

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

In the Matter of
Requests for Waiver of Decisions of the
Emergency Connectivity Fund Program
Administrator by
Evans-Brant Central School District
Angola, NY, et al.
Establishing Emergency Connectivity Fund to
Close the Homework Gap
ECF202209790 et al.
WC Docket No. 21-93

ORDER

Adopted: September 21, 2022

Released: September 21, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address requests from three petitioners seeking waivers of the Emergency Connectivity Fund (ECF) Program’s third and final application filing window deadline. We find that the three petitioners listed in the Appendix have demonstrated that special circumstances exist to justify a waiver of the Commission’s rules. Specifically, we grant their requests because we find that the three petitioners were unable to timely file their ECF FCC Form 471 applications due to the Universal Service Administrative Company’s (USAC) delays in resolving technical issues that prevented these three petitioners from being able to access the ECF Portal before the May 13, 2022 filing deadline. Accordingly, we remand these underlying applications to USAC for further action consistent with this Order.

II. BACKGROUND

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

1 The petitioners and requests for waiver are listed in the Appendix. We note that one of the petitioners filed more than one request for waiver with the Commission related to the same ECF FCC Form 471 application.

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).

3 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).

rules, if total demand during a filing window exceeds the total amount of support available, requests will be prioritized based on an applicant's E-Rate discount rate for Category One services, subject to a five percent increase for rural schools and libraries.⁴

3. The Commission and USAC opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁵ and a second 15-day application filing window from September 28, 2021 to October 13, 2021.⁶ During the first two windows, applicants requested over \$6.4 billion in ECF support.⁷ In view of outstanding demand, the Bureau opened a third 15-day application filing window from April 28, 2022 to May 13, 2022 and received requests for over \$2.8 billion.⁸ Given that the total demand received during the third application filing window exceeded the amount of support available, the Commission and USAC will prioritize funding for the third window requests submitted by schools and libraries entitled to higher discount rates until the funds are exhausted.⁹

4. Pursuant to the Commission's rules, applicants must file the ECF FCC Form 471 application within the relevant filing window because USAC treats all filings made within the window as if the applications were simultaneously received.¹⁰ In general, ECF FCC Form 471 applications that are filed after a filing window has closed are put into an "out of window" status and are not processed. In the requests before us, the petitioners failed to timely file their ECF FCC Form 471 applications during the third ECF application filing window due to USAC's delays in resolving technical issues with their accounts and now seek a waiver of the third application filing window deadline.

III. DISCUSSION

5. 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

6. For the three petitioners listed in the Appendix, we find that good cause exists to waive the ECF Program's third application filing window deadline based on the facts and circumstances of their specific cases. These petitioners were unable to access the ECF Portal to file their ECF FCC Form 471 applications by the May 13, 2022 deadline because they were waiting for USAC's approval of a timely-

⁴ See 47 CFR § 54.1708(c); *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740-41, para. 91.

⁵ 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*).

⁶ 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-emergencyconnectivity-fund-requests> (*Second ECF Application Window News Release*).

⁷ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

⁸ *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, DA 22-309, 2022 WL 867322, at *1 (WCB Mar. 23, 2022) (*Third ECF Application Window PN*).

⁹ News Release, FCC, FCC Announces Over \$2.8 Billion in Funding Requests for Final Window in Ongoing Work to Close the Homework Gap (May 25, 2022), <https://docs.fcc.gov/public/attachments/DOC-383685A1.pdf> (*Third ECF Application Window News Release*).

¹⁰ 47 CFR § 54.1708(b).

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.

filed request to resolve issues with their accounts in USAC's online filing systems. The record shows that the three petitioners contacted USAC before the third application filing window deadline but were impacted by an error and/or a delay by USAC resulting from the additional time and coordination required to first get set up or correct information in the E-Rate Productivity Center (EPC) system before being able to access the ECF Portal to file their ECF FCC Form 471 application. We find that USAC's delays in resolving these technical issues ultimately contributed to the late-filing of their third window ECF FCC Form 471 applications and present special circumstances that warrant a deviation from the Commission's rules. We therefore waive the ECF Program's third application filing window deadline for the three petitioners listed in the Appendix because we find they have demonstrated that special circumstances exist to justify a waiver. We note, however, that this relief is very limited, and we do not expect to grant additional waivers of the ECF third window application filing deadline on this basis absent a showing of special circumstances.¹⁴

7. We remand the applications included in the Appendix to USAC and direct USAC to treat these applications as if they were timely filed during the third application filing window and to determine compliance with the ECF Program rules and requirements. We also remind these three petitioners that although we are granting a waiver of the third application filing window deadline, the review and processing of their applications are subject to section 54.1708(c) of the Commission's rules, and USAC and the Commission are required to ensure those with the greatest need are funded first because not all timely-filed third window ECF FCC Form 471 applications will be able to be funded.¹⁵

IV. ORDERING CLAUSES

8. 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 the Requests for Waiver listed in the Appendix are GRANTED and the underlying ECF FCC Form 471 applications are REMANDED to USAC for further action in accordance with the terms of this order.

9. 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 section 47 CFR § 54.1708(b) of the Commission's rules IS WAIVED to the limited extent provided herein.

10. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader
Chief
Wireline Competition Bureau

¹⁴ We further note that the 30 day deadline to request a waiver of the third ECF application filing window deadline has passed. See 47 CFR § 54.1718(b).

¹⁵ 47 CFR § 54.1708(c) (establishing how funds should be allocated in the event demand exceeds the amount of support available).

APPENDIX

ECF FCC Form 471 Applications Remanded to USAC

Petitioner	Application Number(s)	Date Request(s) for Waiver Filed
Evans-Brant Central School District Angola, NY	ECF202209790	June 7, 2022
Lummi Nation School Bellingham, WA	ECF202201283, ECF202206155	May 23, 2022
Naaleh High School for Girls Fair Lawn, NJ	ECF202209836	May 17, 2022 June 14, 2022