



August 10, 2022

SUBMITTED ELECTRONICALLY VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

**Re: Request to Waive and Extend E-rate Service Delivery Deadline for Non-recurring Services for Funding Year 2021
Schools and Libraries Universal Service Support Mechanism; CC Docket No. 02-6**

Dear Ms. Dortch:

The Schools, Health & Libraries Broadband (SHLB) Coalition¹ respectfully asks the Wireline Competition Bureau (Bureau) to temporarily waive section 54.507(d)(4) of the Commission’s Schools and Libraries Universal Service (E-rate) program rules for non-recurring services² for funding years 2020 and 2021, and extend the service delivery deadline an additional one year from September 30, 2022 to October 2, 2023.³ Many applicants and service providers are experiencing delays in estimated delivery and installation deadlines, including those for E-rate funded projects. These delays are often due to equipment shortages resulting from the current global supply chain crisis, largely stemming from the COVID-19 pandemic. These delays hinder the ability of applicants and service providers to meet the current September 30, 2022 installation deadline, for reasons beyond the service providers’ control.

To receive E-rate program support, eligible services must be received during a specific time period, relative to the funding year for which an applicant requests a discount. The deadline to implement all non-recurring services is September 30 following the close of the funding year.⁴ Given the state of current global supply chain issues, however, the date of delivery and

¹ The SHLB Coalition is a broad-based public interest coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer advocates. See <http://shlb.org/about/coalition-members> for a list of SHLB Coalition members.

² 47 CFR § 54.507(d)(4) (requiring the deadline for implementation of non-recurring services by September 30 following the close of the funding year).

³ September 30, 2023 falls on a Saturday, thus making the next business day October 2, 2023.

⁴ 47 CFR § 54.507(d)(4).

installation for eligible services has been substantially delayed for funding year 2021 projects, as well as for funding year 2020 projects that were previously extended to the current 2022 deadline.

The Commission previously waived and extended several E-rate filing and service implementation deadlines that were impacted due to the pandemic.⁵ For example, the Commission waived the service delivery deadline for non-recurring services for funding year 2019 which extended the deadline from September 30, 2020 to September 30, 2021.⁶ In doing so, the Commission found good cause to extend the deadline given manufacturing delays and disruption to global supply chains caused from the COVID-19 pandemic.⁷ Unfortunately, as described below, these delays and global supply chain problems have become worse, not better.

Generally, the Commission maintains discretion to waive any provision of its rules for good cause shown.⁸ When deciding whether to exercise this discretion, the Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ Additionally, the Commission may consider other factors such as hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰

At the start of the pandemic, schools, libraries, and service providers faced unprecedented hardship when trying to complete projects by applicable service delivery deadlines. This was due in part to extended school and library closures (making it impossible for service providers to gain access to the building) and disruption to global supply chains that adversely impacted manufacturing of the equipment required by these institutions.¹¹ Schools and libraries have since opened and allow in-person contact, but the effects of pandemic-related restrictions have unfortunately exacerbated global supply chain disruptions. Challenges such as labor shortages, equipment availability, and global bottlenecks,¹² geopolitical conflict, renewed COVID-19 lockdowns, and silicon chip shortages affecting the technology industry,¹³ continue to delay

⁵ See, e.g., *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 20-364 (WCB rel. Apr. 1, 2020) (*E-rate Waiver Order*).

⁶ *Id.* at 3, para. 6.

⁷ *Id.*

⁸ 47 C.F.R. § 1.3.

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹¹ *E-rate Waiver Order* at 3, para. 6.

¹² Tom Bartman, *Overcoming global supply chain challenges*, MCKINSEY & COMPANY (Apr. 28, 2022), <https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/overcoming-global-supply-chain-challenges>. The COVID-19 pandemic increased the demand for US containerized consumer goods, causing congestion and delay. Shippers also struggle with shortages of vessel and warehouse space, container boxes, and labor. See David Dierker, Ezra Greenberg, Steve Saxon, and Tewodros Tiruneh, *Navigating the current disruption in containerized logistics*, MCKINSEY & COMPANY (Mar. 14, 2022), <https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/navigating-the-current-disruption-in-containerized-logistics>.

¹³ See *What's Behind The Global Supply Chain Crisis?*, J.P. MORGAN (May 25, 2022) <https://www.jpmorgan.com/insights/research/global-supply-chain-issues>. The Russia-Ukraine conflict and

equipment and services delivery, and are preventing schools and libraries from completing their projects by anticipated deadlines.

SHLB members have reported that current equipment and service delivery delays are generally spanning between 6-12 months. Additionally, many applicants and service providers are facing atypical challenges like receiving only a partial order or being unable to quickly secure the workforce necessary to install equipment once it's delivered.

Examples from our members include:

- The Hamilton Heights School Corporation, a school district located in central Indiana, placed an initial order for 9 switches and 180 access points (APs) in July of 2021, which were to be available in April of 2022 prior to the September 30, 2022 deadline. District staff has since installed the switches, but the access points have yet to be delivered: in March 2022, it received notice that product availability was estimated for July; in July, it received notice once again that product availability was estimated for November. The district has checked into other distributors for any available stock, but has been unsuccessful. It stands ready to perform the installation once they receive the shipment of access points.
- The South Dearborn Community School Corporation placed an equipment order on May 3, 2021 for access points, switches, modules, and transceivers. This equipment will support a complete network refresh of the wireless network for the High School, Middle School and 3 Elementary Schools. As of July of 2022, the last known possible delivery date presented to the district for this equipment, however, was described as "sometime next month." Such a general and uncertain timetable makes the district unable to determine whether it will be able to meet the upcoming service delivery deadline.
- The Fresno United School District faced delivery delays last year, resulting in it filing extension requests for those projects. They stand to face similar challenges for next year, including anticipating a 400 day wait for delivery of certain wireless access points.

recent COVID-19 lockdowns in China have exacerbated supply chain issues that were prominent during the height of the pandemic. Further, President Joe Biden recently signed into law H.R. 4346. The legislation, known as the CHIPS and Science Act, includes investment to assist the production of American-made semiconductors, signaling that Congress recognizes the current state of global supply chain issues and vulnerabilities. *See* H.R. 4346, 117th Cong. (2021-2022), <https://www.congress.gov/bill/117th-congress/house-bill/4346/text>; *See also Ensuring the U.S. is Equipped to Lead in Science and Innovation*, <https://science.house.gov/chipsandscienceact>; Press Release, The White House, FACT SHEET: CHIPS and Science Act Will Lower Costs, Create Jobs, Strengthen Supply Chains, and Counter China (Aug. 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/>.

- The IU13 Consortia is facing delays on equipment to be used as modulating electronics for Category 1 dark fiber service. It received a status update a month ago, stating that delivery of the equipment (to be used for funding year 2022-23 circuits) is anticipated in March-April of 2023. This anticipated delivery date places the consortia at least 10 months behind the expected start of service for these circuits.
- The Milwaukee Public Library received a funding commitment in April of 2021. In May, its provider reported that certain equipment (patch panels) was on backorder. It later became apparent that additional equipment (racks) was also backordered and didn't ship until September. Once installation began (around November), the library identified the need to order replacement equipment and file a service substitution, which wrapped up in July of 2022. As the library plans to restart the project, it expects that it will extend beyond the current service delivery deadline.
- InterMountain Education Service District, located in Oregon, had two school districts, Crook County and Redmond, that faced equipment delays for funding year 2021-22 projects. Redmond was told that the equipment would most likely not arrive until December 2022, which would be one year from the initial order. For Crook County, the district was not provided an estimated delivery date, but the provider indicated that the equipment wouldn't be provided by the September 30th service delivery deadline. Both districts filed a Form 500 to extend the delivery date.
- The Los Angeles Public Library is generally experiencing a 6-9 month delay for delivery of certain parts and equipment, with some still on backorder, and has also seen projects put on hold or delayed due to vendor staff shortages. It is also seeing price increases ranging from 10% to 30%, whether for material costs or labor rates.
- The Hoonah City School District, located in Hoonah, Alaska, was awarded funding for its Category 2 application for funding year 2021 in April of 2021. It immediately placed its equipment order thereafter. Equipment was received almost a year later in February 2022. In addition to the delay in delivery, the provider is also experiencing backlogs, causing difficulty for the district to get workers to the site to complete the installation. Hoonah is a rural remote village located on Chichagof Island in Southeast Alaska. It is accessible only by aircraft or the Alaska Marine Highway (ferry) so weather can also be a factor for travel. Although the last date to invoice is January 30, 2023, the district is concerned about workers getting to and from the island due to the potential for inclement weather.
- North Valley Academy, a public Charter School in Albuquerque New Mexico, has experienced delays in completing its Category 2 upgrade projects due to supply chain issues. Initially, it received an expected shipping date of August 2022 for an order of new switches. However, the latest update (received in early August) confirmed that the switches are now on backorder until January 2023.

Unfortunately, global supply chain issues are not only affecting funding year 2021 projects. A SHLB member also reported that it has continued to see delays in delivery for a funding year 2020 project. The latest update it received was that the equipment is scheduled for delivery by September 1, 2022, but this leaves only a small window to schedule installation prior to the deadline at the end of September, if the equipment is delivered on the intended date.

Equipment vendors are also aware of the impact that global supply chain issues have on their ability to deliver equipment and services.¹⁴ Some SHLB members have reported receiving notices or letters directly from vendors reporting that deliveries of electronic equipment could be delayed. For example, a school district in Indiana (that placed equipment orders for funding year 2021 projects covering 6 of its schools) received a letter from the vendor in December of 2021 explaining that material shortages across the semiconductor industry continue to impact global supply chains, extending lead-times and delivery dates of their products.

As described in the above examples, supply chain issues are still an ongoing effect of the pandemic, although schools and libraries have since re-opened. Such circumstances are well beyond the control of the service providers and applicants, and the Commission previously recognized them as a basis to waive section 54.507(d)(4) and extend the service delivery deadline for funding year 2019. SHLB asks the Commission to consider the ongoing nature of these global supply chain issues as a basis of the current hardships facing applicants with respect to their 2021 projects. SHLB also asks the Commission to recognize that these issues are continuing to impact applicants with funding year 2020 projects that were previously extended, causing them uncertainty as to whether they too can meet the September 2022 deadline.

A waiver of the Commission's rules for funding year 2020 and 2021 projects would not cause any harm to the integrity of the E-rate program. However, a denial of this waiver request would force a multitude of applicants to file individual Form 500s to seek their own service delivery deadline extensions, which would then place an added burden on USAC to review and approve such requests. SHLB is most concerned with the applicants that may not know to file a Form 500 or realize it too late, causing them to forfeit E-rate funding for those 2020 and 2021 projects that cannot meet the current deadline of September 30, 2022.¹⁵ If an applicant loses its funding, it may have to pay out of pocket for the costs of equipment and services, which it may not be able to afford, or it may have to push the project into the future and re-apply for funding, which further delays the school or library from getting the services they need. Given these alternatives, strict adherence to the Commission's rules will work against rather than advance the public interest.

¹⁴ For example, Cisco, a common vendor for telecommunications equipment, reported a "backlog of \$15 billion in products, including \$2 billion in software, a record value of orders that are yet to be delivered to customers." Yuvraj Malik, *Cisco crashes to 18-month low as China lockdown raises supply doubts*, REUTERS (May 19, 2022), <https://www.reuters.com/technology/cisco-falls-dismal-outlook-supply-shortage-bites-2022-05-19/#:~:text=Cisco%20has%20a%20backlog%20of,lower%20than%20pre%2Dpandemic%20times>.

¹⁵ Technically these applicants could submit individual deadline waiver requests to the FCC, which would create a further burden on the FCC as well as the affected applicants.

Rather than having each applicant submit individual Form 500's to USAC – creating more administrative burden – SHLB believes it would be more efficient for the Bureau to grant a blanket one-year extension of the service delivery deadline for non-recurring services for funding year 2021, as well as an additional one-year extension for funding year 2020 (making the new deadline for both 2020 and 2021 extended until October 2, 2023). This approach will best serve the public interest via an efficient resolution of this issue.

The continuing global supply chain issues brought about by the pandemic are unprecedented, and constitute extraordinary circumstances that warrant this requested waiver.

Thank you in advance for considering this request. Please contact me if you have any questions or if we can provide additional information.

Respectfully Submitted,



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