

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

In the Matter of)
Schools and Libraries Universal Service Support) CC Docket No.02-6
Mechanism)
Petition for Waiver of Comcast Corporation for)
Lift Zone Initiative)

ORDER

Adopted: October 7, 2021

Released: October 7, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. On December 14, 2020, the Wireline Competition Bureau (Bureau) extended its temporary waiver of the Federal Communications Commission’s (Commission) gift rule applicable to the E-Rate¹ program to assist schools and libraries affected by the coronavirus (COVID-19) pandemic.² The waiver expired on June 30, 2021.

2. The Bureau has received a request by a number of E-Rate stakeholders to extend the waiver of the E-Rate program gift rule until June 30, 2022, owing to difficulties created by the ongoing COVID-19 pandemic.³ Further, Comcast has sought a waiver of certain E-Rate program rules to allow it to conduct a pilot program to expand its “Lift Zone” initiative, which would provide seven library systems with free Wi-Fi and other products to enable students and members of the community to participate in remote learning and complete homework assignments.⁴

¹ E-Rate is more formally known as the schools and libraries universal service support mechanism.

² See 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, 35 FCC Rcd 2741 (WCB 2020) (RHC and E-Rate Gift Rules Waiver Order) (initially waiving sections 54.622(h) and 54.503(d) of the Commission’s rules through September 30, 2020); 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, 35 FCC Rcd 9416 (WCB 2020) (First RHC and E-Rate Gift Rules Waiver Extension Order) (extending the waiver of each program’s gift rule until December 31, 2020); 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, 35 FCC Rcd 14544 (WCB 2020) (Second RHC and E-Rate Gift Rules Waiver Extension Order) (extending the waiver of each program’s gift rule until June 30, 2021).

³ Letter from John Windhausen, Executive Director, Schools, Health & Libraries Broadband Coalition, et al, to Kris Monteith, Chief, Wireline Competition Bureau, CC Docket No. 02-6, at 3 (filed July 16, 2021) (SHLB Letter).

⁴ Petition for Waiver of Comcast Corporation for Lift Zone Initiative, CC Docket No. 02-6 (filed May 12, 2021) (Comcast Petition for Waiver). On May 20, 2021, the Bureau sought comment on the Comcast Petition for Waiver. See Wireline Competition Bureau Seeks Comment on Comcast Petition for Waiver Regarding Its Lift Zone Initiative, CC Docket No. 02-6, Public Notice, 36 FCC Rcd 8562 (WCB 2021).

3. In light of the ongoing disruptions caused by the COVID-19 pandemic to program participants and the continued need for robust connectivity, we find good cause to extend our waiver of the E-Rate program gift rule through June 30, 2022, the end of funding year 2021.⁵ With our action, we continue to ensure that schools and libraries can benefit from and solicit offers for improved broadband connections or equipment for remote learning during the COVID-19 pandemic without running afoul of Commission rules. We also partially grant Comcast's petition, as we are extending the E-Rate program gift rule waiver for one year, but decline to extend the waiver beyond June 30, 2022. In addition, we clarify that applicants are still required to pay the non-discount share of the cost of E-Rate-funded equipment and services, and for the purposes of the waiver period, free services and equipment are not considered as rebates pursuant to section 54.523 of the Commission's rules.

II. BACKGROUND

4. The E-Rate program provides universal service discounts to eligible schools, libraries, and consortia (comprised of eligible schools and libraries) for eligible services and equipment, including connections necessary to support broadband connectivity to eligible schools and libraries.⁶ E-Rate program participants must adhere to the Commission's gift rules, which prohibit applicants from soliciting or accepting any gift or other thing of value from a service provider participating in or seeking to participate in either program.⁷ Similarly, service providers are prohibited from offering or providing any gift or other thing of value to those personnel of eligible entities involved in either program.⁸ When it adopted the gift rules for the E-Rate program, the Commission explained that "the restriction on gifts is always applicable and is not in effect or triggered only during the time period when competitive bidding is taking place."⁹ Accordingly, under the Commission's rules, applicants are not permitted to solicit or accept a gift or thing of value over \$20 from a service provider, and service providers are not permitted to offer or provide applicants a gift or thing of value over \$20.¹⁰

⁵ 47 CFR § 54.503(d) (setting forth the E-Rate program gift rule and requirements).

⁶ 47 CFR §§ 54.501, 54.502.

⁷ 47 CFR § 54.503(d)(1) ("[A]n eligible school, library, or consortium that includes an eligible school or library may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the schools and libraries universal service program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided herein."); *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18801, para. 88 (2010) (*Schools and Libraries Sixth Report and Order*). "The terms 'school, library or consortium' include all individuals who are on the governing boards of such entities (such as members of a school committee), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such school, library, or consortium with the [E-Rate Program]." *Id.* at 54.503(d)(2)(i). Consistent with the gift rules applicable to federal agencies, certain *de minimis* gifts, including modest refreshments and items that are worth \$20 or less, are allowable under the rules. *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88.

⁸ 47 CFR § 54.503(d)(1); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. "The term 'service provider' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, or independent contractors of such entities." *Id.* at 54.503(d)(2)(ii).

⁹ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88 (noting that "the restriction on gifts is always applicable, and is not in effect or triggered only during the time period when the competitive bidding process is taking place," because "gift activities that undermine the competitive bidding process may occur outside the bidding period").

¹⁰ *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18801, para. 88. In addition to *de minimis* gifts, the Commission's rules also allow for charitable donations, including literacy programs, scholarships, and capital

(continued....)

5. Additionally, section 54.523 of the Commission's rules provides that applicants "must pay the non-discount portion of services or products purchased with universal service discounts." Further, the rule states that applicants "may not receive rebates for services or products purchased with universal service discounts," and concludes that "the provision, by the provider of a supported service, of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services." The Bureau did not previously waive section 54.523 in its earlier gift rule waivers,¹¹ though Comcast seeks a waiver of section 54.523, in addition to a waiver of section 54.503(d)(1) (i.e., the E-Rate gift rule), in its petition.

6. The Bureau first waived the E-Rate program gift rule in March 2020, and subsequently extended the waiver in September and again in December 2020.¹² The challenges posed by COVID-19 on schools and libraries persist, however, as schools face supply chain issues that have dramatically increased the time for installation and deployment of broadband projects, as well as continued uncertainties for the current school year, particularly given the recent rise in coronavirus cases due to the Delta variant.¹³

III. DISCUSSION

7. Generally, the Commission's rules may be waived for good cause shown.¹⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁶

8. We find that the extensive disruption to schools and libraries throughout the country and the heightened need for remote learning caused by the ongoing COVID-19 pandemic continue to present compelling and unique circumstances that merit further extension of the E-Rate program gift rule waiver through June 30, 2022, the end of funding year 2021, to provide relief to schools and libraries affected by COVID-19 and to enable service providers to continue supporting remote learning efforts without concerns about an impact on E-Rate program support.¹⁷ In so doing, we partially grant Comcast's petition for waiver to conduct a pilot for libraries to expand its "Lift Zone" initiative, as explained further below.

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improvements, as long as such contributions are not directly or indirectly related to procurement activities or decisions. *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18802, para. 90.

¹¹ In the *First RHC and E-Rate Gift Rules Waiver Extension Order*, the Bureau stated that "we remind applicants that they are still required to pay the non-discount portion of the cost of eligible E-Rate services pursuant to section 54.523 of the Commission's rules, and we clarify that this waiver does not permit service providers to cover an applicant's non-discount share of costs. *See First RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 9422, n.49; *see also* 47 CFR § 54.523.

¹² *RHC and E-Rate Gift Rules Waiver Order*, 35 FCC Rcd at 2741; *First RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 9416; *Second RHC and E-Rate Gift Rules Waiver Extension Order*, 35 FCC Rcd at 14544. Prior waivers of the gift rules applied to both the RHC and E-Rate programs, while our action today waives only the E-Rate program gift rule, section 54.503(d), through June 30, 2022.

¹³ SHLB Letter at 3.

¹⁴ 47 CFR § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹⁷ *See RHC and E-Rate COVID-19 Gift Rules Waiver Order*, 35 FCC Rcd at 2741-42, para. 1. Further, stakeholders in the E-Rate community are also supportive of extending a waiver of section 54.503(d) through June 30, 2022. *See SHLB Letter*; *see also* Letter from B. Lynn Follansbee, Vice President, Policy and Advocacy, USTelecom, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-6, 02-60, at 1 (filed July 28, 2021) (supporting request to extend the waiver of the gift rule).

As the COVID-19 pandemic continues to impact the nation, schools and libraries face increasing uncertainty regarding how instruction will be delivered throughout the current school year, particularly in light of the recent surge of COVID-19 cases across the country due to the Delta variant.¹⁸ Therefore, we find it is in the public interest to continue allowing service providers to offer or provide, and E-Rate program participants to solicit or accept, improved capacity, Wi-Fi hotspots, networking gear, or other things of value that could help students, teachers, and patrons in light of this uncertainty. Moreover, we find that extending the gift rule waiver until the end of funding year 2021 will eliminate any confusion applicants may face distinguishing between the E-Rate and Emergency Connectivity Fund programs, as the latter allows certain gifts through June 30, 2022.¹⁹

9. This waiver is limited to offerings provided by service providers and solicited or accepted by E-Rate eligible entities on behalf of students, teachers, or patrons while schools and libraries continue to use remote learning and other tools to address the needs of students and library patrons during the ongoing pandemic. Additionally, we waive any other requirement, to the extent that is necessary, in these special circumstances to effectuate the relief granted.²⁰

10. We decline, however, to extend the waiver of the gift rule for any parties beyond June 30, 2022 at this time as requested by Comcast. The public interest is served by waiving the gift rule during the ongoing COVID-19 pandemic; but, given the uncertainty around how long the pandemic will last and the importance of the E-Rate gift rule as a safeguard against waste, fraud, and abuse, we believe it prudent to proceed on a year-to-year basis. In partially granting Comcast's petition, we also seek to apply the waiver of the gift rule equally to all service providers so that schools and libraries can benefit from similar offerings.²¹ Thus, we partially grant Comcast's request for a waiver of section 54.503(d), in that we extend the waiver of this rule until June 30, 2022, but decline to provide any further waiver in response to Comcast's request.

11. In addition, we remind applicants that they are required to pay the non-discount share of the cost of E-Rate-funded equipment and services, and clarify that for the purposes of the waiver period, free services and equipment are not considered to be rebates pursuant to section 54.523. We further clarify that any gifts provided by service providers to schools and libraries since the Bureau initially waived the gift rule in March 2020 do not constitute impermissible rebates for the purposes of section 54.523.²² At the same time, we remind E-Rate applicants of their obligation to comply with state and

¹⁸ See, e.g., Katie Reilly, *Schools Expected to Leave Virtual Learning Behind in the Fall, but the Delta Variant Is Forcing a Change in Plans*, Time (Aug. 5, 2021), <https://time.com/6087815/covid-delta-schools-reopening/> (stating that school districts may continue to offer remote learning in the upcoming school year); Dan Goldberg et al, *Chaos and Confusion: Back to School Turns Ugly as Delta Rages*, Politico (Aug. 4, 2021), <https://www.politico.com/news/2021/08/04/school-delta-variant-502331>.

¹⁹ 47 CFR § 54.1704(b); see also *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8753, para. 122 (2021).

²⁰ We also waive the E-Rate program gift rule, to the extent necessary, for the period between June 30, 2021 and the date of this order. *SHLB Letter* at 2 (stating that extending the waiver “would provide certainty, would be consistent with the end of the funding year for the E-rate program, and would be consistent with the ECF gift rule waiver, and would be easy to administer”).

²¹ See Comments of USTelecom, CC Docket No. 02-6, (rec. June 21, 2021) at <https://www.fcc.gov/ecfs/filing/10621031716347> (supporting the applicability of Comcast's requested relief to all service providers).

²² We also clarify that applicants need not return any free equipment obtained from service providers to help address COVID-19 pandemic-related remote learning needs during the waiver period, and that keeping this gifted equipment does not constitute an impermissible rebate under section 54.523.

local procurement laws,²³ and we note that applicants are still subject to the program rules requiring a fair and open competitive bidding process for funding years 2021 and 2022.²⁴

12. We are committed to protecting against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Accordingly, we require all eligible E-Rate program participants to retain records documenting the services, equipment, or other things of value that they receive pursuant to the waiver described above, consistent with the document retention periods applicable to the program.²⁵ Although we grant the limited waiver described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF 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.

IV. ORDERING CLAUSES

13. 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 54.503(d)(1) of the Commission's rules IS WAIVED to the extent provided herein.

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

²³ See 47 CFR § 54.503(b).

²⁴ See 47 CFR § 54.503.

²⁵ See 47 CFR § 54.516(a)(1)-(2).