

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

In the Matter of)
Schools and Libraries Universal Service Support) CC Docket No. 02-6
Mechanism)
)

ORDER

Adopted: September 19, 2022

Released: September 19, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. Most schools and libraries across the United States have returned to in-person learning, but they are still impacted by the challenges that stem from the ongoing coronavirus (COVID-19) pandemic. Specifically, they are experiencing delays in estimated delivery and installation of E-Rate-eligible equipment and services, due to labor and equipment shortages from the global supply chain disruptions that have been exacerbated during the COVID-19 pandemic. To provide relief to E-Rate program participants affected by this unprecedented national pandemic, we waive section 54.507(d)(4) of the Commission's rules and extend the service implementation deadline to September 30, 2023 for certain funding year 2020 and 2021 applicants with non-recurring service deadlines that expire on September 30, 2022. In providing this relief, we seek to prevent schools and libraries from losing their funding due to circumstances out of their control, alleviate administrative burdens, and assist schools and libraries by giving them additional time to receive the equipment and services they need to serve their students and patrons.

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, including connections necessary to support broadband connectivity to eligible schools and libraries. To obtain support, an applicant must comply with the Commission's competitive bidding rules, enter into an agreement with a service provider, and apply for E-Rate discounts with USAC for the purchase of eligible equipment and services. To ensure efficient and effective administration of the program, the

1 See Letter from Kristen Corra, Policy Counsel, Schools, Health & Libraries Broadband (SHLB) Coalition, to Marlene H. Dortch, Secretary, FCC at 1 (Aug. 10, 2022) (SHLB Letter); Letter from Kristen Corra, Policy Counsel, SHLB Coalition, to Marlene H. Dortch, Secretary, FCC (Sept. 9, 2022) (SHLB Ex Parte) (requesting that the Commission provide a blanket waiver for all funding year 2020 and 2021 non-recurring service requests regardless of whether the funding year 2020 applicant had requested an extension of this deadline pursuant to section 54.507(d)(4)(i)-(iv)). The E-Rate program is more formally known as the schools and libraries universal service support mechanism.

2 47 CFR §§ 54.501, 54.502.

3 See 47 CFR § 54.503.

Commission has adopted deadlines for the filing of appeals, requests for waiver, and invoices, as well as for the delivery of equipment and services.⁴

3. SHLB requests a temporary waiver of section 54.507(d)(4) of the Commission rules for non-recurring services for funding years 2020 and 2021 and an extension of the service delivery deadline for these services from September 30, 2022 to October 2, 2023.⁵ SHLB states that many schools and libraries are experiencing delays in the estimated delivery and installation of E-Rate-funded non-recurring services because of the equipment shortages caused by the global supply chain crisis resulting from the COVID-19 pandemic.⁶ SHLB explains that “challenges such as labor shortages, equipment availability, and global bottlenecks, geopolitical conflict, renewed by COVID-19 lockdowns, and silicon chip shortages affecting the technology industry” are preventing schools and libraries, as well as their service providers, from being able to meet the upcoming September 30, 2022 service delivery deadline for non-recurring services.⁷ SHLB requests that the Commission issue a blanket waiver and extend the service delivery deadline for non-recurring services to October 2, 2023 for all funding year 2020 and 2021 non-recurring service requests that are currently subject to the September 30, 2022 service delivery deadline.⁸

III. DISCUSSION

4. Generally, the Commission’s rules may be waived for good cause shown.⁹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ Given the continuation of global supply chain delays and its impact on the timely delivery and installation of applicants’ E-Rate-funded equipment and services, we find there is good cause to waive and extend the upcoming September 30, 2022 non-recurring service implementation deadline to September 30, 2023 for these funding year 2020 and 2021 requests. Although SHLB requests that the funding year 2020 and 2021 requests with the current September 30, 2022 service implementation deadline be extended to October 2, 2023, for administrative ease, we are extending the deadline for one year to September 30, 2023. We note that funding year 2022 non-recurring service requests currently have September 30, 2023 as the service implementation deadline pursuant to section 54.507(d)(4), and we do not want to cause confusion by using October 2, 2023 for certain funding year 2020 and 2021 non-recurring requests and September 30, 2023 for the funding year 2022 non-recurring service requests.

5. *Waiver of the Service Implementation Deadline for Non-recurring Services.* The Commission’s E-Rate rules require non-recurring services to be delivered by September 30 of the funding year for which services were sought.¹² We find that good cause exists to waive section 54.507(d)(4) of the Commission’s rules and extend the service implementation deadline an additional one year from September 30, 2022 to September 30, 2023, due to the global supply chain disruptions and the delays that schools and libraries are facing regarding these funding year 2020 and 2021 requests. In particular, we

⁴ See, e.g., 47 CFR §§ 54.507(d)(1),(4); 54.514; 54.720.

⁵ SHLB Letter at 1.

⁶ *Id.*

⁷ *Id.* at 2-3.

⁸ *Id.* at 6.

⁹ 47 CFR § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

¹² 47 CFR § 54.507(d)(4) (requiring the delivery and installation of non-recurring services by September 30 following the close of the funding year).

find that schools and libraries are unable to complete their projects by the anticipated deadlines, due to the pandemic and resulting global supply chain and labor disruptions. As SHLB explains, their members have experienced delivery delays of six to 12 months, have received only partial orders, and have been unable to secure the workforce needed to install the equipment after it is delivered.¹³ These circumstances are beyond the control of the schools, libraries, and their service providers, and are preventing applicants from meeting the established deadline for the implementation of their non-recurring services. Because it would be inconsistent with the public interest to penalize schools and libraries for these unanticipated delays, we find it appropriate to waive the upcoming September 30, 2022 service implementation deadline for non-recurring services, and extend the deadline to September 30, 2023 for these funding year 2020 and 2021 requests.

6. We note that this relief applies to only funding year 2020 and funding year 2021 non-recurring service funding requests that currently have September 30, 2022 as the service implementation deadline for these services.¹⁴ We decline, however, to extend the service implementation deadline for the other funding year 2020 requests that had September 30, 2021 as the deadline pursuant to section 54.504(d)(4), as requested in SHLB's Ex Parte.¹⁵ These applicants should have requested an extension pursuant to section 54.507(d)(d)(i)-(iv) of the Commission's rules if they needed additional time to implement these services by the September 30, 2021 deadline, and we find that our waiver standards are not met to provide a blanket extension for all funding year 2020 non-recurring service requests nearly one year after this deadline has passed. If there are special circumstances, these applicants may file a waiver request for these funding year 2020 non-recurring services that were required to be implemented by September 30, 2021 pursuant to section 54.507(d)(4) of the Commission's rules, but they will also need to justify why the waiver request is being submitted late.

7. *Preventing Waste, Fraud, and Abuse.* We are committed to protecting the limited E-Rate funding from waste, fraud, and abuse. Although we grant a waiver and extend the service implementation deadline for non-recurring services from September 30, 2022 to September 30, 2023, program participants remain otherwise subject to audits and investigations to determine compliance with E-Rate program rules and requirements. We will require USAC to recover funds through its normal processes when we discover that the E-Rate funds were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the USF programs and to determine on a case-by-case basis when waste, fraud, or abuse of program funds has occurred, and that recovery is warranted. We remain committed to ensuring the integrity of the E-Rate program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

IV. ORDERING CLAUSES

8. 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 section 54.507(d)(4) of the Commission's rules, 47 CFR § 54.507(d)(4), is waived to the limited extent provided herein.

¹³ SHLB Letter at 3.

¹⁴ See, e.g., *Schools and Libraries Universal Support Mechanism, et al.*, CC Docket Nos. 02-6, *et al.*, 36 FCC Red 13405, 13408, para. 6 (WCB 2021) (extending the funding year 2020 non-recurring service implementation deadline from September 30, 2021 to September 30, 2022 for applicants located in areas directly impacted by Hurricane Ida (i.e., located in Louisiana and Mississippi)) and 47 CFR § 54.507(d)(4)(i)-(iv) (listing the criteria for requesting and receiving an extension of the deadline to implement non-recurring services).

¹⁵ *SHLB Ex Parte* at 1 and 2.

9. 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