

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

In the Matter of)
Request for Waiver by Alaska Federation of)
Natives)
Schools and Libraries Universal Service Support) CC Docket No. 02-6
Mechanism)

ORDER

Adopted: March 4, 2022

Released: March 4, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The E-Rate program provides support to schools and libraries across the nation to obtain affordable, high-speed broadband services and internal connections to connect today's students and library patrons with next-generation learning opportunities and services. E-Rate support helps libraries afford these services and provide free, public Internet access to their communities, but until recently, there was a barrier in the program rules preventing some Tribal libraries from participating in the program. On January 28, 2022, the Commission took steps to resolve this issue and amended its rules to clarify that Tribal libraries are eligible for the E-Rate program. Consistent with that action, we now find it to be in the public interest to grant a waiver of the funding year 2022 application filing deadline and direct the Universal Service Administrative Company (USAC) to treat as timely filed all applications with a new Tribal library entity as a recipient of service that are filed within 65 days of the application filing window deadline.

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 equipment and services (collectively "services"), including connections necessary to support broadband connectivity to eligible schools and libraries. E-Rate program rules provide that these entities must seek competitive bids for services eligible for support. In accordance with the Commission's competitive bidding rules, applicants

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

2 47 U.S.C. § 254(b)(6) ("Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h)."); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780, para. 1 (1997) (First Report and Order).

3 Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Report and Order, FCC 22-8, 2022 WL 287893 (Jan. 28, 2022) (Tribal Libraries Order).

4 47 CFR §§ 54.501, 54.502.

5 47 CFR § 54.503.

must submit for posting on USAC's website an FCC Form 470 that describes the services and seeks bids for the E-Rate eligible services.⁶ After submitting an FCC Form 470, applicants must wait at least 28 days before entering into an agreement with their service provider(s) for the services.⁷ Once competitive bidding is concluded and a contract or contracts are signed, applicants must file an FCC Form 471 before the close of the applicable funding year's application filing window to request E-Rate support for the contracted eligible services.⁸

3. The Commission has granted waivers of the application filing window deadline in a number of cases, including situations where applicants filed their FCC Form 471 applications within 14 days of deadline,⁹ experienced a serious and unexpected medical conditions but filed their FCC Form 471 applications within 30 days of the close of the filing window,¹⁰ or filed their FCC Form 471 applications even beyond 14 days of the deadline due to delays beyond their control.¹¹ In 2020, the Bureau also granted waivers for applicants impacted by the COVID-19 pandemic that filed their FCC Form 471 applications within 99 days of the close of the application filing window.¹²

4. The E-Rate application filing window for funding year 2022 opened on January 12, 2022, and will close at 11:59 p.m. ET on March 22, 2022.¹³ During this application filing window, applicants may request funding for eligible services and equipment provided between July 1, 2022 through June 30, 2023.¹⁴ The last day to seek competitive bids for these services and still be able to timely file an E-Rate application was February 22, 2022.¹⁵

5. On January 28, 2022, the Commission released the *Tribal Libraries Order*, which updated the definition of "library" in the Commission's rules to provide clarity regarding the eligibility of Tribal libraries to participate in the E-Rate program.¹⁶ It also directed the Wireline Competition Bureau, working with the Office of Native Affairs and Policy and the Tribal liaison at USAC, to target outreach efforts to promote increased participation of Tribal libraries in the E-Rate program.¹⁷ On February 18, 2022, the Alaska Federation of Natives (AFN) filed a request for a waiver of the funding year 2022 application filing deadline, seeking an additional 40 days to file an E-Rate application requesting funding as a consortium representing a number of Tribal libraries in Alaska.¹⁸ AFN cites to the short timeframe

⁶ 47 CFR § 54.503(c).

⁷ 47 CFR § 54.503(c)(4).

⁸ 47 CFR §§ 54.504(a); 54.507(c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Sept. 2021) (FCC Form 471).

⁹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256, 9259-60, paras. 7-9 (2010) (*Academy of Math and Science Order*).

¹⁰ See, e.g., *id.*

¹¹ See, e.g., *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Abbotsford School District et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 27 FCC Rcd 15299, 15300, para. 2 (WCB 2012).

¹² See, e.g., *See Requests for Waiver and Review of Decisions of the Universal Service Administrator by Agri-Business Child Development et al.*; *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 8278, 8280, para. 7 (WCB 2020) (*Agri-Business Child Development Order*).

¹³ See Schools and Libraries Special Edition News Brief, *The FY2022 FCC Form 471 Filing Window is Now Open*, (dated Jan. 12, 2022), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=1030>

¹⁴ 47 CFR § 54.507(b).

¹⁵ 47 CFR § 54.503(c)(4).

¹⁶ *Tribal Libraries Order*, 2022 WL 287893 at *2.

¹⁷ *Id.* at *4.

between the Commission's action and the competitive bidding deadline, the challenges of gaining approval from Tribal councils – particularly during the ongoing COVID-19 pandemic – and the initial learning required as new entities to complete the competitive bidding and application processes as reasons why a deviation from the regular deadline is warranted.¹⁹

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.²⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²²

7. Based on the special circumstances caused by the timing of the release of the *Tribal Libraries Order* in the middle of the annual application filing window of the E-Rate program, we find good cause exists to waive the funding year 2022 FCC Form 471 application filing window deadline for all new Tribal library entities that file FCC Form 471 applications within 65 days of March 22, 2022 (i.e., 11:59 p.m. ET on Thursday, May 26, 2022). Because applicants must open their competitive bidding process at least 28 days in advance of selecting a service provider,²³ Tribal libraries that had not previously participated in the E-Rate program, had to begin their competitive bidding process just a few weeks after the *Tribal Libraries Order* was released. Particularly during the ongoing pandemic and in remote areas, obtaining approval, conducting competitive bidding, and selecting service providers and negotiating contracts can take extra time.²⁴ Given the amount of funding available under the program funding cap in prior years,²⁵ we grant this waiver in advance of the application filing window close to encourage new Tribal libraries to consider requesting E-Rate support for funding year 2022 by providing additional time for them to complete the competitive bidding requirements and submit their funding applications. Tribal libraries provide a critical service to their communities and access to E-Rate support can help these libraries afford these services and deploy high-speed broadband needed to learn, connect with healthcare services, or search for jobs. We find that requiring this limited set of new E-Rate participants, the Tribal libraries, to wait more than a year until funding year 2023 (i.e., July 1, 2023 to June 30, 2024) to be able to participate in the E-Rate program would not serve the public interest and would be inconsistent with the Commission's direction to promote participation and encourage increased Tribal library access to affordable broadband connectivity through the program.²⁶

8. We direct USAC to provide this relief, and to treat all funding year 2022 FCC Form 471 applications that include a new Tribal library entity as a recipient of service filed within 65 days of the

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¹⁸ Request for Waiver of the Alaska Federation of Natives, CC Docket No. 02-6 (filed Feb. 18, 2022).

¹⁹ Request for Waiver at 2.

²⁰ 47 CFR § 1.3.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²³ 47 CFR § 54.503(c)(4).

²⁴ Request for Waiver at 2.

²⁵ See *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-Rate Requests*, CC Docket No. 02-6, Public Notice DA 21-1063, 2021 WL 3863426 (WCB Aug. 27, 2021) (finding sufficient funding under the \$4.27 billion cap in funding year 2021 to fund the \$3.03 billion in total E-Rate program demand).

²⁶ *Tribal Library Order*, 2022 WL 287893, at *4.

March 22, 2022 deadline (i.e., May 26, 2022) as timely filed.²⁷ All new Tribal library applicants face the same special circumstances as the Tribal libraries represented by the Alaska Federation of Natives and should be provided with additional flexibility to complete their competitive bidding process and submit their E-Rate applications for funding year 2022. We therefore waive the deadline for all funding year 2022 FCC Form 471 applications that are filed by a new Tribal library applicant, or include a new Tribal library entity as a recipient of service, and direct USAC to process any such late-filed applications submitted before May 26, 2022 as timely filed. At the same time, we make no finding as to the ultimate eligibility of the FCC Form 471 applications or of the services requested, and direct USAC to determine compliance with E-Rate program rules and requirements and issue funding decisions accordingly.

IV. ORDERING CLAUSES

9. 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(c) 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

²⁷ While some Tribal libraries may have filed applications early in the E-Rate program, any Tribal library that has not applied since funding year 2016 should be treated as a new Tribal library entity.