

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

In the Matter of )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )

ORDER

Adopted: February 27, 2019

Released: February 27, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In March 2018, the Universal Service Administrative Company (USAC) learned that its E-Rate Productivity Center (EPC)1 assigned the incorrect service implementation deadline to certain funding year 2016 and 2017 special construction E-Rate applicants as a result of a system error. Based on that incorrect service implementation deadline, USAC’s invoicing system in turn assigned the incorrect invoicing deadline to the same applicants. USAC corrected these issues in March 2018 to prevent other applicants from receiving incorrect service implementation or invoicing deadlines. However, to prevent the affected applicants from the hardship of having their funding subject to recovery or their invoices rejected by USAC as a result of their reliance on these incorrect deadlines, on our own motion, we grant a limited, one-time waiver of the Commission’s special construction service implementation deadline. Specifically, we provide relief to applicants that: (1) received the incorrect special construction service implementation deadline on either their funding commitment decision letters (FCDLs) or revised FCDLs (RFCDLs) for funding years 2016 or 2017 due to this system error; and (2) did not complete special construction by the correct deadline, but did meet the incorrect deadline generated by USAC’s systems (Affected Applicants).2

2. Accordingly, we direct USAC to extend the special construction service implementation deadline for each of the Affected Applicants to the deadline listed on the applicant’s FCDL or RFCDL. We also direct USAC to adjust the associated invoicing deadline for these applicants.3 In doing so, we caution applicants that the relief granted by this Order is limited to the specific facts described herein and remind applicants of their obligations to know and diligently comply with all E-Rate program rules and deadlines.

1 EPC is the web-based account and application management portal for the E-Rate program. The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

2 See Appendix (identifying Affected Applicants subject to the relief provided in this Order). We find that funding year 2016 and 2017 applicants who received the incorrect special construction service implementation deadline on their FCDLs or RFCDLs, but completed special construction and submitted invoices by the correct deadlines, do not need additional time to complete special construction or submit invoices and, as a result, are not eligible for the relief provided under this Order.

3 See 47 CFR § 54.514(a) (requiring applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the service implementation deadline or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later).

## II. BACKGROUND

3. *E-Rate Special Construction Service Implementation Deadline.* Under the E-Rate program, eligible schools, libraries, and consortia (comprised of eligible schools and libraries) may request universal service discounts for eligible services, including connections necessary to support broadband connectivity to eligible schools and libraries.<sup>4</sup> In the *2014 Second E-Rate Order*, the Commission expanded the high-speed broadband options available to applicants by, among other things, allowing special construction of leased dark fiber and self-provisioned networks to be eligible for support.<sup>5</sup> The Commission adopted several safeguards, including service implementation deadlines, to ensure that E-Rate support is not used to purchase unnecessary services.<sup>6</sup> Specifically, applicants may only receive E-Rate discounts for special construction charges related to leased lit or leased dark fiber if the fiber is lit by the end of the funding year,<sup>7</sup> i.e., June 30.<sup>8</sup> Similarly, special construction charges related to a self-provisioned network are only eligible for E-Rate support if the facilities are constructed and used by the end of the funding year.<sup>9</sup> Applicants may request, and USAC may grant, a one-year extension of the June 30 deadline to complete special construction and light the fiber, or use a self-provisioned network, if they demonstrate that construction was “unavoidably delayed due to weather or other reasons.”<sup>10</sup> If applicants require additional time to complete construction, they must request a waiver of the special construction deadline from the Commission.<sup>11</sup>

4. *Incorrect Service Implementation Deadline.* In March 2018, USAC learned that its EPC system issued FCDLs and RFCDLs that contained an incorrect service implementation deadline for some funding year 2016 and 2017 special construction funding requests.<sup>12</sup> Specifically, due to a system error, some applicants received letters indicating a deadline of September 30, the service implementation deadline for non-recurring services,<sup>13</sup> rather than June 30, the service implementation deadline for special construction.<sup>14</sup> As a result, based on the incorrect service implementation deadline, USAC’s invoicing

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<sup>4</sup> See 47 CFR §§ 54.501-54.505.

<sup>5</sup> See *Modernizing the E-rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13- 184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15555, 15558, paras. 36, 43 (2014) (*2014 Second E-Rate Order*).

<sup>6</sup> *Id.*

<sup>7</sup> See 47 CFR § 54.507(d)(1) (stating that a recurring service must be used within the funding year for which discounts are sought to be eligible for support); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16738, para. 129 (2012) (“In the E-rate program, fiber must be lit within the funding year for non-recurring charges to be eligible.”); see also *2014 Second E-Rate Order*, 29 FCC Rcd at 15555, 15560, paras. 37, 49.

<sup>8</sup> 47 CFR § 54.507(b) (establishing July 1 through June 30 as the funding year for the E-Rate program).

<sup>9</sup> See *2014 Second E-Rate Order*, 29 FCC Rcd at 15560, para. 49.

<sup>10</sup> *Id.* at 15555-56, 15560, paras. 38, 49; see also *Requests for Waiver by Grants/Cibola County School District, Jemez Pueblo Tribal Consortium, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 18-1060, at 5-6, para. 12 (WCB 2018) (*Grants/Cibola Waiver*).

<sup>11</sup> *Id.*

<sup>12</sup> See, e.g., Notification from USAC to Amphitheater Unified School District 10 (dated Mar. 2, 2017); Notification from USAC to Battiest Independent School District 71 (dated Dec. 12, 2016); Notification from USAC to Los Angeles Unified School District (dated Feb. 2, 2017).

<sup>13</sup> 47 CFR § 54.507(d)(4).

system also assigned incorrect invoicing deadlines to these applicants.<sup>15</sup> During the same month, USAC implemented system updates to correct these issues and prevent other applicants from receiving incorrect service implementation or invoicing deadlines.

5. *Affected Applicants.* Based on the special circumstances presented, we provide relief to the Affected Applicants listed in the Appendix to this Order.<sup>16</sup> These Affected Applicants received FCDLs or RFCDLs for funding year 2016 or funding year 2017 with incorrect service implementation deadlines, and all of the Affected Applicants completed their construction by the incorrect deadlines provided on their FCDL or RFCDL.

### III. DISCUSSION

6. We waive the special construction service implementation deadline for Affected Applicants and direct USAC to set service implementation deadlines that reflect the date applicants received in their commitment notifications. Generally, a waiver of the Commission's rules is appropriate if: (a) special circumstances warrant a deviation from the general rule, and (b) such deviation will serve the public interest.<sup>17</sup> Although applicants are responsible for knowing and complying with E-Rate program rules,<sup>18</sup> the Wireline Competition Bureau (WCB) has previously found good cause to waive the Commission's rule establishing the service implementation deadline for non-recurring services when an applicant missed the service implementation deadline based on mistaken information from its consultant.<sup>19</sup> In that matter, the Bureau emphasized that granting the request would not lead to an undue advantage in funding because the applicant would not receive more funding than that to which it was entitled and the services had already been delivered by the service provider.<sup>20</sup> Moreover, the Bureau has also found good cause to grant a waiver of the service implementation deadline for recurring services where USAC erroneously approved an applicant's request for an extension of the service implementation

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<sup>14</sup> See *supra* n.7.

<sup>15</sup> 47 CFR § 54.514(a).

<sup>16</sup> See Appendix (listing the Affected Applicants eligible for relief under this Order, the funding request number for which they are being provided relief, and the incorrect service implementation deadline received on their FCDL or RFCDL).

<sup>17</sup> Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>18</sup> See *Requests for Waiver by Lucia Mar Unified School District et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 20364, 20365, para. 3 (WCB 2004) ("Applicants are required to know the relevant rules of the E-Rate program and are ultimately responsible for the timely submission of their applications."); *Requests for Waiver by E-rate Central, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 3638, 3639, para. 3 (WCB 2005) ("[I]t is administratively necessary to place on the applicant the responsibility of complying with all relevant rules and procedures, including filing deadlines.").

<sup>19</sup> *Request for Review of a Decision of the Universal Service Administrator by Covert Public School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 15144, 15146, para. 5 (WCB 2011).

<sup>20</sup> *Id.*; see also *Request for Waiver of the Decision of the Universal Service Administrator by Great Rivers Education Cooperative and I-K Electric Company*, CC Docket No. 02-6, Order, 21 FCC Rcd 14115, 14120, para. 10 (WCB 2006) (*Great Rivers Order*) (recognizing that there was no harm in granting applicant's request for an extension of the service implementation deadline when the funding had already been approved and committed by USAC and the service provider already started delivering equipment).

deadline, the applicant relied on that extension, and USAC subsequently sought to recover funding based on the applicant's failure to meet the original, correct service implementation deadline.<sup>21</sup>

7. Consistent with this precedent, we find that granting a limited waiver here is appropriate. The Affected Applicants relied on and met the incorrect service implementation deadline provided by USAC on their commitment notifications. Moreover, a waiver of the service implementation deadline will not lead to any undue advantage in funding; these applicants will not receive more funding than that allowed under the E-Rate program rules, and their service providers have already delivered the service. In addition, we find that the public interest would not be served were these Affected Applicants to lose their E-Rate funding for the services needed to connect students and library patrons to high-speed broadband when they relied on, and complied with, the incorrect deadlines provided to them based on USAC systems errors, which were beyond their control.

8. USAC has resolved the system issue that caused these applicants to receive an erroneous service implementation deadline. Accordingly, we anticipate that applicants requesting special construction funding will be provided the correct service implementation deadline going forward. Thus, we limit the waiver and relief granted here to only the Affected Applicants and direct USAC to extend the special construction service implementation deadline for each of the Affected Applicants to the deadline listed on the applicant's FCDL or RFCDL.<sup>22</sup> We also direct USAC to adjust the invoicing deadline for these applicants.<sup>23</sup> Affected Applicants that received a service implementation deadline of September 30, 2018 should submit their invoices to USAC by no later than 90 calendar days from the effective date of this Order.

9. We emphasize the limited nature of this decision. Although we grant a limited waiver of the Commission's special construction service implementation deadline rule, this Order does not alter the obligation of participants in the E-Rate program to comply with the Commission's rules.<sup>24</sup> We remind applicants that USAC is unable to grant more than a one-year extension of the special construction service implementation deadline because the Commission's rules only allow an extension of the special construction service implementation deadline of up to one year.<sup>25</sup> For this reason, any funding year 2016 or 2017 applicant that requires more time to complete its special construction projects than the relief granted herein must file a request for waiver extension directly with the Commission.

10. Finally, we find no evidence of waste, fraud, or abuse presented by waiving the special construction service implementation deadline. We emphasize that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the E-Rate program are used for appropriate purposes. Although we grant a limited waiver of the Commission's special construction service implementation deadline, this action does not affect the authority of the Commission or USAC to conduct audits or investigations to determine compliance with E-Rate program rules and requirements. Because audits or investigations may provide information showing that a beneficiary or service provider failed to comply with the statute or the Commission's rules, such proceedings can reveal instances in which universal service funds were disbursed improperly or in a manner inconsistent with the statute or the Commission's rules. To the extent that the Commission finds that funds were not used

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<sup>21</sup> *Request for Review of a Decision of the Universal Service Administrator by Benavides Independent School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 12910, 12914, para. 9 (WCB 2006).

<sup>22</sup> See Appendix (listing those deadlines).

<sup>23</sup> We remind USAC that Commission rules set the invoicing deadline for 120 days after the service implementation deadline or the date of the FCC Form 486 Notification Letter, whichever is later. 47 CFR § 54.514(a).

<sup>24</sup> 47 CFR §§ 54.501-503.

<sup>25</sup> *2014 Second E-Rate Order*, 29 FCC Rcd at 15555, 15560, paras. 38, 49.

properly, the Commission will require USAC to recover such funds through its normal processes. The Commission retains the discretion to evaluate the use of monies disbursed through the E-Rate program and to determine on a case-by-case basis whether waste, fraud, or abuse of program funds occurred, or recovery is warranted. The Commission will continue to aggressively pursue instances of waste, fraud, or abuse under the Commission's procedures and in cooperation with law enforcement agencies.

#### IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the requirement to light a leased dark fiber network within the applicable funding year, as set forth in paragraph 37 of the *2014 Second E-Rate Order*, 29 FCC Rcd at 15552, para. 37, IS WAIVED for the Affected Applicants to the extent described above.

12. Accordingly, IT IS ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, 1.3, the requirement to build and use a self-provisioned network within the applicable funding year, as set forth in paragraph 49 of the *2014 Second E-Rate Order*, 29 FCC Rcd at 15560, para. 49, IS WAIVED for the Affected Applicants to the extent described above.

13. IT IS FURTHER ORDERED that, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, the requirement to use a recurring service within the applicable funding year, as set forth in section 54.507(d)(1) of the Commission's rules, 47 CFR § 54.507(d)(1), IS WAIVED to the extent described above.

14. 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 Anne Monteith  
Chief  
Wireline Competition Bureau

## APPENDIX

## List of Affected Applicants

## WC Docket No. 02-6

<b>Funding Year</b>	<b>Applicant Name</b>	<b>Funding Request Number</b>	<b>Service Implementation Deadline Received</b>
2016	Amphitheater Unified School District 10	1699144679	9/30/2017
2016	Battiest Independent School District 71	1699068414	9/30/2017
2016	Bloomfield School District	1699075102	9/30/2018
2016	CENIC – Corporation for Education Network Initiatives in California	1699138456	9/30/2018
2016	Livingston School District	1699113761	9/30/2017
2016	Los Angeles Unified School District	1699067472	9/30/2017
2016	Smithville I-14 School District	1699100164	9/30/2017
2016	Texarkana Independent School District	1699144793	9/30/2017
2017	Archdiocese of New Orleans	1799083792	9/30/2018
2017	Biblioteca Electrónica Municipal	1799017364	9/30/2018
2017	Biblioteca Josefina Betancourt de Millán	1799103603	9/30/2018
2017	Bicentennial Union High School District 76	1799031403	9/30/2018
2017	Centro Tecnológico Guaynabo City	1799063073	9/30/2018
2017	Cisco Independent School District	1799050743	9/30/2018
2017	Colegio Metodista Julia Torres	1799113435	9/30/2018
2017	Einetwork	1799074388	9/30/2018
2017	Joint School District Number 243	1799113099	9/30/2018
2017	Sun Prairie Area School District	1799106429	9/30/2018