



PUBLIC NOTICE

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DA 22-309

Released: March 23, 2022

WIRELINE COMPETITION BUREAU ANNOUNCES THIRD APPLICATION FILING WINDOW FOR THE EMERGENCY CONNECTIVITY FUND PROGRAM

WC Docket No. 21-93

By this Public Notice, the Wireline Competition Bureau (Bureau) announces that a third application filing window for the Emergency Connectivity Fund (ECF) Program will open on Thursday, April 28, 2022, and close on Friday, May 13, 2022. We anticipate that a minimum of \$1 billion will be available for commitment and disbursement for this third window.¹ In view of outstanding demand, eligible schools and libraries may request funding during this 15-day filing window for a maximum of 12 months of eligible services and equipment that will be received or delivered between July 1, 2022, and December 31, 2023. Accordingly, we also modify section 54.1711(e) of the Commission's rules to establish December 31, 2023 as the service delivery date for equipment, other non-recurring services, and recurring services requests submitted during the third application filing window.

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.² On May 10, 2021, the Commission adopted a Report and Order establishing the rules for the Emergency Connectivity Fund Program to distribute the funding to eligible schools and libraries.³ The Commission and the Universal Service Administrative Company (USAC) opened an initial 45-day application filing window from June 29, 2021 to August 13, 2021,⁴ and a second 15-day application filing window from September 28, 2021 to October 13, 2021.⁵ During the first two application filing windows, applicants

¹ The \$1 billion estimate takes into account the connected device cap of \$400 per device and Wi-Fi hotspot cap of \$250 per hotspot, and reflects amounts remaining once requests from the first and second windows are fully committed and administrative expenses are covered. It also reflects application cancellations as of Wave 12, though these may increase in connection with the ongoing application reviews.

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*).

⁴ 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*).

⁵ 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-emergency-connectivity-fund-requests> (*Second ECF Application Window News Release*).

could request funding for eligible equipment and services received or delivered between July 1, 2021 and June 30, 2022.⁶ On December 2, 2021, the Bureau established June 30, 2022 as the service delivery date for Emergency Connectivity Fund requests for equipment, other non-recurring services, and recurring services submitted for the July 1, 2021 through June 30, 2022 funding period.⁷ Subsequently, in February 2022, the Bureau extended the service delivery date from June 30, 2022 to June 30, 2023 for funding requests for equipment and services submitted during the first and second application filing windows, recognizing that multiple factors outside of the applicants' control resulted in them having less time to use the funded equipment and services.⁸

Pursuant to the authority delegated to the Bureau in the *Emergency Connectivity Fund Report and Order*,⁹ we will open a third application filing window to provide ECF support for eligible equipment and services received or delivered between July 1, 2022 and December 31, 2023 in light of the continuing demand for prospective equipment and services and ECF stakeholders' concerns about meeting the persisting unmet connectivity needs of students, school staff, and library patrons during the upcoming school year.¹⁰ Specifically, the Schools, Health & Libraries Broadband (SHLB) Coalition and the State E-rate Coordinators' Alliance (SECA) urged the Commission to open a third prospective filing window this spring to enable schools and libraries to receive "additional funding needed to continue engaging in online instruction to students and patrons in need"¹¹ because it makes the "best policy sense to be forward

⁶ See 47 CFR § 54.1710; *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

⁷ See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Order, DA 21-1499, 2021 WL 5759736 (WCB Dec. 2, 2021) (*ECF Service Delivery Date Order*).

⁸ See *Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Order, DA 22-176, 2022 WL 544369, para. 8 (WCB Feb. 22, 2022) (*ECF Service Delivery Date Extension Order*).

⁹ See *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8735, 8738, paras. 80, 85 (providing that the Commission should consider if demand for prospective support appears to be far short of meeting current needs for a future filing window and delegating authority to the Bureau to open additional application filing windows until the Emergency Connectivity Fund is exhausted or the COVID-19 emergency period ends, whichever is earlier). We find the substantial remaining unmet need for connectivity among students, school staff and library patrons during the ongoing pandemic to be persuasive in our decision to open another prospective window.

¹⁰ In addition to the outstanding demand indicated by applications filed after the close of the second application filing window, we have also heard from a number of stakeholders who urged us to open a third application filing window to meet the continuing unmet needs of students, school staff, and library patrons. See Universal Service Administrative Company, *Emergency Connectivity Fund FCC Form 471*, <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-FCC-Form-471/i5j4-3rvr> (last visited Mar. 22, 2022) (detailing the out-of-window ECF funding applications submitted after the close of the second application filing window); see also Letter from John Windhausen, Jr., Executive Director, SHLB, et al., to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93, at 2-3 (filed Jan. 28, 2022) (*SHLB Ex Parte*) (recommending that a third funding window be opened in Spring 2022 to allow schools to obtain funding going forward); Letter from Debra M. Kriete, Chairperson, SECA, to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-93, at 3-4 (filed Feb. 11, 2022) (*SECA Ex Parte*) (recommending the funding period for a third window to be prospective); Letter from Sam Liccardo, Mayor, City of San José, to Jessica Rosenworcel, Chairwoman, FCC, et al., at 1-2 (Jan. 24, 2022) (encouraging the Commission to open a third window to address ongoing remote learning needs due to the pandemic). When coupled with the fact that many schools and libraries have procured alternative funding for purchases made early in the pandemic that were considered when the *Report and Order* was adopted, we agree with stakeholders that a prospective window to meet the continuing unmet needs of students, school staff, and library patrons is the best use of the limited remaining ECF funds.

¹¹ *SHLB Ex Parte* at 2-3 (explaining that spikes in cases and the rise of a new variant of COVID-19 demonstrates that the need for broadband connectivity for students at home remains strong).

looking and consider the future rather than the past needs of school students, educators, and library patrons.”¹²

In the third application filing window, applicants can request support and reimbursement for a maximum of 12 months of costs associated with eligible equipment or services during the 18-month funding period (i.e., July 1, 2022 to December 31, 2023). In establishing an 18-month funding period, we seek to maximize flexibility for applicants, allowing first and second window applicants the full benefit of their 12-month ECF funding commitments and ensuring continuity of service, regardless of their term of service. We expect that this approach will address requests by SHLB and SECA to tailor third window ECF funding requests based on the service end dates of existing ECF-supported services,¹³ while facilitating the efficient administration of the program by establishing a firm service delivery end date. We believe these actions will maximize the use of the limited ECF funds and allow applicants to continue to provide eligible equipment and services to their students, school staff, and library patrons who would otherwise be unable to fully engage in remote learning without the continuation of the ECF-supported services.

We also establish December 31, 2023 as the service delivery date for equipment, other non-recurring services, and recurring services funding requests submitted in the third application filing window. As a result, the invoice filing deadline for these third window funding requests will be 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or February 29, 2024 (i.e., 60 days after December 31, 2023), whichever is later.¹⁴ We remind applicants seeking support for the construction of new networks or the provision of customer premises equipment for datacasting services that they will continue to have one year from the date of their funding commitment decision letter to demonstrate that construction is completed and the services have been provided.¹⁵

Recognizing that the service delivery date for many first and second window ECF funding requests was extended to June 30, 2023,¹⁶ we emphasize that applicants are not allowed to request duplicative funding during the third application filing window for equipment or services that are committed and were or will be funded through the applicant’s first or second window funding requests.¹⁷ To avoid duplicative support and expedite the review of the third filing window applications, applicants should include in the narrative section of the ECF FCC Form 471 application information regarding services funded during the first or second filing windows, including the ECF FCC Form 471 application number(s) and the service end date(s) for any services funded during the first or second window that an applicant is seeking to continue between July 1, 2022 through December 31, 2023. If an applicant does not have any first or second window funding commitments that will be used to fund eligible equipment or services during the July 1, 2022 through December 31, 2023 funding period, the applicant should provide

¹² SECA *Ex Parte* at 3 (arguing that a third prospective window is “the most effective use of ECF funds”).

¹³ See SECA *Ex Parte* at 2-3 (urging the Commission to coordinate the extended service delivery date for first and second window funding requests with the service dates for funding requests submitted in a third filing window); SHLB *Ex Parte* at 2-3.

¹⁴ See 47 CFR § 54.1711(d).

¹⁵ *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8717, para. 41.

¹⁶ *ECF Service Delivery Date Extension Order*, DA 22-176, at 4, para. 8.

¹⁷ See 47 CFR §§ 54.1712 (prohibiting applicants and service providers from seeking ECF support or reimbursement for eligible equipment or services that have been purchased and reimbursed in full); 54.1710(a)(1)(ix) (requiring that applicants certify that they are not requesting funding for eligible equipment or services that have been purchased and reimbursed in full); 54.1711(a)(1)(vii) (requiring that applicants certify that they are not requesting reimbursement for eligible equipment and/or services that have been purchased and reimbursed in full).

the service start and end dates for up to 12 months of service that will be requested on their ECF FCC Form 471. Applicants may only request support for up to 12 months of eligible services during the third application filing window that covers eligible equipment and services received or delivered between July 1, 2022 and December 31, 2023.

The Commission received over \$6.4 billion in funding requests during the first and second ECF application filing windows.¹⁸ Therefore, in the event that demand exceeds available funding during the third ECF application filing window, we remind applicants that requests will be prioritized based on applicants' E-Rate Program discount rate for category one services, adjusted to provide a five percent increase for rural schools and libraries.¹⁹

Appendix A attached to this Public Notice reflects the procedural rule modification for section 54.1711(e). We make this modification without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules.²⁰ The updated rule will become effective upon publication of this Order in the Federal Register.²¹

Additional Information. For further information regarding this Public Notice, please contact Molly O'Connor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Molly.OConor@fcc.gov or (202) 418-0578. For additional information about the Emergency Connectivity Fund Program, please refer to the Commission's website at <https://www.fcc.gov/emergency-connectivity-fund>.

– FCC –

¹⁸ See *First ECF Application Window News Release*; *Second ECF Application Window News Release*.

¹⁹ See 47 CFR § 54.1708(c); *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8740-41, para. 91.

²⁰ 5 U.S.C. § 553(b)(3)(A). This amended rule is not subject to the APA requirements because it is a procedural rule setting a service delivery date for equipment, non-recurring, and recurring services purchased between July 1, 2022 and December 31, 2023.

²¹ 47 CFR § 1.427(b) (allowing procedural rules to take effect upon publication in the Federal Register). The APA's requirement that rules must be published in the Federal Register at least 30 days before their effective date, subject to certain exceptions, applies only to "substantive rules." See 5 U.S.C. § 553(d); see also *Neighborhood TV Co. v. Federal Commc'ns Comm'n.*, 742 F.2d 629, 637 (D.C. Cir. 1984) (recognizing that "[t]he FCC has maintained . . . that its interim processing procedures are procedural rules, and therefore are not subject to the APA's notice and comment, or advance publication requirements.").

APPENDIX A**Final Rules**

For the reasons set forth above, section 54.1711(e) is amended and reads as follows:

(e) *Service delivery date.*

- (1) For the initial filing window set forth in § 54.1708(b) and second application filing window, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.
- (2) For the third application filing window and any subsequent filing windows covering funding for purchases made between July 1, 2022 and December 31, 2023, the service delivery date for equipment, other non-recurring services, and recurring services is December 31, 2023.