

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

In the Matter of)
)
Modernizing the E-Rate Program for) WC Docket No. 13-184
Schools and Libraries)

ORDER

Adopted: December 9, 2020

Released: December 10, 2020

By the Commission: Commissioner Rosenworcel issuing a statement.

I. INTRODUCTION

1. The efficient administration of the E-Rate program¹ depends on providing program participants flexibility to procure needed services and equipment in a timely and cost-effective manner, while ensuring that safeguards are in place to administer the program effectively and protect against waste, fraud and abuse. Since the program’s inception, the Commission and the program’s administrator, the Universal Service Administrative Company (USAC), have continuously worked to achieve the appropriate balance in meeting these goals. This Order builds on those efforts by amending our invoicing rules to enhance the efficient administration of the program while ensuring that program participants have sufficient time to complete the invoice payment process.²

2. Specifically, we permit applicants and service providers up to 120 days to submit invoices after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal of a previously denied or reduced funding request. In so doing, we facilitate program participants’ ability to meet evolving needs—by changing service providers or submitting service substitutions, for example—without jeopardizing their ability to obtain reimbursement or necessitating a Commission waiver proceeding. Consistent with this change, we grant relief to certain program participants that were excluded from an earlier invoicing relief order and provide a one-time waiver opportunity for program participants that were unable to timely submit an invoice because they were awaiting a post-commitment decision.

3. In taking these actions, we promote the goals of the E-Rate program by ensuring that its subsidies continue to assist students and library patrons in getting access to essential communication and broadband services without applicants and service providers facing unfair obstacles when submitting claims for reimbursement.

II. BACKGROUND

4. *E-Rate Program Rules and Requirements.* The E-Rate program provides eligible schools, libraries and consortia that include eligible schools and libraries funding for the purchase of Internet access, internal connections, basic maintenance of internal connections, managed internal broadband services, telecommunications, and telecommunications services.³ To obtain support, an

¹ The E-Rate program is formally known as the schools and libraries universal service support mechanism.

² See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8965-66, paras. 238-40 (2014) (*2014 First E-Rate Order*); 47 CFR § 54.514 (codifying the invoice deadline).

³ 47 CFR §§ 54.501, 54.502.

applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and file an FCC Form 471 with USAC to request E-Rate discounts for the purchase of the services.⁴ The completed FCC Form 471 notifies USAC of the eligible services the applicant has ordered from the service provider, and specifies the amount of E-Rate funds the applicant is requesting for those eligible services.⁵

5. After USAC reviews an applicant's funding request, USAC issues a Funding Commitment Decision Letter, which approves, modifies, or denies the request.⁶ Next, all E-Rate applicants are required to file an FCC Form 486 to notify USAC of the date that the E-Rate-supported service has begun and to certify compliance with the Children's Internet Protection Act (CIPA).⁷ USAC then sends the applicant and service provider an FCC Form 486 Notification Letter, which triggers the invoice deadline.⁸

6. *E-Rate Invoicing Rules.* Before 2014, USAC's procedures specified invoice filing deadlines, and allowed applicants or vendors to request and receive a 120-day invoice deadline extension under certain conditions.⁹ USAC routinely granted invoice deadline extension requests that met its criteria, including requests made up to a year after the original invoice deadline.¹⁰ In the *2014 First E-Rate Order*, the Commission codified the invoice deadline from USAC's procedures.¹¹ Under the rule adopted in 2014, applicants and service providers are required to submit invoices for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.¹²

7. The Commission also adopted a strict standard for granting requests for extensions of the applicable invoice deadline.¹³ Specifically, USAC may grant a one-time, 120-day extension of an invoicing deadline only if an applicant or service provider submits the request on or before the invoicing deadline.¹⁴ In the interest of efficient program administration, however, the Commission has prohibited

⁴ 47 CFR § 54.503.

⁵ See 47 CFR § 54.501.

⁶ See USAC, Step 4: Application Review, <https://www.usac.org/e-rate/applicant-process/application-review/> (last visited Nov. 13, 2020) (explaining USAC's application review process and noting that USAC will issue a Funding Commitment Decision Letter with its decision once its review is complete).

⁷ USAC, FCC Form 486, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited Nov. 13, 2020); see also *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002) (*CIPA II Order*).

⁸ Invoices may also be submitted 120 days after the last day to receive services, whichever is later. *Id.*

⁹ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26950, para. 93 (2003) (noting that USAC provides an extension of the deadline to file invoices under certain conditions, including: (1) authorized service provider changes; (2) authorized service substitutions; (3) no timely notice to USAC (e.g., the service providers' FCC Form 486 Notification Letter is returned to USAC as undeliverable); (4) USAC errors that result in a late invoice; (5) USAC delays in data entering a form that ultimately result in a late invoice; (6) documentation requirements that necessitate third party contact or certification; (7) natural or man-made disasters that prevent timely filing of invoices; (8) good Samaritan BEARs; and (9) circumstances beyond the service provider's control).

¹⁰ See *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3835, para. 3 (WCB 2016).

¹¹ See *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-39.

¹² 47 CFR § 54.514(a).

¹³ See *2014 First E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

¹⁴ 47 CFR § 54.514(b). USAC automatically grants timely filed invoice extension requests. *Id.*

USAC from granting any other invoice deadline extensions beyond the first request.¹⁵ As a result, if applicants and service providers require more time than the single, 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice deadline extension rule from the Commission.¹⁶ The *2014 First E-Rate Order* concluded, however, that “it is generally not in the public interest to waive [the] invoicing rules,”¹⁷ and the Bureau should grant waivers of the invoice deadline rules only under “extraordinary circumstances.”¹⁸

8. *Post-Commitment Requests.* When USAC approves a funding request, it issues a Funding Commitment Decision Letter.¹⁹ Under certain circumstances, applicants and service providers may request post-commitment changes to their approved funding requests. For example, applicants and service providers may file a Service Provider Identification Number (SPIN) change request to change service providers or correct a service provider’s identification number, submit a request for a service substitution permitted by program rules, or submit an appeal of a funding decision—such as an appeal of a modified discount rate or a denied funding request.²⁰ If USAC approves the post-commitment request or appeal, it issues a Revised Funding Commitment Decision Letter with the updated information for the funding commitment.²¹ The Revised Funding Commitment Decision Letter must be received before applicants and service providers can submit invoices reflecting the post-commitment changes approved by USAC.²² Otherwise, their invoices will either be immediately rejected (in instances where information

¹⁵ *2014 First E-Rate Order*, 30 FCC Rcd at 8966, para. 240.

¹⁶ *Id.*

¹⁷ The Commission has concluded that the invoice deadline rules are necessary to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused E-Rate funds that may be carried forward to future funding years. *Id.* at 8965-66, paras. 238-39.

¹⁸ *Id.* at 8966, para. 240.

¹⁹ See *Request for Review or Waiver of a Decision of the Universal Service Administrator by RECTec Technology and Communications, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 8180, 8181, para. 3 (WCB 2014); see also USAC, Step 4: Application Review, <https://www.usac.org/e-rate/applicant-process/application-review/> (last visited Nov. 13, 2020).

²⁰ Many post-commitment changes to a funding commitment must be filed with USAC before the last date to submit an invoice, and in some cases, earlier than that. See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Warren Village School, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 237, 237-38, para. 2 (WCB 2011) (stating that SPIN changes must be submitted before the last date to submit an invoice); *Requests for Review of Decisions of the Universal Service Administrator by Beaufort County School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 3124, 3125, para. 3 & n.6 (WCB 2014) (“[A] service substitution request must be received or postmarked by the last day to receive service for that funding request number.”). Requests for review must be filed within 60 days of the date that USAC issues a decision. 47 CFR § 54.720(b).

²¹ See, e.g., *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18802-03, paras. 91-92 (2010) (*Sixth Report and Order*) (clarifying the circumstances under which USAC may approve a SPIN change after a funding commitment is issued); *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*) (modifying USAC procedures on post-commitment SPIN changes); see also USAC, *Schools and Libraries Program News Brief: RFCDL Reminders* (Jan. 19, 2018), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=812> (listing post-commitment changes and events for which Revised Funding Commitment Decision Letters will be issued).

²² See *Sixth Report and Order*, 25 FCC Rcd at 18802-03, paras. 91-92; *Copan Order*, 15 FCC Rcd 5498; see also USAC, *Schools and Libraries Program News Brief: RFCDL Reminders* (Jan. 19, 2018), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=812>.

on the invoice does not match the system) or subject to funding denials if they are submitted with incorrect information.

9. *2018 Invoicing Relief Order.* In funding year 2016, E-Rate applicants were required to use the E-Rate Productivity Center (EPC), a new web-based account and application management portal for the E-Rate program.²³ The rollout of EPC was marred by a series of unexpected errors that led to many challenges and delays for applicants.²⁴ To address the extraordinary circumstances created by these technological system issues that delayed USAC's issuance of post-commitment Revised Funding Commitment Decision Letters for funding year 2016, the Wireline Competition Bureau (Bureau) granted a limited waiver to allow program participants that had timely requested an invoice deadline extension, but still had a pending post-commitment request, an additional 120 days to invoice from the date of the Revised Funding Commitment Decision Letter.²⁵ Because the order applied only to those that requested and received a one-time, 120-day invoice extension, many other E-Rate program participants did not receive relief and subsequently filed waiver requests.²⁶

III. DISCUSSION

10. We amend our rules to provide greater flexibility to applicants and service providers by providing them 120 days to submit an invoice after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an appeal regarding a previously denied or reduced funding request. We also extend the relief provided in the *2018 Invoicing Relief Order* to applicants and service providers that were unable to invoice while awaiting a post-commitment decision from USAC and timely filed a request for waiver, regardless of whether they requested and received a one-time, 120-day invoice deadline extension. Finally, we provide a one-time opportunity for program participants to seek a waiver if they have not previously done so if they can demonstrate that were unable to timely submit an invoice because they were awaiting a post-commitment decision. These filings must demonstrate good cause to waive the 60-day waiver filing deadline.

11. *Post-Commitment Invoice Period.* We amend the E-Rate program rules to allow applicants and service providers to submit invoices for payment up to 120 days after USAC issues a Revised Funding Commitment Decision Letter approving a post-commitment request or granting an

²³ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8945, para. 190 (2014) (simplifying the E-Rate application process by requiring the use of electronic filings); *see also* USAC Website, Schools and Libraries Program News Brief, Introduction to the E-Rate Productivity Center (Sep. 11, 2015), <https://www.usac.org/sl/tools/news-briefs/preview.aspx?id=640>.

²⁴ *See, e.g., Application for Review of a Decision by the Wireline Competition Bureau by Pribilof School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 8378, 8381, para. 9 (2018) (granting waivers to file school district's FCC Form 471 based in part of the technical difficulties associated with the rollout of EPC).

²⁵ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 2042 (WCB 2018) (*2018 Invoicing Relief Order*) (finding that granting a limited waiver is appropriate where the affected program participants timely requested and received a single 120-day extension, but were unable to submit their invoices within that extended time period solely because of USAC system issues).

²⁶ *See e.g., Request for Waiver or Review by Circle City Preparatory Charter School*, CC Docket No. 02-6 (filed May 31, 2019) (seeking an invoice deadline extension because the revised funding commitment letter approving its service provider identification number change was received more than a month after its already-extended invoice deadline); *Request for Waiver by Palm Beach Maritime Academy*, CC Docket No. 02-6 (filed May 28, 2019) (seeking an invoice deadline extension because the revised funding commitment letter approving its service provider identification number change was received two weeks after its already-extended invoice deadline); *Request for Waiver by Making Waves Academy*, CC Docket No. 02-6 (filed Aug. 21, 2020) (seeking an invoice deadline extension because the revised funding commitment letter approving its service substitution was received after its invoice deadline).

appeal of a previously denied or reduced funding request.²⁷ We find that the Commission did not fully consider all of the potential scenarios that might affect an applicant or service provider's ability to invoice when it codified the invoicing deadline in 2014. Such delays could be caused by technical issues or involve requests that include particularly complicated appeals or investigations. We find that providing applicants and service providers 120 days to invoice under these circumstances will not greatly delay the ability of the Commission or USAC to efficiently administer the program. Several members of the E-Rate community have requested that we take this action, including the State E-Rate Coordinators Alliance (SECA).²⁸

12. We amend the rule now without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.²⁹ This change in the rules will be effective upon publication of this Order in the Federal Register.³⁰ Upon publication of this Order in the Federal Register, if USAC grants an appeal or approves other post-commitment requests submitted by an applicant or service provider, it must provide applicants and service providers 120 days from the date of the resulting Revised Funding Commitment Decision Letter to complete invoicing.

13. We limit the rule change to post-commitment requests or appeal decisions that result in a Revised Funding Commitment Decision Letter approving the request. Therefore, applicants or service providers appealing partially approved funding requests should submit invoices for the partial funding before the original invoice deadline expires because USAC will not provide additional time to invoice if the appeal is denied.³¹

14. *Relief for Program Participants Outside the Scope of the 2018 Invoicing Relief Order.* We next waive the existing invoicing rule for any applicant or service provider that was unable to invoice while awaiting a post-commitment decision and filed a pending request for waiver of this rule with the Bureau for funding year 2016, regardless of whether the applicant or service provider requested and received a one-time, 120-day invoice deadline extension.³² The Commission's rules may be waived for

²⁷ See Appendix A.

²⁸ See Letter from Debra M. Kriete, Esq., SECA, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6 (filed May 23, 2018) (proposing an amendment to the invoicing rules to provide applicants with 120 days to invoice after a Revised Funding Commitment Decision Letter).

²⁹ 5 U.S.C. § 553(b)(3)(A). This rule change is not subject to notice and comment under the APA because it is a procedural rule establishing a deadline for filing invoices.

³⁰ 47 CFR § 1.427(b) (allowing procedural rules to take effect upon publication in the Federal Register). The Administrative Procedure Act'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.").

³¹ For example, if an applicant appeals a decision by USAC that reduces a funding commitment due to a late-filed FCC Form 486, the applicant or service provider should submit invoices by the original invoice deadline. If the appeal is granted, pursuant to the rule we amend today, USAC will provide an additional 120 days to submit invoices for the additional funding amount. However, if the appeal is denied, USAC will not be able to provide additional time to invoice for the original reduced funding level. Therefore, we caution these applicants and service providers to submit invoices for the partial funding before the original invoice deadline to avoid having their invoice rejected as untimely should USAC deny their appeal.

³² See, e.g., Request for Waiver of Worth County School District, CC Docket No. 02-6 (filed Mar. 7, 2018). This includes applicants and service providers who may have missed the invoice filing deadline either because they are waiting for the resolution of an appeal of USAC's funding commitment decision, or because they are waiting for USAC's decision regarding a post-commitment request.

good cause shown.³³ We find, as in the *2018 Invoicing Relief Order*, that the circumstances here require a waiver of our invoicing rules because the applicants and service providers made nearly every attempt to comply with the invoice deadline rules, but were blocked from timely completing the invoicing process because a predicate request or function had not been completed (or could not be completed) by USAC's systems.³⁴

15. We also direct the Bureau to extend this relief to any applicant or service provider that similarly faced this issue and filed a pending request for waiver of this rule due to a post-commitment request approval or a successful appeal decision received after the invoice deadline for funding years 2014-2015 and funding year 2017 or later. Because all of these applicants and service providers had approved funding commitments and were unable to take the last step to file invoices due to circumstances outside of their control, there are no concerns about waste, fraud, or abuse. We therefore direct the Bureau to evaluate and grant these pending waiver requests on a case-by-case basis consistent with this Order. For program participants that receive a waiver, we direct USAC to issue a Revised Funding Commitment Decision Letter and provide 120 days from the issuance of that letter for applicants or service providers to submit or resubmit invoices.

16. Finally, we recognize that there may be other applicants and service providers that faced the same circumstances as the others granted relief in this Order but did not file a waiver request with the Commission. To ensure that similar facts lead to similar outcomes, other applicants or service providers facing similar circumstances may request within 60 days from the date of Federal Register publication of this Order a waiver demonstrating that they were unable to timely invoice due to a delay in the processing of a post-commitment change or resolution of a successful appeal decision for funding years 2014 or later. We find that 60 days is an appropriate length of time to give applicants and service providers to file their waiver requests. Our current rules require that appeals and waiver requests be submitted within this time frame, which provides petitioners an adequate opportunity to respond meaningfully to adverse decisions.³⁵ Because these filings are likely being submitted beyond the 60-day time period for waiver requests, each pleading must contain an explanation of the reason they did not previously file a timely waiver request and, if the Bureau finds good cause, it should waive the filing deadline in section 54.720(a) of the rules.³⁶ We direct the Bureau to evaluate and grant these waiver requests to the extent affected parties demonstrate that they were unable to submit timely invoices under the circumstances discussed in this Order and demonstrate good cause to waive the deadline to timely file a waiver request.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201 through 202, 254, 303(r), and 403, this Order IS ADOPTED.

18. IT IS FURTHER 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 section 1.3 of the Commission's rules, 47 CFR § 1.3, that sections 54.514 and 54.720(a) of the Commission's rules, 47 CFR §§ 54.514 and 54.720(a), ARE WAIVED to the extent provided herein.

³³ 47 CFR § 1.3. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (noting that the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest).

³⁴ See *2018 Invoicing Relief Order*, 33 FCC Rcd at 2044-45, para. 6.

³⁵ 47 CFR § 54.720. See also *Application for Review of a Decision by the Wireline Competition Bureau by Pribilof School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 33 FCC Rcd 8378, 8382-83, para. 13 (2018) (giving 60 days for applicants to demonstrate in an appeal that a waiver is in the public interest in situations where the petitioner faced similar circumstances to Pribilof School District).

³⁶ 47 CFR § 54.720(a).

19. IT IS FURTHER 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 and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 1.3, we direct the Wireline Competition Bureau to GRANT RELIEF to similarly situated applicants to the extent described herein.

20. The rule changes adopted in the Order and contained in Appendix A constitute either a rules of agency organization, procedure and practice and are not subject to the notice and comment and effective date provisions of the Administrative Procedure Act.³⁷ Accordingly, these rule changes are EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

³⁷ 5 U.S.C. § 553(b)(3)(A).

APPENDIX**Final Rules****PART 54—UNIVERSAL SERVICE****Subpart F—Universal Service Support for Schools and Libraries**

1. Amend § 54.514 by revising paragraph (a) to read as follows:

(a) Invoice filing deadline. Invoices must be submitted to the Administrator:

- (1) 120 days after the last day to receive service,
- (2) 120 days after the date of the FCC Form 486 Notification Letter, or
- (3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-84.

In today's decision we provide schools and libraries that have experienced difficulties with additional time to submit invoices for E-Rate support. This is the right thing to do right now and it has my support.

It has been a year like no other. This pandemic has presented all of us with challenges and at the Federal Communications Commission we have had to adjust many of our policies in response. But shame on this agency for not doing more with E-Rate during this crisis. There are nearly 17 million students who do not have the internet access they need for school today. When their schools are shuttered and they are told to go to class online these students have no way to get there. They are locked out of the virtual classroom. Instead of fixing this Homework Gap and helping every child get the connection they need for school, this agency has turned the other way. We should be using E-Rate to meet this moment so that no child is left offline.