

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

In the Matter of)
Requests for Waiver and Review of Decisions of)
the Emergency Connectivity Fund Program) File Nos. ECF202108943 et al.
Administrator by Fresno Unified School Districts,)
et al.)
Establishing Emergency Connectivity Fund to) WC Docket No. 21-93
Close the Homework Gap)

ORDER

Adopted: January 4, 2022

Released: January 4, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address seven requests for waivers of the \$400 maximum reasonable support amount for connected devices reimbursed through the Emergency Connectivity Fund Program. Specifically, we find that five of the petitioners have demonstrated special circumstances that justify a waiver of the \$400 reasonable support amount cap for connected devices in order to fully meet the remote learning needs of students, school staff and library patrons with disabilities, and grant these requests accordingly. We also deny two requests because we find that the petitioners failed to present special circumstances to justify a waiver of the Commission’s rules for the Emergency Connectivity Fund Program.

2. To ensure an expeditious resolution of these matters, we direct the Universal Service Administrative Company (USAC) to complete its review of these seven funding requests consistent with this order and to recommend a commitment, denial or revised decision based on a complete review and analysis no later than 60 calendar days from the release of this order.

II. BACKGROUND

3. As part of the American Rescue Plan Act of 2021 (the Act), Congress appropriated \$7.171 billion to the 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.

1 The Requests for Waiver are listed in Appendices A and B.

2 47 CFR § 54.1707(a).

3 To the extent any of these funding requests have already been modified, we remand those applications to USAC for review consistent with this order.

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).

through the Emergency Connectivity Fund, the Act requires that reimbursements for eligible equipment and services “not exceed an amount that the Commission determines . . . is reasonable.”⁵ The Act defines eligible equipment to mean (1) Wi-Fi hotspots, (2) modems, (3) routers, (4) devices that combine a modem and router, and (5) connected devices⁶ and eligible services to mean advanced telecommunications and information services, as such term is used in section 254(h) of the Communications Act.⁷

4. 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 libraries.⁸ Pursuant to the statutory directive to determine reasonable costs to reimburse through the Emergency Connectivity Fund Program, the Commission established a reasonable maximum support amount of \$400 for each connected device (i.e., a laptop or tablet computer).⁹ The Commission recognized however that the reasonable cost of connected devices for individuals with disabilities may be higher than the \$400 cap per connected device and directed schools and libraries to seek a waiver of the this support amount cap if they can demonstrate that the additional cost for the connected devices is necessary to meet the needs of students, school staff and library patrons with disabilities.¹⁰

5. For each of the petitions addressed in this order, the petitioners submitted timely applications and subsequently sought waivers of section 54.1707(a) to request funding for the additional costs of the connected devices needed to accommodate students and school staff with disabilities and to meet their remote learning needs.

III. DISCUSSION

6. Generally, the Commission’s rules may be waived for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹³

7. Based on the facts before us, we now grant five requests for waiver of section 54.1707(a) and the \$400 reasonable support amount cap for connected devices because we find the public interest in ensuring individuals with disabilities can receive equipment that meets their educational needs warrants a deviation from the general rule. In the *Emergency Connectivity Fund Report and Order*, the Commission established an expectation that connected devices be accessible to and usable by individuals with disabilities and urged schools and libraries to request the devices needed to accommodate students, school staff, and library patrons with disabilities.¹⁴ Recognizing that accessible devices may be more expensive,

⁵ H.R. 1319, tit. VII, § 7402(b).

⁶ *Id.* § 7402(d)(6).

⁷ *Id.* § 7402(d)(1).

⁸ 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*).

⁹ *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8730-31, para. 69; 47 CFR § 54.1707.

¹⁰ *Id.* at 8731, para. 70. The Order emphasized that “applicants seeking a waiver for this purpose should demonstrate that the additional cost associated with connected devices for those with disabilities is necessary to meet the needs of students, school staff, and library patrons with disabilities that would otherwise not be met with the purchase of a connected device at the \$400 reasonable support amount.” *Id.*

¹¹ 47 CFR § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8709-10, para. 30.

we find there is good cause to waive section 54.1707(a) of the Commission's rules to allow the petitioners to seek the full amount of support needed to purchase connected devices that are accessible to and usable by their students, school staff, and library patrons with disabilities.

8. Each of the petitioners serves students and school staff with disabilities and has shown that the requested connected devices have certain specifications that are required for those students and staff to fully participate in remote learning. For example, petitioners requested connected devices that are compatible with software providing screen magnification and screen reading functionalities for blind or visually impaired students and school staff, and captioning services for deaf students and school staff.¹⁵ Petitioners also requested larger screens,¹⁶ enhanced resolution for visually impaired students and school staff,¹⁷ and touchscreens for students with significant fine motor skills difficulties.¹⁸ The petitioners make clear that all of these requested specifications require more processing power, storage, and memory than a standard connected device, resulting in a higher price per device. In light of these factors, we find that the petitioners have demonstrated that the additional cost associated with connected devices for those with disabilities is necessary to meet the needs of students and school staff with disabilities and that a waiver of the \$400 reasonable support amount for connected devices under section 54.1707(a) is justified.¹⁹ We therefore waive the \$400 reasonable support amount cap for connected devices to enable the petitioners to be fully reimbursed for the purchase of connected devices necessary for their students and school staff with disabilities to engage in remote learning.

9. We deny the remaining two requests because we find that the petitioners failed to present special circumstances justifying a waiver of section 54.1707(a) and the \$400 reasonable support amount cap on connected devices.²⁰ In the *Emergency Connectivity Fund Report and Order*, we explicitly contemplated that waivers may be appropriate to address the higher equipment costs associated with ensuring connected devices are accessible to individuals with disabilities.²¹ After reviewing the facts of these petitioners' requests, we find that the petitioners' waiver requests do not present such compelling circumstances. Specifically, one petitioner is seeking additional funding for equipment accessories that are ineligible for reimbursement through the Emergency Connectivity Fund, as well as funding to purchase more than one connected device per student.²² The other petitioner is seeking the additional costs associated with connected devices that are compatible with software used in a specialty academic program focused on career preparation.²³ In addition to finding that these requests would violate the Commission's rules regarding eligible equipment²⁴ and per-user limitations,²⁵ we conclude that the

¹⁵ See, e.g., Arizona Schools for the Deaf and the Blind Waiver Request at 3-4.

¹⁶ See, e.g., St. Francis School for the Deaf Waiver Request at 1; Fresno Unified School District Waiver Request at 2.

¹⁷ See, e.g., Arizona Schools for the Deaf and the Blind Waiver Request at 4.

¹⁸ See, e.g., NYSARC Inc, New York City Chapter, AHRC New York City Waiver Request at 1.

¹⁹ *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8731, para. 70.

²⁰ See Appendix B.

²¹ *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8731, para. 70.

²² See Bay Area Technology School Waiver Request at 1 (requesting a waiver of the \$400 cap to fund Logitech Crayons for use with connected devices, as well as both Chromebooks and iPads for students with disabilities).

²³ See Health Science High & Middle College Waiver Request at 2 (requesting a waiver of the \$400 cap to fund MacBooks compatible with the hardware and software used in a schoolwide specialized Health Sciences academic program).

²⁴ See 47 CFR § 54.1702; see also *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8785, Appendix B (citing non-connected accessories as an ineligible cost).

petitioners have not demonstrated that the remote learning needs of their students and school staff would otherwise not be met without these additional costs and equipment. Therefore, we deny the two requests of the petitioners listed in Appendix B because we find that they do not present any other circumstances justifying a waiver of sections 54.1702, 54.1706(c), or 54.1707(a) of the Commission's rules.

10. We direct USAC to review the underlying applications listed in Appendices A and B consistent with this order.²⁶ In remanding these applications to USAC, we make no finding as to the ultimate eligibility of the petitioners' applications. To ensure that the underlying applications are resolved expeditiously, we direct USAC to complete its review of the underlying applications and recommend a commitment, denial, or revised decision based on a complete review and analysis no later than 60 calendar days from the release date of this order.

IV. ORDERING CLAUSES

11. 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 54.1707(a) of the Commission's rules IS WAIVED for the petitioners listed in Appendix A to the extent provided herein.

12. IT IS FURTHER 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 the requests for waiver filed by the petitioners listed in Appendix B ARE DENIED.

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

Kris A. Monteith
Chief
Wireline Competition Bureau

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²⁵ See 47 CFR § 54.1706(c); see also *Emergency Connectivity Fund Report and Order*, 26 FCC Rcd at 8725, para. 54 (limiting schools and libraries to purchasing only one connected device per student, school staff member, or library patron).

²⁶ See Appendices A and B.

APPENDIX A
Waiver Requests Granted

Petitioner	Application Number(s)	Date Request(s) for Waiver Filed
Fresno Unified School District	ECF202108943 ECF202111965	September 20, 2021 <i>(filed two requests)</i>
St. Francis School for the Deaf	ECF202106009	September 13, 2021
Arizona Schools for the Deaf and the Blind	ECF202100525	September 10, 2021
NYSARC Inc, New York City Chapter, AHRC New York City	ECF202115617	September 9, 2021

APPENDIX B
Waiver Requests Denied

Petitioner	Application Number(s)	Date Request for Waiver Filed
Bay Area Technology School	ECF222116200 ECF202115400	October 7, 2021
Health Science High & Middle College	ECF202101275	September 1, 2021