

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

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

ORDER

Adopted: February 22, 2022

Released: February 22, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant, in part, the Petition for Waiver filed by a group of Emergency Connectivity Fund Program stakeholders led by the Schools, Health & Libraries Broadband (SHLB) Coalition by waiving and extending the service delivery date to June 30, 2023 for all applicants who applied for Emergency Connectivity Fund support for equipment, other non-recurring services, and recurring services during the first and second application filing windows.1 We find that due to the concurrent timing of the funding request processing and other factors beyond Emergency Connectivity Fund Program participants' control, certain first and second window applicants may not be able to use their committed funding to the full extent possible. Therefore, in providing this relief, we seek to alleviate administrative burdens, streamline the process for Emergency Connectivity Fund Program participants, and ensure applicants are treated fairly and equitably regardless of when their applications are processed and funding commitment decision letters are issued. Accordingly, we modify the procedural rule and direct the Universal Service Administrative Company (USAC), the Administrator of the Emergency Connectivity Fund Program, to use June 30, 2023 as the service delivery date for all requests for equipment, other non-recurring services, and recurring services submitted during the first and second Emergency Connectivity Fund Program application filing windows.

II. BACKGROUND

2. As part of the American Rescue Plan Act of 2021 (the Act), Congress appropriated \$7.171 billion to the Federal Communications Commission (Commission) to promulgate rules providing for the distribution of 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.2 On May 10, 2021, the Commission adopted a Report and Order establishing the rules for the Emergency Connectivity Fund Program to distribute the \$7.171 billion in funding to eligible schools and

1 Petition of Schools, Health & Libraries Broadband Coalition, et al., WC Docket No. 21-93, at 1 (filed Jan. 28, 2022), https://www.fcc.gov/ecfs/filing/101281737819629 (SHLB Petition). The SHLB Petition was submitted by SHLB, the Consortium for School Networking (CoSN), the State Educational Technology Directors Association (SETDA) and the American Library Association (ALA).

2 American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at https://www.congress.gov/bill/117th-congress/house-bill/1319/text (American Rescue Plan Act) (enrolled bill).

libraries.<sup>3</sup> The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,<sup>4</sup> and a second 15-day application filing window from September 28, 2021 to October 13, 2021.<sup>5</sup> During these two application filing windows, applicants could request funding for eligible equipment and services that are received or delivered between July 1, 2021 and June 30, 2022.<sup>6</sup>

3. The Commission also established an invoice filing deadline rule for the Emergency Connectivity Fund Program in the *Report and Order*.<sup>7</sup> Section 54.1711(d) 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.”<sup>8</sup> To address instances where the service delivery date for equipment or other non-recurring services may not be known at the time of the funding request submission, on July 22, 2021, the Wireline Competition Bureau (Bureau) issued a *Public Notice* clarifying that applicants may use June 30, 2022 as the service delivery date for equipment and other non-recurring services on their ECF FCC Form 471 funding applications if the equipment or services have not been ordered or received at the time that the applicant submitted their funding request(s).<sup>9</sup>

4. The Bureau subsequently received a petition for waiver contending that the *Public Notice* resulted in applicant confusion around the appropriate service delivery date to use for equipment and other non-recurring services, which led some applicants to mistakenly use June 30, 2022 as the service delivery date, despite having already received the equipment and/or services at the time that they filed their funding request(s), and consequently, these applicants have received an incorrect invoice filing deadline.<sup>10</sup> To avoid further confusion and minimize administrative burdens, the Bureau granted a limited waiver of the Emergency Connectivity Fund Program invoice filing deadline for program participants who were affected, and modified section 54.1711 to adopt June 30, 2022 (i.e., the last date of the funding period) as the service delivery date for funding requests for equipment, other non-recurring services, and recurring services submitted during the two application filing windows.<sup>11</sup>

5. As we approach the June 30, 2022 deadline for service delivery for the funding requests submitted already, a number of stakeholder groups have requested that the Commission extend the deadline for service delivery by one year to June 30, 2023. Specifically, on January 28, 2022, SHLB filed

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<sup>3</sup> 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*).

<sup>4</sup> 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*).

<sup>5</sup> 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*).

<sup>6</sup> See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

<sup>7</sup> *Id.* at 8743, para. 98.

<sup>8</sup> 47 CFR § 54.1711(d).

<sup>9</sup> *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*).

<sup>10</sup> Petition of State E-rate Coordinators’ Alliance for Waiver, WC Docket No. 21-93, at 1 (filed Nov. 20, 2021), <https://www.fcc.gov/ecfs/filing/112067310772> (SECA Petition).

<sup>11</sup> See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Order, DA 21-1499, at 4 (WCB Dec. 2, 2021) (*ECF Service Delivery Date Clarification Order*).

a petition for waiver requesting a one-year extension because the current service delivery date is “unworkable” for many applicants.<sup>12</sup> SHLB explains that many applicants are waiting to receive a funding commitment decision letter before ordering eligible equipment and services, and decisions received later in the funding period place these applicants at risk of not being able to use all of their committed Emergency Connectivity Fund support by the June 30, 2022 service delivery date.<sup>13</sup> SHLB contends that applicants with recently approved or pending funding requests will have less time to use the full amount of committed funding for recurring services, or may not have enough time to order, receive, and distribute eligible equipment by June 30, 2022.<sup>14</sup>

6. Similarly, the City of San José explains that procurement logistics and review processes are impeding its ability to use its Emergency Connectivity Fund Program funding effectively by June 30, 2022.<sup>15</sup> On February 9, 2022, E-rate Management Professionals Association (E-mpa) submitted a statement in support of SHLB’s request for a one-year extension of the service delivery date, adding that the timing of post-commitment change request reviews, supply chain delays, price increases, and COVID-19-related staffing shortages are resulting in applicants not being able to fully use their Emergency Connectivity Fund supported equipment or services because of the June 30, 2022 service delivery date.<sup>16</sup> Lastly, on February 11, 2022, the State E-rate Coordinators’ Alliance (SECA) expressed support for extending the service delivery deadline for equipment and other non-recurring services,<sup>17</sup> but also proposed that first and second window applicants seeking recurring services should submit a post-commitment change request to extend the service delivery date by the number of months remaining instead of the Commission extending a blanket waiver to all Emergency Connectivity Fund applicants.<sup>18</sup>

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<sup>12</sup> See Letter from John Windhausen, Jr., Executive Director, SHLB, et al., to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93, at 1 (filed Jan. 28, 2022) (SHLB Petition).

<sup>13</sup> *Id.* at 1-2.

<sup>14</sup> See *Id.* at 2 (explaining that some service providers require a minimum six-month contract for services, leaving applicants who do not receive a commitment by January 1, 2022 unable to enter into a contract for Emergency Connectivity Fund supported services with the current service delivery deadline). See also Letter from John Windhausen, Jr., Executive Director, SHLB, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93, at 1 (filed Feb. 9, 2022) (SHLB Feb. 9 *Ex Parte*) (explaining how applicants who were either only recently approved or not yet approved may only have an opportunity to receive “4-5 months” of supported services, which may deter applicants from participating in the Emergency Connectivity Fund Program altogether); Letter from John Windhausen, Jr., Executive Director, SHLB, et al., to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 21-93, 13-184, at 1 (filed Feb. 15, 2022) (SHLB Feb. 15 *Ex Parte*) (providing examples of applicants who are unable to use a significant portion of their approved funding before June 30, 2022 as a result of processing, distribution, and logistical delays). Although a school or library must have received the equipment or services prior to submitting a request for reimbursement, we note that the equipment or services do not need to be distributed to students, school staff members, or library patrons prior to seeking reimbursement. See Federal Communications Commission, *Emergency Connectivity Fund FAQs*, at 9.9, <https://www.fcc.gov/emergency-connectivity-fund-faqs> (last visited Feb. 18, 2022).

<sup>15</sup> Letter from Sam Liccardo, Mayor, City of San José, to Jessica Rosenworcel, Chairwoman, FCC, et al., at 1-2 (Jan. 24, 2022) (San José *Ex Parte*) (describing how the current service delivery date leaves the City only five months to fully use its Emergency Connectivity Fund Program funding commitment).

<sup>16</sup> Letter from Deborah Sovereign, President, E-mpa, to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93 (filed Feb. 9, 2022) (E-mpa *Ex Parte*) (“With the delayed funding, most of the applicants can only receive six months or less of service which is hardly enough time to make it worth the service providers’ time to install and start service before they have to cut off service or find another source of funding.”).

<sup>17</sup> Letter from Debra M. Kriete, Chairperson, SECA, to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93, at 3 (filed Feb. 11, 2022) (SECA *Ex Parte*).

<sup>18</sup> *Id.* at 1-2, 4.

SECA explains this requirement would help prevent potential duplicative services from being funded through the program.<sup>19</sup>

### III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.<sup>20</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>21</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>22</sup>

8. To ensure first and second window applicants can use all of their Emergency Connectivity Fund support to connect students, school staff, and library patrons regardless of when their application was processed and funding commitment decision letter was issued, we find that good cause exists to waive and extend the service delivery date to June 30, 2023 for all first and second window funding requests for equipment, other non-recurring services, and recurring services. In particular, we recognize that in the swift implementation of this emergency program, the timing of application reviews, post-commitment change request processing, and the issuance of funding commitment decision letters may have inadvertently resulted in some applicants having less time to use the funded equipment and/or services during the July 1, 2021 through June 30, 2022 funding period.<sup>23</sup> Moreover, other factors, such as disruptions in the global supply chain,<sup>24</sup> logistical delays,<sup>25</sup> and the ongoing impact of the COVID-19 pandemic on our nation's schools and libraries<sup>26</sup> have contributed to the need for additional time and present compelling and unique circumstances that merit a waiver of our rules. As such, we extend the service delivery date for all Emergency Connectivity Fund Program requests for equipment, other non-recurring services, and recurring services submitted during the first and second application filing windows. This means that applicants will be able to receive Emergency Connectivity Fund support for

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<sup>19</sup> *Id.* at 2-3 (explaining that applicants should modify their Window 1 and 2 funding requests to account for the additional time that is being provided to use these services and not include these months of service in their Window 3 funding requests to avoid requesting funding for duplicative services).

<sup>20</sup> 47 CFR § 1.3.

<sup>21</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>22</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>23</sup> *See, e.g.*, *SECA Ex Parte* at 2 (“An applicant is approved for 12 months of recurring service in December 2021 and did not order the service before receiving funding approval. Service is ordered and activated on February 1, 2022, and therefore, the applicant would use five months of service through June 30, 2022. This leaves seven months of unused funding that a service delivery deadline extension would allow to be used through January 31, 2023.”); *E-mpa Ex Parte* at 2-3 (noting four applicants for whom the post-commitment request processing delayed the receipt of a funding commitment decision letter).

<sup>24</sup> *See, e.g.*, *E-mpa Ex Parte* at 1 (explaining how supply chain shortages have led to situations where approved products are no longer available by the time an applicant receives a funding commitment decision letter); *SHLB Feb. 9 Ex Parte* at 1-2 (citing an example where supply chain problems forced Puerto Rico Department of Education to submit a post-commitment change request to substitute for more readily available hotspot devices); *SECA Ex Parte* at 2-3 (noting supply chain delays with respect to both recurring and non-recurring services).

<sup>25</sup> *See, e.g.*, *SHLB Feb. 9 Ex Parte* at 2-3 (explaining that additional time needed to be factored in for service provider contract negotiations, equipment distribution to recipients, record-keeping management and end user training); *SHLB Feb. 15 Ex Parte* at 2-4 (same); *E-mpa Ex Parte* at 2 (noting that there can be several months between ordering and delivery of eligible equipment and services).

<sup>26</sup> *See, e.g.*, *E-mpa Ex Parte* at 2 (stating that service provider, school staff, and library staff shortages due to COVID-19 quarantine also results in significant delays in processing requests); *SHLB Feb. 15 Ex Parte* at 3 (explaining that Puerto Rico Department of Education was having a difficult time distributing the requested hotspot devices to students and school staff during the ongoing pandemic); *SHLB Petition* at 2 (noting that the rise of the Omicron variant resulted in some schools closing and staff quarantining again).

the full requested twelve months of service, or for connected devices or other eligible equipment delivered by June 30, 2023.

9. We also conclude that extending the service delivery date will not lead to any undue advantage in funding as the first and second window applicants will not receive more funding than what is allowed under the Emergency Connectivity Fund Program rules. In addition, we find that the public interest would not be served were these first and second window applicants to lose or not be able to fully use the committed Emergency Connectivity Fund support for the equipment and broadband services needed for these students, school staff, and library patrons to fully engage in remote learning during this unprecedented time. Rather, the action we take today will allow schools and libraries to provide and use the Emergency Connectivity Fund-supported equipment and services beyond the current June 30, 2022 service delivery date, thereby enhancing the off-campus connectivity available to students, school staff, and library patrons during the ongoing emergency period, consistent with the goals of the Emergency Connectivity Fund Program.

10. In granting the requested relief, we emphasize that this Order does not impact funding requests for the construction of new networks or the provision of customer premises equipment for datacasting services. Unlike requests for equipment or commercially available services, applicants seeking support for special construction or customer premises datacasting equipment are provided one year from the date of their funding commitment decision letter to demonstrate that construction is completed and the services have been provided.<sup>27</sup> The one-year deadline for special construction and customer premises datacasting equipment was established to ensure the greatly needed services were provided as quickly as possible to these students, school staff, and library patrons with continuing unmet needs during the COVID-19 emergency period.<sup>28</sup> Thus, in the interest of providing and fully using this emergency funding to meet the immediate connectivity needs of students, school staff, and library patrons nationwide, we limit the relief provided by this Order to requests for equipment, other non-recurring services, and recurring services requested during the first and second application filing windows.

11. We also acknowledge SECA's concerns about the potential impact that an extension of the service delivery date may have on future application filing windows.<sup>29</sup> We are mindful that these funds are limited and have adopted safeguards to ensure the funds are fully used for their intended purpose.<sup>30</sup> We further believe that taking a different approach than the one we adopt today will contribute to further delays,<sup>31</sup> impose additional administrative burdens on the affected first and second window applicants,<sup>32</sup> and create confusion among program participants by switching from a consistent deadline to a more variable one. We conclude that extending the service delivery date to June 30, 2023 will streamline the process for all program participants and allow for the greater provision of affordable devices and connectivity to students, school staff, and library patrons in need during the ongoing

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<sup>27</sup> *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41.

<sup>28</sup> *Id.* at 8717, para. 41, n.125 (finding that additional construction time is inconsistent with the goals of this emergency program).

<sup>29</sup> *See SECA Ex Parte* at 1-4.

<sup>30</sup> For example, we note that USAC has appropriate review procedures and internal controls to ensure applicants will not be able to request and receive duplicative support for Emergency Connectivity Fund-supported equipment and services.

<sup>31</sup> *Compare SECA Ex Parte* at 2-4 (recommending that applicants with approved recurring services requests be required to submit a post-commitment request for a service delivery date extension in the ECF Portal instead of receiving an automatic extension) *with E-mpa Ex Parte* at 2 (describing the additional time added for processing post-commitment change requests).

<sup>32</sup> *See, e.g., SHLB Petition* at 2 & n.2 (arguing that without a service delivery date extension, some applicants will have undergo additional efforts to apply again in a future window for services that were already approved for funding); *SECA Ex Parte* at 2 (noting that applicants could potentially reapply in a future window).

pandemic and therefore, furthers the mission of the Emergency Connectivity Fund.<sup>33</sup> We encourage applicants and service providers, who agree to invoice on behalf of the applicant, to continue to submit timely requests for reimbursement after receiving the requested eligible equipment or services, to allow any unused Emergency Connectivity Fund support to be made available to other students, school staff, and library patrons with continuing unmet needs during this pandemic.

12. We are also mindful that certain applicants may have modified their first or second application filing window recurring services requests to reflect the dates that the services could be delivered between July 1, 2021 and June 30, 2022, based on the date of their funding commitment decision letter. For example, applicants may only be able to use funding for 6 months of service based on a January 1, 2022 dated funding commitment decision letter. If an applicant has modified a first or second window recurring services funding request, they may submit a waiver to the Commission asking that the voluntarily reduced funds be restored to those funding requests and subject to the updated June 30, 2023 service delivery date.

13. We modify section 54.1711(e) accordingly to extend the service delivery date to June 30, 2023 as reflected in Appendix A. We make this change without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.<sup>34</sup> The updated rule will become effective upon publication of this Order in the Federal Register.<sup>35</sup>

14. Finally, we find no evidence of waste, fraud, or abuse is presented by waiving and extending the service delivery date to June 30, 2023. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the Emergency Connectivity Fund Program are used for their intended purposes to provide broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs during the ongoing COVID-19 emergency period. Although we grant a waiver of and extend the service delivery date for the first and second application filing window funding requests for the Emergency Connectivity Fund Program, these actions do not affect the authority of the Commission or USAC to conduct audits or investigations to verify compliance with Emergency Connectivity Fund Program rules and requirements.<sup>36</sup>

#### IV. ORDERING CLAUSES

15. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 USC §§ 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 47 CFR 54.1711 of the Commission's rules IS WAIVED to the extent provided herein.

16. 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.

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<sup>33</sup> See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8703, para. 16.

<sup>34</sup> 5 U.S.C. § 553(b)(3)(A). This amended rule is not subject to the APA requirements because it is a procedural rule setting a service delivery date for equipment, non-recurring and recurring services purchased between July 1, 2021 and June 30, 2022.

<sup>35</sup> 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.").

<sup>36</sup> 47 CFR § 54.1714.

17. 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.<sup>37</sup> Accordingly, this amended rule is EFFECTIVE upon publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith  
Chief  
Wireline Competition Bureau

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<sup>37</sup> 5 U.S.C. § 553(b)(3)(A).

**APPENDIX A****Final Rule**

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

*Service delivery date.* For the initial filing window set forth in § 54.1708(b) and any subsequent filing windows covering funding for purchases made between July 1, 2021 and June 30, 2022, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.