Special Compliance Information Request to ENT.² USAC made this request after finding evidence in 2020 that ENT "assists E-rate clients with creating the FCC Form 470" and "provides technology support, including end-user and/or infrastructure support for a fee to some E-rate clients."

A-53. This evidence raised doubts about whether ENT's E-rate clients conducted a "fair and open" competitive bidding process before entering into contracts with ENT. *See* 47 C.F.R. § 54.503(a). To assess whether those contracts complied with the competitive bidding rule, USAC asked ENT to respond to a series of questions regarding its relationship with the school districts it served. A-53-A-54. USAC also sought information from the ten schools or school districts that have E-rate contracts with ENT. *See* Declaration of Latoya Anderson ("Anderson Decl."), ¶ 8.

USAC's investigation of ENT initially encompassed 46 funding requests submitted by ENT's E-rate customers between 2016 and 2020. The scope of this

² This document is reproduced in petitioners' addendum to their petition for review at page A-53. We will hereafter use "A-__" to cite to particular pages in the addendum.

inquiry has since expanded to include review of 14 additional funding requests made by four of ENT's E-rate customers between 2021 and 2024. Anderson Decl. ¶ 8.

USAC also received information in 2021 that MetComm "assists E-rate clients with creating the FCC Form 470 E-rate requirements and certifying various FCC forms." A-61. If proven, assistance of that kind, like ENT's conduct under investigation, would be inconsistent with the sort of "fair and open competitive bidding process" required by FCC rules. *See* Note to 47 C.F.R. § 54.503(a). To determine whether MetComm's E-rate customers conducted a fair and open competitive bidding process before they entered into contracts with MetComm, USAC sent a Special Compliance Information Request to MetComm on March 29, 2023, seeking answers to a series of questions about MetComm's relationship with the school districts it served. A-61-A-70. USAC also requested information from 26 schools that have (or had) E-rate contracts with MetComm since 2011. *See* Anderson Decl. ¶ 7.

Originally, USAC's investigation of MetComm entailed review of 214 funding requests made by MetComm's E-rate customers between 2011 and 2021. The inquiry has since expanded to include some funding requests submitted in subsequent years by one of MetComm's E-rate customers. Anderson Decl. ¶ 7.

USAC's investigations concerning petitioners' E-rate contracts are ongoing. Shortly after USAC received evidence suggesting potential rule violations, it suspended E-rate payments under the contracts pending completion of these investigations. By letter dated July 23, 2023, MetComm asked USAC to reconsider its suspension of E-rate payments to MetComm. *See* A-104-A-111. USAC has not yet responded to MetComm's request. Neither MetComm nor ENT has otherwise pursued administrative remedies through either USAC or the FCC.

ARGUMENT

I. PETITIONERS ARE NOT ENTITLED TO UNIVERSAL SERVICE SUBSIDIES WHILE THEIR CONTRACTS ARE UNDER INVESTIGATION FOR POSSIBLE FCC RULE VIOLATIONS

Petitioners argue that USAC lacked authority to suspend the disbursement of E-rate funds to petitioners during its investigations of petitioners' contracts. *See* Petition at 24-27; Motion to Expedite at 9-10. According to petitioners, section 254(h)(1)(B) imposes on the FCC "a clear duty to timely issue funds" to reimburse companies that have provided discounted services to schools. Petition at 32. Petitioners construe the statute to create "a clear and indisputable" right to reimbursement for providers of such services. *See* Opposition to Motion to Dismiss at 5-7. This reading of the statute ignores critical qualifying language.

Section 254(h)(1)(B) states that carriers "shall" provide discounted services to schools and libraries upon receiving "a bona fide request" for eligible services.

47 U.S.C. § 254(h)(1)(B). Thus, a provider of discounted services is entitled to a universal service subsidy only if such services are provided in response to “a bona fide request” for eligible services by eligible schools and libraries. The Commission has reasonably concluded that a school’s request for discounted services is not “bona fide” under the statute if the school does not comply with the FCC’s rules governing the E-rate program, including the competitive bidding requirements. *See Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, 18 FCC Rcd 26407, 26433 ¶ 57 (2003) (by violating the Commission’s “competitive bidding requirements,” a school district “violated section 254’s mandate that applicants submit a *bona fide* request for services”); *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, 16 FCC Rcd 4028, 4033 ¶ 11 (2000) (“the requirement that an applicant make a bona fide request for services has been violated” when “a fair and open competitive bidding process has not occurred”).

Petitioners also claim that section 254(h)(1)(B) established “a contractual relationship” between the United States and participants in the E-rate program because “the government offered to reimburse private parties for costs associated with [that] program, and the private parties accepted the offer by complying with section 254(h)(1)(B) and entering contracts for the discounted services.” Petition

at 25; *see also* Motion to Expedite at 10. We question petitioners' premise that the federal government has formed a contract with petitioners. *See Lakehills*, 26 FCC Rcd at 16599-16600 ¶ 26 & nn.153-55 (citing *United States v. Rogan*, 517 F.3d 449, 453 (7th Cir. 2008)). But even assuming *arguendo* that there is such a contract, the terms of that contract are reflected not just in the statute, but also in the FCC's rules governing the E-rate program. Under those rules, any party that applies to participate in the program must certify that "[t]he entities listed in the application have complied with all program rules." 47 C.F.R. § 54.504(a)(1)(vi). In particular, an applicant for E-rate discounts must certify that it "carefully considered" all bids and selected "the most cost-effective bid" for the provision of eligible services, in accordance with FCC rules. *Id.* § 54.504(a)(1)(ix). And the applicant must acknowledge that "failure" to comply with the E-rate program rules "may result in denial of discount funding and/or recovery of funding." *Id.* § 54.504(a)(1)(vi).

Petitioners concede that compliance with FCC rules is a prerequisite to the receipt of E-rate funding. They take the position that section 254(h)(1)(B) requires the FCC to provide such funding "[a]fter a school enters into a contract for E-rate eligible services and timely files an application *certifying it has complied with the E-rate rules.*" Motion to Expedite at 3 (emphasis added). But the Commission is under no obligation—either statutory or contractual—to continue subsidizing the

E-rate services provided to a school if the agency subsequently learns that the school's certification of compliance is false. And when the Commission or USAC discovers credible evidence that a school and/or its service provider may have violated E-rate program rules, nothing in the statute requires the FCC to keep disbursing universal service funds to those parties before the agency can confirm that there are no rule violations and that the school is making a bona fide request for discounted services.

The Commission has previously recognized that when USAC discovers evidence of potential rule violations concerning an E-rate contract, it is proper for USAC to withhold E-rate payments under the contract until USAC determines whether any violations have occurred. *See Lakehills*, 26 FCC Rcd at 16591 ¶ 10 (USAC placed a "hold" on "E-rate payments to Lakehills" pending an investigation of possible violations of the FCC's competitive bidding requirements); *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 25417, 25423 ¶ 17 (2003) ("it was appropriate for USAC to defer action" on E-rate applications by the Puerto Rico Department of Education "in light of the ongoing investigation of activities" by the Department that may have violated FCC rules).

The prudence of this practice was demonstrated in *Lakehills*. In that case, USAC ultimately found that the applicant and its service providers violated the competitive bidding rules, and it proceeded to seek full recovery of the E-rate

funds that had previously been disbursed under the contracts in question. *See Lakehills*, 26 FCC Rcd at 16596-16601 ¶¶ 20-28. If USAC had not withheld payments under the contracts when it first learned of potential rule violations, it would have had to recover an even larger amount of improperly disbursed money.

The practice of suspending E-rate payments during an investigation into possible violations of the FCC's competitive bidding rules is fully consistent with the policy goals articulated by Congress in section 254. Strict enforcement of those rules advances the statute's primary objective, the promotion of universal service: "[A] strict rule denying or recovering funding when violations of the competitive bidding rules occur greatly encourages strict compliance with the rules, ultimately leading to increased competition, better quality of services, and lower prices." *Hill*, 496 F. App'x at 403. By contrast, "[i]t is unclear how providing funding to service providers who violate the competitive bidding rules for services completed—even if those services are done well—would advance the overall goal of universal service." *Ibid.*

In short, nothing in section 254 requires the FCC to continue making E-rate payments to petitioners while USAC investigates whether petitioners and the schools they serve have violated the FCC's competitive bidding rules. To the contrary, if the Commission persisted in making E-rate payments to petitioners even after finding substantial evidence of potential rule violations, such payments

could be used to subsidize services for which there is no “bona fide request,” in violation of section 254(h)(1)(B).

Having failed to show that they have “a clear and indisputable right to relief,” petitioners are not entitled to mandamus. *See In re Flyers Rights Educ. Fund, Inc.*, 61 F.4th 166, 167-69 (D.C. Cir. 2023). But even if petitioners could establish a clear and indisputable right to relief, “mandamus is unavailable” here “because an adequate alternative remedy exists.” *In re Flynn*, 973 F.3d 74, 79 (D.C. Cir. 2020) (en banc).

If USAC ultimately finds no rule violations, it will issue the universal service payments that have been withheld from petitioners. On the other hand, if USAC concludes that petitioners’ contracts violate FCC rules, petitioners can appeal USAC’s ruling to the FCC. *See* 47 C.F.R. § 54.719. And if the FCC denies their appeal, they can petition for judicial review of the FCC’s decision and ask a court to order reimbursement. *See inContact, Inc. v. FCC*, 495 F. App’x 95 (D.C. Cir. 2013). Thus, “adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.” *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015).

Petitioners assert that any relief obtained “after USAC completes its investigations and all administrative appeals” will be inadequate because “the FCC’s failure to provide timely reimbursement has already caused significant

irreparable injury to the public interest, and further delay will compound that injury.” Petition at 26-27. This Court rejected that unsubstantiated claim when it denied petitioners’ motion to expedite. *See* Order, March 25, 2024 (“Petitioners have not demonstrated that delay will cause irreparable injury”). Because petitioners’ request for reimbursement involves the sort of “[r]ecoverable monetary loss” that can be remedied “in the ordinary course of litigation,” there is no reason for the Court to grant the extraordinary remedy of mandamus. *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

II. PETITIONERS HAVE NOT SHOWN ANY UNREASONABLE AGENCY DELAY THAT WOULD WARRANT MANDAMUS

Petitioners also claim that “unreasonable FCC delay” justifies a grant of mandamus in this case. Petition at 6. To establish that the alleged delay in this case warrants a writ of mandamus, petitioners must do more than merely show that the delay is unreasonable. *See In re Barr Labs., Inc.*, 930 F.2d 72, 75 (D.C. Cir. 1991) (“a finding that delay is unreasonable does not, alone, justify judicial intervention”). Petitioners must demonstrate that the delay here is “egregious.” *Mexichem Specialty Resins*, 787 F.3d at 554. They have failed to do so.

Contrary to petitioners’ contention (Petition at 20, 31), USAC’s investigations have not been “grossly delayed.” USAC initiated its formal investigation of ENT a little more than two years ago, in February 2022. *See* A-53; Anderson Decl. ¶ 6. Its formal investigation of MetComm commenced just over a

year ago, in March 2023. *See* A-61; Anderson Decl. ¶ 5. Given the number of contracts and funding requests that are the subject of these investigations, the duration of the investigations thus far is not unreasonable, let alone “so egregious as to warrant mandamus.” *Telecomm. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) (“*TRAC*”); *see id.* at 80-81 (two- and five-year delays did not warrant mandamus); *Monroe Commc’ns*, 840 F.2d at 945-47 (three-year delay fell “so short of egregious” that it did not warrant mandamus).

Ten different schools or school districts have E-rate contracts with ENT. *See* A-12 (Declaration of Joseph Walsh, ¶ 10), A-53-A-54; Anderson Decl. ¶ 8. USAC is reviewing 60 different funding requests made under those contracts between 2016 and 2024 to determine whether those requests complied with section 254 and the FCC’s rules. *See* Anderson Decl. ¶ 8.

USAC’s investigation of MetComm involves 26 different schools that made funding requests under contracts with MetComm. USAC is reviewing more than 200 funding requests made under those contracts between 2011 and 2024 to assess whether those requests complied with section 254 and the FCC’s rules. *See* Anderson Decl. ¶ 7.

Petitioners complain that their universal service payments have been suspended for several years. The suspension of ENT’s payments started in 2020. *See* Petition at 13. MetComm’s payments were first suspended in 2021. *See id.* at

17. In both instances, USAC reasonably decided to suspend petitioners' payments shortly after receiving evidence that petitioners' contracts may violate FCC rules.

Understandably, a review of nearly 300 funding requests submitted over more than a decade takes time. USAC's staff has informed us that to determine whether any rule violations had occurred, USAC first needed time, in consultation with the FCC, to develop a plan for investigating the contracts in question and petitioners' relationship with their E-rate customers, including an investigative framework that would avoid disclosing the source of USAC's information to the parties under investigation. For that reason, the formal investigations of petitioners did not begin until 2022 (for ENT) and 2023 (for MetComm).

Moreover, to conduct these investigations properly, USAC had to obtain information not only from ENT and MetComm, but also from the three dozen E-rate applicants that have (or had) contracts with those companies. USAC's collection of this evidence has taken longer than anticipated because a number of parties requested (and received) extensions of time to respond to USAC's information requests. Anderson Decl. ¶¶ 9-12. Many parties also provided incomplete responses, necessitating time-consuming follow-ups by USAC staff. Anderson Decl. ¶ 11. In addition, because many of the schools served by petitioners were closed in the summer, USAC did not contact those schools during the summer months. Anderson Decl. ¶ 9.

After USAC received the information it requested from petitioners and their E-rate customers, it needed additional time to review the evidence. These investigations involve “complex ... questions,” and USAC “must be afforded the amount of time necessary to analyze such questions so that it can reach considered” judgments concerning whether petitioners’ E-rate contracts—and the hundreds of funding requests associated with those contracts—comply with the FCC’s competitive bidding rules. *See Sierra Club v. Thomas*, 828 F.2d 783, 798 (D.C. Cir. 1987).

Furthermore, “in assessing the reasonableness of an administrative delay,” this Court has emphasized “the importance of” considering the “competing priorities for” an agency’s “limited resources.” *See Mashpee Wampanoag Tribal Council v. Norton*, 336 F.3d 1094, 1100-01 (D.C. Cir. 2003). Given USAC’s competing priorities, petitioners cannot plausibly claim that there has been unreasonable delay here. USAC’s investigations involving petitioners are not the only investigations currently being conducted by USAC. *See Anderson Decl.* ¶ 13. In addition, USAC must allocate many of its resources to the completion of other critical tasks (*e.g.*, the processing of E-rate funding requests for the next school year). *Anderson Decl.* ¶ 14.

Given the scope of USAC’s investigations, the complexity of the issues involved, and the competing priorities for USAC’s limited resources, USAC has

not taken an unreasonably long time to conduct these inquiries. Moreover, USAC is nearing completion of these proceedings. It expects to conclude its review of petitioners' contracts by the end of May 2024. Anderson Decl. ¶ 15. The substantial progress that USAC has made in these investigations weighs heavily against a grant of mandamus here. *See In re Ctr. for Auto Safety*, 793 F.2d 1346, 1354 (D.C. Cir. 1986) (rejecting mandamus request where an agency had “made some progress” in completing tasks that petitioners had claimed were unreasonably delayed); *TRAC*, 750 F.2d at 72 (declining to grant mandamus relief “because the agency has assured us that it is now moving expeditiously”).

For all of these reasons, petitioners' claims of unreasonable delay provide no basis for mandamus relief.

CONCLUSION

To the extent the petition in this case seeks a writ of mandamus, it should be denied.

Respectfully submitted,

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April 24, 2024

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/s/ James M. Carr

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CERTIFICATE OF FILING AND SERVICE

I, James M. Carr, hereby certify that on April 24, 2024, I filed the foregoing Opposition of Federal Communications Commission to Petition for Writ of Mandamus with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ James M. Carr

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DECLARATION OF LATOYA ANDERSON

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. I am currently serving as the Senior Manager of Program Management for the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC).
2. In that role, I supervise the work of the Special Compliance Review (SCR) team, which reviews Beneficiary applications and Beneficiary and Program participant invoices, certifications, and FCC form submissions for accuracy and completeness.
3. In addition to USAC’s standard application review process, SLD’s SCR team conducts heightened scrutiny reviews of applications. These reviews may be random or targeted, due to potential red flags in the application, a history of rule

infractions, whistleblower complaints, or referrals from USAC's Division of Audit and Assurance (AAD) or the FCC's Office of Inspector General (OIG) or Enforcement Bureau (EB).

USAC's Investigation of MetComm.Net, LLC (MetComm) and Essential Network Technologies, LLC (ENT)

4. USAC's heightened scrutiny review process (HS review) consists of four levels of review from multiple reviewers prior to completion.
5. USAC initiated its review of the Billed Entities associated with MetComm on March 22, 2023 and its review of the service provider on March 29, 2023.
6. USAC initiated review of the Billed Entities associated with ENT on February 2, 2022 and the service provider on February 3, 2022.
7. For Metcomm, the initial scope of the reviews was 214 funding requests numbers (FRNs) across 26 individual Beneficiaries in funding years 2011-2021. However, during the course of the investigation, additional facts resulted in the review being expanded for at least one Beneficiary to include subsequent funding years.
8. For ENT, the scope of the review was 46 FRNs across 10 Beneficiaries during funding years 2016-2020. However, during the course of investigation, the reviewers discovered additional facts resulting in the initial addition of 14 FRNs for four Billed Entities in funding years 2021-2024 to the scope of review.
9. USAC's procedures and FCC guidance also provide that Beneficiaries or service providers who are the subject of a review may request extensions on USAC documentation requests of inquiries. Additionally, many Beneficiaries were placed

on “Summer Deferral” – a process by which no contact is made with Beneficiaries during the summer months. Beneficiaries can request Summer Deferral or USAC will place a Beneficiary in that status if no response is received by the Beneficiary on an outstanding request during that time period.

10. For MetComm, extension times varied, but on average each Beneficiary was provided with approximately fifteen (15) extra days, creating approximately a one-month response time to information requests, in many cases longer.
11. Many of the Beneficiaries also failed to submit complete and responsive answers to reviewer requests, resulting in reviewers having to send follow-up requests for response and/or documentation and thereby extending the response time.
12. For ENT, because the scope of the review expanded to include the most recent funding years, the reviewers have sent requests for additional documentation. Several affected Beneficiaries requested extensions; one does not expire until April 29, 2024.

USAC’s Timeline and Completion of the MetComm and ENT Investigations

13. The team within SCR averages approximately 300 reviews/cases (each containing multiple Beneficiaries and/or service providers) per person, per calendar year.
14. USAC and FCC priorities also dictate that sufficient resources must be allocated to work towards the current funding year, closing and processing the applications moving towards the Funding Year 2024 Commitment Wave scheduled for April 26, 2024.
15. As a result of all of these factors, USAC expects that the HS team will complete

its reviews for both MetComm and ENT on or around May 22, 2024.

I HEREBY DECLARE AND CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

4/22/2024

Date

DocuSigned by:
Latoya Anderson
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Latoya Anderson
Senior Manager of Program
Management,
Schools and Libraries Division | USAC