

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

In the Matter of	)	
	)	
Schools and Libraries	)	CC Docket No. 02-6
Universal Service Support Mechanism	)	
	)	
Request for Waiver by	)	
the Schools, Health & Libraries	)	
Broadband (SHLB) Coalition	)	

**REQUEST FOR WAIVER  
OF THE SERVICE DELIVERY DEADLINE  
BY THE SCHOOLS, HEALTH & LIBRARIES  
BROADBAND (SHLB) COALITION**

Pursuant to section 1.3 of the Federal Communications Commission’s rules,<sup>1</sup> the Schools, Health & Libraries Broadband (SHLB) Coalition<sup>2</sup> respectfully asks the Wireline Competition Bureau (Bureau) to waive section 54.507(d)(4) of the Commission’s Schools and Libraries Universal Service (E-rate) program rules for applications with special construction.<sup>3</sup> SHLB requests that the Bureau extend the deadline for service implementation for special construction projects with deadlines in calendar year 2021 to June 30, 2022.

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<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> 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.

<sup>3</sup> 47 C.F.R. § 54.507(d)(4); *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).

SHLB appreciates the Commission’s previous action to extend the special construction implementation deadline to June 30, 2021.<sup>4</sup> Despite their good faith efforts to comply with Commission rules, procedures, and deadlines, however, some service providers will be unable to complete implementation by the current deadline of June 30, 2021,<sup>5</sup> because of delays caused by the ongoing coronavirus pandemic. Those circumstances are beyond the control of the service providers and applicants.<sup>6</sup>

Any of the Commission’s rules may be waived if good cause is shown.<sup>7</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>8</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>9</sup>

Under the E-rate program rules, projects with special construction are required to be built and used within the same funding year.<sup>10</sup> That is, the facilities must be installed, and service must be “turned up,” – that is, initiated – before June 30 of that funding year. Applicants can

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<sup>4</sup> *In the Matter of Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 2978 (2020) (temporarily waiving and extending several E-Rate filing and service implementation deadlines) (*E-rate Waiver Order*).

<sup>5</sup> At least one applicant has a deadline of September 1, 2021, due to a waiver previously granted by the Commission. See *Request for Waiver by Grand Canyon Unified School District*, CC Docket No. 02-6, Order, 35 FCC Rcd 1500, 1504-1505, para. 13 (WCB 2020) (*Grand Canyon USD Order*). As such, we request that any applicant with a deadline in calendar year 2021 be granted this relief.

<sup>6</sup> See, e.g., *Request for Waiver by Utah Education and Telehealth Network*, CC Docket No. 02-6 (filed April 16, 2021) (requesting extension to complete construction in light of the topographical challenges, the need to obtain permits from numerous entities, and the challenges caused by the COVID-19 pandemic) (UETN San Juan Waiver Request).

<sup>7</sup> 47 C.F.R. § 1.3.

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

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

<sup>10</sup> *Second 2014 E-Rate Order*, 29 FCC Rcd at 15550, 15552-53, 15558, paras. 37, 49 (setting the deadline for completing special construction).

request one extension of this deadline from USAC. The Commission previously found good cause to waive and extend the special construction implementation deadline from June 30, 2020, to June 30, 2021, specifically noting the impact the COVID-19 pandemic has had on manufacturers worldwide, the disruption to global supply chains, and the extended closures of schools and libraries, during which time service providers may not have been allowed on the premises to work.<sup>11</sup>

In addition to the common challenges presented by special construction projects—*i.e.*, the permitting process, weather, challenging topography, etc.—service providers have faced additional challenges posed by the pandemic. Unfortunately, the reasons cited by the Commission a year ago are still applicable. Many schools are still closed or are just now allowing students and staff to come back in person.<sup>12</sup> Disruptions to the global supply chain are still being addressed. Probably most problematic for special construction projects, however, are the delays seen in the permitting process as local permitting authorities have shut down or provided fewer services as their already understaffed workforces were forced to work from home.<sup>13</sup> Even under normal circumstances the permitting process can be an extremely lengthy

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<sup>11</sup> *E-rate Waiver Order*, 35 FCC Rcd at 2979, para. 5.

<sup>12</sup> *'I Was So Nervous': Back to School After a Year Online*, New York Times (April 3, 2021), <https://www.nytimes.com/2021/03/09/us/schools-reopen-covid.html> (“But in several large cities, students have started returning to school buildings only in the last few weeks.”); *Quick Guide: California’s Plan for Getting More Kids Back to School*, EdSource (April 4, 2021), <https://edsources.org/2021/quick-guide-how-does-gov-newsoms-safe-schools-for-all-plan-work/646111> (But based on available information, the vast majority of students in California are still learning remotely. Only 37% of elementary schools even offer some form of in-person instruction, and even fewer middle schools (19%) and high schools (20%), according to a [Los Angeles Times tracker](#).”).

<sup>13</sup> The Navajo Nation most recently issued a public health order, “Safer At Home,” on March 26, 2021. See <https://www.ndoh.navajo-nsn.gov/Portals/0/PDF/PHE/NDOH%20PHEO%202021-007%20Dikos%20Ntsaaigii-19.pdf>. The Stay at Home order ordering residents to conduct only essential business was in effect until March 10, 2021. See <https://www.ndoh.navajo-nsn.gov/Portals/0/PDF/PHE/NDOH%20Public%20Health%20Emergency%20Order%202021-006%20Dikos%20Ntsaaigii-19.pdf>. The state of California first issued a Stay Home Order on March 19,

process.<sup>14</sup> As described in more detail in the recent waiver request submitted by the Utah Education and Telehealth Network, special construction projects often require numerous permits from various federal, state, local, and Tribal entities.<sup>15</sup> The COVID-19 pandemic has exacerbated this lengthy process. Many governmental and Tribal entities have been forced to shut down or reduce operations due to restrictions caused by the COVID-19 pandemic. Further, permitting on national lands was paused for 60 days with the recent presidential administration change.<sup>16</sup> As a result of these shutdowns and reduction in services, permit approvals have been delayed, thereby delaying the entire timeline for the buildout of special construction projects.

The Commission also recently waived the service delivery deadline for non-recurring services for the Rural Health Care (RHC) Program, citing the significant disruptions to program participants caused by the ongoing and persistent COVID-19 pandemic.<sup>17</sup> Similarly, these disruptions and the unique circumstances caused by the COVID-19 pandemic are still present today for E-rate program participants.

SHLB believes the relief will be limited to a small group of applicants. Reviewing USAC's open data tool, there appear to be no more than 90 applications that would be eligible

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2020, and then implemented a tier system for reopening the state in August 2020. California recently announced the entire state may lift restrictions on businesses and residents starting on June 15, 2021. *See* <https://covid19.ca.gov/>.

<sup>14</sup> *See, e.g., Grand Canyon USD Order*, 35 FCC Rcd at 1502, 1504-1505, paras. 5-6, 12-14 (granting extension to complete construction in light of complexity of the build, unforgiving topography of the build route, and difficult permitting issues). *See also* UETN San Juan Waiver Request (requesting extension to complete construction in light of the topographical challenges, the need to obtain permits from numerous entities, and the challenges caused by the COVID-19 pandemic).

<sup>15</sup> *See* UETN San Juan Waiver Request.

<sup>16</sup> For example, on January 20, 2021, the Secretary of the Interior suspended the delegation of authority for a number of department bureaus and offices for a period of 60 days, delaying permit approvals for lands under its jurisdiction. *See* The Secretary of the Interior, Order No. 3395, *Temporary Suspension of Delegated Authority* (2021).

<sup>17</sup> *In the Matter of Rural Health Care Support Mechanism; Promoting Telehealth in Rural America*, WC Docket Nos. 02-60, 17-310, Order, DA 21-394, paras. 27-29 (WCB rel. April 8, 2021).

for this relief. SHLB believes it would be more efficient for the Wireline Competition Bureau to grant a waiver of the deadline – for the applicants, USAC, and the Commission – as it has done for the Rural Health Care program, instead of having each applicant submit a separate waiver request.<sup>18</sup> Furthermore, a waiver is appropriate here because it is difficult to predict which areas may be “hard hit” next and affected by an outbreak or surge of COVID-19 cases.

Additionally, a waiver would not cause any harm to the integrity of the E-rate program, but a denial of this waiver request would create significant hardship for the impacted applicants. If the requested waiver is not granted and the special construction project cannot meet the June 30, 2021 deadline, schools and libraries will lose E-rate funding for that project. Yet, special construction contracts often require payment even if the applicant does not receive E-rate program funds. As a result, applicants may be forced to pay for these special projects out of pocket. Although applicants may be able to apply for some funding during the next funding year, any funds expended thus far will have to be paid for without E-rate support, and even the most well-funded applicants may not be able to absorb these unexpected costs.

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<sup>18</sup> We note that USAC already granted some applicants a one-time extension before the Commission extended the deadline for special construction to June 30, 2021. Accordingly, it is not clear whether USAC has the authority to grant additional extensions for those applicants.

For these reasons, it is in the public interest for the Bureau to waive the rule and to extend special construction implementation deadlines in calendar year 2021 to June 30, 2022.<sup>19</sup> Given the upcoming deadline, it would be helpful for the Bureau to announce this relief as soon as possible. SHLB also respectfully requests that the Bureau grant a waiver of any other rules, such as invoicing deadlines, as may be necessary to allow E-rate program participants to timely complete implementation of their special construction projects.

Respectfully submitted,



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<sup>19</sup> Deadlines in 2021 could be applicable to multiple funding years, so we have not specified the funding year in this waiver request.