

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

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

ORDER

Adopted: April 1, 2020

Released: April 1, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Schools and libraries across the United States have been affected by the coronavirus (COVID-19) pandemic as they close for extended periods of time to protect their students and patrons and help prevent the spread of the disease. To provide relief to E-Rate program participants affected by this unprecedented national pandemic, we temporarily waive and extend several E-Rate filing and service implementation deadlines, as provided herein. Additionally, we direct the Universal Service Administrative Company (USAC) to provide all program participants an automatic 30-day extension to respond to information requests related to pending appeals, invoices, FCC Form 500 requests, and audits. In providing this relief, we seek to alleviate administrative burdens and minimize the disruption caused by COVID-19 to allow schools and libraries to focus their time and resources on transitioning their students, patrons, teachers, and staff to remote learning and working in response to this public health emergency. We will continue to monitor the situation to determine whether any additional waiver of these rules and deadlines is needed.

II. BACKGROUND

2. 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. To obtain support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and apply for E-Rate discounts with USAC for the purchase of services. To ensure efficient and effective administration of the program, the Commission has adopted deadlines for the filing of appeals, requests for waiver, and invoices, as well as for the delivery of services.

1 See, e.g., Map: Coronavirus and School Closures, Education Week (last updated Mar. 26, 2020), https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html; Press Release, American Library Association, ALA Executive Board recommends closing libraries to public (Mar. 17, 2020), http://www.ala.org/news/press-releases/2020/03/ala-executive-board-recommends-closing-libraries-public.

2 47 CFR §§ 54.501, 54.502.

3 See 47 CFR § 54.503.

4 See, e.g., 47 CFR §§ 54.507(d)(1),(4); 54.514; 54.720.

3. The COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.⁵ In response to this pandemic, institutions throughout the country have taken steps to prepare for a rise in COVID-19 cases and mitigate the spread in their communities. In particular, many schools have closed and are transitioning to remote learning, and libraries are closing to reduce the risk to their staff and patrons.⁶

III. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁸ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.⁹ In considering waivers of the invoicing rules, the Commission has held that "it is generally not in the public interest to waive [the] invoicing rules,"¹⁰ and the Wireline Competition Bureau (Bureau) should grant waivers of the invoice deadline rules only under "extraordinary circumstances."¹¹

5. Based on the unprecedented circumstances before us, we find that good cause exists to waive several E-Rate program rules and extend procedural deadlines to mitigate the impact of the COVID-19 outbreak on E-Rate program participants. In particular, we find that the mass disruption to daily life, including the closure of schools and libraries for an extended period of time, the transition to remote learning and working for students, teachers and staff, and the adverse impact to service providers and manufacturers caused by COVID-19 present compelling and unique circumstances that merit a waiver of our rules. Accordingly, we waive the following: (1) the service implementation deadline for non-recurring services for funding year 2019; (2) the deadline for the installation of special construction equipment for all funding year 2019 applicants, as well as funding year 2018 applicants that already received a one-year extension; (3) deadlines for requests for review or waiver of decisions by USAC, whether directed to USAC or the Commission; (4) the invoice filing deadline; and (5) the deadline for filing the FCC Form 486 (Receipt of Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form).¹² Recognizing that program participants may not be able to respond to USAC

⁵ Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited Mar. 31, 2020).

⁶ See, e.g., *Rural Health Care Universal Service Support Mechanism, Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, DA 20-290, para. 6 (WCB rel. Mar. 18, 2020) (discussing closures).

⁷ 47 CFR § 1.3.

⁸ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁰ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8965-66, paras. 238-39 (2014) (*2014 First E-Rate Order*).

¹¹ *Id.* at 8966, para. 240.

¹² See 47 CFR § 54.514(a) (codifying the invoicing deadline); 47 CFR § 1.106, 47 CFR § 54.720 (codifying the appeal and waiver rules and related deadlines); 47 CFR § 54.507(d)(4) (establishing the implementation deadline for non-recurring services, other than special construction); *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, 15550, 15558, paras. 37, 49 (2014) (*Second 2014 E-Rate Order*) (setting the deadline for completing special construction); *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*) (setting the deadline for filing the FCC Form 486).

inquiries in a timely manner, we further direct USAC to give all program participants an additional 30 days to respond to information requests related to pending USAC appeals, FCC Form 500 (Funding Commitment Adjustment Request Form) requests, invoices, and all audits, including Beneficiary and Contributor Audit Program (BCAP) and Payment Quality Assurance (PQA) audits. We note that the Bureau has already directed USAC to extend the E-Rate application filing window for funding year 2020 due to disruptions caused by COVID-19.¹³

6. *Waiver of the Service Delivery Deadlines for Non-recurring Services and Special Construction.* First, we waive the service delivery deadline for non-recurring services for funding year 2019 and extend the deadline an additional year from September 30, 2020 to September 30, 2021.¹⁴ E-Rate program rules require non-recurring services to be delivered by September 30 of the funding year for which services were sought.¹⁵ Given the impact the pandemic has had on manufacturers worldwide and the potential disruption to global supply chains, which may reduce the availability of the equipment and materials needed to satisfy funding requests, as well as the extended closure of schools and libraries across the country, we find an automatic, one-year extension of the deadline for non-recurring services for all funding year 2019 applicants is appropriate. For the same reasons, we waive the service delivery deadline for special construction charges.¹⁶ As SHLB explains, with schools and municipalities closed for lengthy periods of time, “service providers may not be allowed on the premises and may experience significant challenges in meeting this deadline.”¹⁷ Under Commission rules, special construction, i.e., the upfront, non-recurring costs of deploying fiber or upgraded facilities, must be delivered and the network must be lit or in use by June 30 of the applicable funding year.¹⁸ To mitigate the disruptions caused by COVID-19, we provide a one-year extension of the special construction deadline for all funding year 2019 applicants, as well as for funding year 2018 applicants that already received a one-year extension, and extend the deadline from June 30, 2020 to June 30, 2021.

7. *Waiver of Deadline for Appeals and Requests for Waiver.* Next, we waive our rules for requests for review or waiver of decisions by USAC, whether directed to USAC or the Commission, and provide all petitioners an automatic 60-day extension to submit such requests.¹⁹ Commission rules require parties seeking review or waiver of a decision by USAC to submit their requests within 60 days from the date of the decision.²⁰ We find that providing an additional 60 days to file appeals and waivers—double the normal 60-day time period for a total of 120 days from the date of USAC’s decision—is an appropriate measure to accommodate the extraordinary circumstances caused by COVID-19. We understand that these disruptions will persist for an uncertain length of time and find that the limited harm in giving petitioners additional time to submit their filings is outweighed by the significant public interest benefits in allowing program participants to focus first on COVID-19-related activities

¹³ See *Wireline Competition Bureau Directs USAC to Extend E-Rate Application Window for Funding Year 2020 Due to Potential Coronavirus Disruptions*, CC Docket No. 02-6, Public Notice, DA 20-273 (WCB rel. Mar. 13, 2020) (*Funding Year 2020 Filing Window Extension Public Notice*).

¹⁴ 47 CFR § 54.507(d)(4) (requiring the delivery and installation of non-recurring services by September 30 following the close of the funding year).

¹⁵ *Id.*

¹⁶ See Letter from John Windhausen, Jr., Executive Director, Schools, Health & Libraries Broadband (SHLB) Coalition, to Chairman Pai and Commissioners, FCC, at 3 (Mar. 17, 2020) (requesting an extension of the service delivery deadline for special construction for funding year 2019).

¹⁷ *Id.*

¹⁸ 2014 *Second E-Rate Order*, 29 FCC Rcd at 15552-53, 15558, paras. 37, 49.

¹⁹ 47 CFR § 54.720(a)-(b); see also 47 CFR § 1.106.

²⁰ *Id.*

without diverting resources towards appeals and waiver responses. This waiver will be in effect for parties seeking review or waiver of an adverse USAC decision with an appeal deadline between March 11, 2020 and September 30, 2020.²¹

8. *Waiver of the Invoice Filing Deadline.* Again, recognizing the extraordinary circumstances presented by the school and library closures due to COVID-19, we provide all applicants and service providers with an automatic 120-day extension of the invoice filing deadline for any funding request with an invoice deadline between March 11, 2020, and October 28, 2020 (i.e., the invoice deadline for funding year 2019 recurring services and special construction), regardless of whether the applicant or service provider already sought an extension of the deadline prior to March 11, 2020.²² Section 54.514(a) of our rules requires that invoices be submitted to USAC 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.²³ We understand that, for the reasons discussed above, program participants may have difficulty timely submitting invoices and find it is in the public interest to waive the deadline, and we provide all program participants with deadlines that fall within the March 11, 2020 to October 28, 2020 period an additional 120 days to submit their invoices to USAC. During this timeframe, we also direct USAC to provide additional 30-day extensions to applicants or service providers that file an invoice extension request with an explanation of, and documentation supporting, the entities' inability to file invoices at that time (e.g., dates of closure, difficulty securing the appropriate resources, etc.).

9. *Extending the Procedural Deadline for Filing the FCC Form 486.* Program participants are required to file the FCC Form 486 to notify USAC that services have been initiated and to indicate the status of compliance with CIPA.²⁴ For schools and libraries and consortia, with FCC Form 486 deadlines that fall between March 11, 2020 and September 30, 2020, we direct USAC to provide these applicants with an additional 120 days to submit these forms without penalty.²⁵ Extending the deadlines for these applicants will allow them to give their attention to meeting the immediate needs of their students and patrons during this critical time, and to shift their focus to these administrative requirements once those needs have been addressed.

10. *Extending the Timeframe for Responding to USAC Information Requests.* Finally, recognizing that E-Rate program participants may have difficulty timely responding to USAC information requests while dealing with the impact of school and library closures due to COVID-19, we direct USAC to provide all program participants with an automatic 30-day extension to respond to information requests related to the following: pending USAC appeals; invoices; pending FCC Form 500 requests, including service substitutions, Service Provider Identification Number (SPIN) changes, or funding request cancellation requests; and audits, including BCAP and PQA audits. In light of the number of schools and libraries that have closed for extended periods of time since we extended the deadline to respond to

²¹ Therefore, E-Rate program participants that have received or will receive an adverse decision dated from January 11, 2020 to August 1, 2020 now have an additional 60 days to file an appeal or waiver.

²² 47 CFR § 54.514(a) ("Invoices must be submitted to the Administrator: (1) 120 days after the last day to receive service, or (2) 120 days after the date of the FCC Form 486 Notification Letter, whichever is later.").

²³ *Id.*

²⁴ The FCC Form 486 must be certified no later than 120 days after the service start date shown on the FCC Form 486, or 120 days after the date of the funding commitment decision letter, whichever date is later. USAC, Schools and Libraries, FCC Form 486 Filing, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited Mar. 31, 2020).

²⁵ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 (2019); *see also CIPA II Order*, 17 FCC Rcd at 12445, para. 5).

Program Integrity Assurance (PIA) requests,²⁶ we also direct USAC to provide all applicants with an additional, automatic 30-day extension for PIA requests. Given that USAC's summer deferral period will begin on May 22, 2020 and end on September 11, 2020,²⁷ this relief will apply to all information requests issued between March 11, 2020 and May 22, 2020, regardless of the funding year for which those requests relate. We remind program participants that, during the summer deferral period, USAC will defer review of forms and—consistent with its administrative procedures—most information requests (with the exception of those information requests related to audits) until program participants provide the information or documentation requested or until the deferral period ends, after which USAC's regular review process will continue pursuant to its administrative procedures.²⁸ To ensure timely review and issuance of decisions, including funding decisions, during this time, we encourage all program participants, to the extent practicable, to continue to work on their PIA requests and submit responses to all information requests as they are able.

11. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the E-Rate program. Although we grant the limited waivers and extensions described herein, program participants remain otherwise subject to audits and investigations to determine compliance with E-Rate program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the E-Rate program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

²⁶ See *Funding Year 2020 Filing Window Extension Public Notice* (directing USAC to provide all applicants with an automatic, 14-day extension for PIA requests).

²⁷ See USAC, Schools and Libraries, Step 4: Application Review, Missing Information, <https://www.usac.org/e-rate/applicant-process/application-review/missing-information/> (last visited Mar. 31, 2020) (noting that the summer deferral period extends from the Friday before Memorial Day (i.e., May 22, 2020) through the Friday following Labor Day (i.e., September 11, 2020)).

²⁸ *Id.*

IV. ORDERING CLAUSES

12. 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 sections 47 CFR 54.507(d)(1), 54.507(d)(4), 54.514(a)-(b), and 54.720 of the Commission's rules are waived to the limited extent provided herein.

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 Anne Monteith
Chief
Wireline Competition Bureau