

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

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| In the Matter of |) | |
| |) | |
| Establishing Emergency Connectivity Fund to |) | |
| Close the Homework Gap |) | WC Docket No. 21-93 |
| |) | |
| Request for Waiver by The Schools, Health |) | |
| & Libraries Broadband Coalition and The |) | |
| Consortium for School Networking |) | |

**REQUEST FOR WAIVER BY
THE SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION
AND THE CONSORTIUM FOR SCHOOL NETWORKING**

Pursuant to Section 54.719 of the Commission’s rules,¹ the Schools, Health & Libraries Broadband Coalition (SHLB)² and the Consortium for School Networking (CoSN) respectfully ask the Wireline Competition Bureau (Bureau) to waive Section 54.1711(e) of the Commission’s Emergency Connectivity Fund (ECF) program rules and extend the current service delivery dates for requests for ECF eligible equipment, other non-recurring services, and recurring services submitted during the first, second, and third application filing windows.³ The extension is necessary due to timing of the issuance of funding commitments, the ongoing nature of the COVID-19 emergency, and deployment delays experienced by some applicants and their service providers.

¹ 47 C.F.R. § 54.719(c); 47 C.F.R. § 54.722(a).

² The SHLB Coalition is a non-profit, 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.

³ See 47 CFR § 54.1711(e).

Specifically, SHLB and CoSN request that the Bureau: extend the current June 30, 2023 service delivery deadline to June 30, 2024 for those Round 1 and 2 applicants that received a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) on or after March 1, 2022. In addition, SHLB and CoSN request that the Bureau extend the current December 31, 2023 service delivery deadline to June 30, 2024, for Round 3 applicants.

I. BACKGROUND

The COVID-19 pandemic created unprecedented challenges for all Americans, including the inability of many households to secure access to reliable broadband service and devices necessary to participate in remote work, learning, healthcare, and more. Since its inception, the ECF program has provided tremendously important federal aid to combat pandemic-related hardship by helping countless schools and libraries provide broadband services and equipment to students, school staff, and library patrons.

The first ECF program application filing window closed on August 13, 2021; the second window closed on October 13, 2021; and the third window closed on May 13, 2022. The Commission originally adopted June 30, 2022, as the service delivery date for those applicants who submitted requests for recurring services and for equipment and other non-recurring services during the first and second application filing windows. It subsequently waived and extended this June 2022 deadline an additional twelve months to June 30, 2023, pursuant to a request submitted by a group of stakeholders, including SHLB.⁴ The Commission adopted December 31, 2023, as the service delivery date for those applicants who submitted requests for

⁴ See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, Order, WC Docket No. 21-93 (Feb. 22, 2022) <https://www.fcc.gov/ecfs/document/022292706123/1> (*ECF Waiver Order*); see also *Petition of Schools, Health & Libraries Broadband Coalition, et al.*, WC Docket No. 21-93 (filed Jan. 28, 2022) <https://www.fcc.gov/ecfs/filing/101281737819629>.

recurring services and for equipment and other non-recurring services during the third application filing window covering funding for equipment and services purchased between July 1, 2022, and December 31, 2023.

Funds totaling \$7.171 billion have been dedicated to the ECF program. As of March 30, 2023, the Commission has approved ECF applications totaling over \$6.6 billion in funding.⁵ Of this amount, approximately \$4.14 billion is supporting applications submitted in the first window, \$833 million is supporting applications submitted in the second window, and \$1.65 billion is supporting applications submitted in the third window.⁶

Based on the data in USAC's ECF Program Data Tool, we believe that nearly 200 applications submitted in the first and second filing windows, and nearly 2,700 applications submitted in the third filing window, currently maintain a "pending" funding request status.⁷ In terms of funding amounts requested, approximately 3 percent of the total funding requested in 2021 in the first two windows are in applications that have not yet been decided, and nearly a third of the funding requested in the third window are in the same status almost a year after that filing window closed.⁸

⁵ News Release, Anne Veigle, FCC, FCC Announces Over \$2.8 Million in Emergency Connectivity Funding for Schools and Libraries (Mar. 30, 2023), <https://www.fcc.gov/document/fcc-announces-over-28-million-emergency-connectivity-funding>.

⁶ *Id.*

⁷ Universal Service Administrative Co., Emergency Connectivity Fund Program Data Tool (retrieved March 30, 2023) <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-Program-Data-Tool/yug3-zpzs>. To calculate this data, SHLB filtered the ECF Program Data Tool by filing window (combining windows 1 and 2) and funding request status to "pending" and downloaded the corresponding data file. Duplicate application numbers from Column "A" of the data file were removed so that only each unique application was counted.

⁸ *Id.* (retrieved March 20, 2023). To calculate this data, SHLB divided the total funding amount pending for each filing window by the total amount requested for each filing window (combining windows 1 and 2).

II. FOR MANY ECF RECIPIENTS, THE AMOUNT OF TIME BETWEEN RECEIVING A FUNDING COMMITMENT DECISION LETTER AND THE CURRENT SERVICE DELIVERY DEADLINES MAY INHIBIT THEIR ABILITY TO FULLY USE THEIR REQUESTED ECF FUNDING

Although the Commission has made significant progress in funding ECF requests, there are ECF applicants who are either still awaiting application approval or who received an FCDL or RFCDL with a narrow amount of time to utilize their funding prior to the current service delivery dates. In these cases, eligible schools and libraries may not be able to receive their requested ECF supported equipment and/or receive their requested period of broadband service prior to the current service delivery deadlines. This outcome would ultimately deprive students and library patrons of the opportunity to obtain low-cost broadband equipment and/or their requested timeframe of connectivity.

For the remaining ECF requests that are currently pending, the ability of these applicants to receive ECF supported equipment and/or provide the full period of service prior to the current service delivery dates is directly in jeopardy, given that the June and December 2023 service delivery dates will occur in less than twelve months. And even if an applicant received an FCDL or RFCDL, it still may not be able to meet the existing service delivery deadlines or use its funding to the fullest extent. Certain factors, such as the amount of time between when an applicant received its FCDL and RFCDL and the service delivery date, combined with the time necessary for a recipient to order, receive, and distribute equipment and services once they are procured, could inhibit an ECF recipient from fully using their requested funding prior to the service delivery dates. For example, many applicants wait to enter contracts for the purchase of equipment and/or services until they receive funding approval. Alternatively, those that did enter into a contract may be required to renegotiate certain terms once they receive a FCDL or RFCDL, especially if pricing for equipment/services increased by the time an applicant received

funding approval. Additionally, an applicant may need to request equipment and/or service substitutions if those originally requested are no longer available. Any of these scenarios could result in an uncertain amount of delay after an applicant receives its FCDL or RFCDL. Further, applicants have been operating under the COVID-19 Public Health Emergency and any constraints and challenges related thereto,⁹ as well as any remaining manufacturing and global supply chain issues that contribute to order and delivery delays.¹⁰ All of these factors can impact and delay the time an ECF applicant needs to complete a project that has been approved. In these cases, even an applicant that received its FCDL or RFCDL exactly twelve months prior to the current applicable service delivery date would not be able to provide a full twelve months of ECF-supported service.

The following scenarios are illustrative of some of the issues faced by applicants, given the timing of approved funding commitments combined with other factors resulting in delay:

- A large urban school district in Georgia received its Window 3 FCDL in November of 2022 to deploy Wi-Fi on its school bus fleet. Installation, however, required an additional 1 to 2 months due to the size and availability of the buses, curbing the district's ability to provide a full twelve months of service to students under the current December 2023 deadline.¹¹
- A rural, single-school district in Minnesota received its Window 3 FCDL in January 2023, with deployment anticipated one month later, in February. The district will not

⁹ The Department of Health and Human Services announced that it is planning for the federal Public Health Emergency for COVID-19 to expire on May 11, 2023. *See* U.S. Department of Health & Human Services, Assistant Secretary for Public Affairs (ASPA), COVID-19 Public Health Emergency (PHE) (last reviewed Mar. 2, 2023), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html>.

¹⁰ The Commission has previously stated that factors like supply chain disruptions and the pandemic's ongoing impact present the types of circumstances that contribute to applicants' need for additional time and merit a waiver of its rules. *See* ECF Waiver Order at 9; *see also* Schools and Libraries Universal Service Support Mechanism, Order, CC Docket No. 02-6 (Sept. 19, 2022) <https://www.fcc.gov/document/wcb-extends-delivery-deadline-certain-fy202021-e-rate-services>.

¹¹ After deliberation, this district is concerned about the inability to utilize its full approved funding and has paused deployment, pending further evaluation. If the service delivery deadline were extended to 6/30/2024, it may reconsider.

be able to provide its approved full twelve months of service to students under the current December 2023 deadline.

- A large public charter school in Florida received two Window 3 approvals, one in January and one in February 2023, for its middle school and high school. The district will not be able to provide its approved full twelve months of service under the current December 2023 deadline.
- A rural school district in Louisiana received its RFCDL for a Round 1 special construction ECF application from USAC in September 2022. The service delivery deadline for special construction installation is September 2023, however the deadline for recurring services provided over those facilities is June 2023. The district will not be able to provide its approved full twelve months of service under the current June 2023 deadline.
- A California County Office of Education applied for the purchase of 1,453 Chromebooks and hotspot service for 720 devices in Window 3. It received its FCDL in December 2022. Because the request covers various programs that operate independently of one another (like alternative education, community day, and special education), the applicant required additional time to coordinate with each separate department to deploy funded equipment and services. As a result, it will not be able to utilize its approved full twelve months of service under the current December 2023 deadline.

III. SERVICE DELIVERY DEADLINE EXTENSIONS ARE APPROPRIATE FOR SOME ECF RECIPIENTS

To help applicants to fully utilize their ECF funding, SHLB and CoSN ask the Commission to waive Section 54.1711(e) of the ECF program rules and extend the current June 2023 service delivery date for the first and second filing windows, and the December 2023 service delivery date for the third filing window. For applications submitted in windows 1 and 2, we ask that the current June 30, 2023 service delivery date be extended an additional year to June 30, 2024 if the applicant received an FCDL or RFCDL on or after March 1, 2022.¹² For

¹² Those applicants that received an FCDL or RFCDL prior to March 1, 2022 for requests submitted in the first and second filing windows, or those with special circumstances, can still separately apply to the Commission for an individual waiver. This blanket extension, however, will reduce the number of appeals or waiver requests that the Commission receives as the deadline draws nearer.

applications filed in window 3, SHLB and CoSN ask that the current December 31, 2023 service delivery date be extended an additional six months to June 30, 2024, for all applicants.¹³

Generally, the Commission maintains discretion to waive any provision of its rules for good cause shown.¹⁴ 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.¹⁵

This waiver request is in the public interest because, if the current service delivery dates are not extended, the ECF program would currently provide minimal assistance, at best, to those applicants who are still waiting for funding request approval or to those who are inhibited from fully using their funds given the timing between when they received their FCDL or RFCDL's and the service delivery dates combined with other factors delaying the project as described herein. This outcome would ultimately harm the students and library patrons that could have received a supported device and/or the requested period of low-cost broadband connectivity, but who now may receive only a fraction of the request. This outcome would not serve the public interest, nor would it serve the program's goal to bring necessary broadband equipment and services to those in need to the fullest extent possible.

Additionally, if the Commission does not extend the service delivery dates, applicants will not be able to use all of their awarded funding, and the Commission will have spent less than the full \$7.17 billion in funding that was appropriated by Congress. It would be a far better

¹³ If the Public Health Emergency for the COVID-19 pandemic ends at the end of the day on May 11, 2023 (or sooner), the ECF program would end on June 30, 2024. *See* Establishing Emergency Connectivity Fund to Close the Homework Gap, Report and Order, WC Docket No. 21-93, para. 7 (rel. May 11, 2021).

¹⁴ 47 C.F.R. § 1.3.

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

policy outcome for the Commission to extend the deadline and allow applicants to utilize the full amount of their awarded funding rather than opening a fourth application window to award the remaining dollars.

IV. CONCLUSION

Accordingly, we ask the Commission to extend the current ECF service delivery dates as described above.¹⁶

Respectfully Submitted by:

SCHOOLS, HEALTH & LIBRARIES
BROADBAND (SHLB) COALITION
Kristen Corra, Policy Counsel
1250 Connecticut Ave. NW, Suite 700
Washington, DC 20036

CONSORTIUM FOR SCHOOL
NETWORKING
Keith Krueger, Chief Executive Officer
1325 G St. NW, Suite 420
Washington, DC 20005

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¹⁶ We note that a grant of this request as presented herein would also automatically extend the ECF invoice filing deadline date. Under the Commission’s rules, “[i]nvoices must be submitted to the Administrator within 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 service delivery date, whichever is later.” 47 C.F.R. § 54.1711(d).