

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

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Schools and Libraries Universal Support Mechanism |) | CC Docket No. 02-6 |
| |) | |
| Rural Health Care Universal Support Mechanism |) | WC Docket No. 02-60 |
| |) | |
| Lifeline and Link Up Reform and Modernization |) | WC Docket No. 11-42 |
| |) | |
| Connect America Fund |) | WC Docket No. 10-90 |
| |) | |
| Federal-State Joint Board on Universal Service High-Cost Universal Service Support |) | WC Docket No. 05-337 |
| |) | |
| Establishing Emergency Connectivity Fund to Close the Homework Gap |) | WC Docket No. 21-93 |
| |) | |
| Emergency Broadband Benefit Program |) | WC Docket No. 20-445 |
| |) | |

ORDER

Adopted: September 3, 2021

Released: September 3, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we waive, on our own motion, certain E-Rate,¹ Rural Health Care (RHC), Lifeline, High Cost, Emergency Connectivity Fund, and Emergency Broadband Benefit rules and deadlines to assist participants and providers located in the areas affected by Hurricane Ida, which struck the states of Louisiana and Mississippi last week.² The resulting storm surge, wind damage, and flooding have destroyed and damaged homes, schools, libraries, and health care facilities and displaced residents. The hurricane has also caused significant power and communications network outages throughout the impacted areas.³ Because of these compelling and unique circumstances, we find good cause to waive certain rules and deadlines to assist program participants and providers in the affected areas.⁴

¹ E-Rate is more formally known as the schools and libraries universal support mechanism.

² See Emma Newburger, CNBC, *Ida now a tropical storm as more than 1 million Louisiana utility customers are left without power* (updated Aug. 30, 2021), <https://www.cnbc.com/2021/08/29/hurricane-ida-makes-landfall-in-louisiana-as-a-powerful-category-4-storm.html>.

³ See Jacob Bogage and Will Englund, The Washington Post, *New Orleans power failures could pose more dangers than the hurricane itself, aid workers warn* (Aug. 31, 2021), <https://www.washingtonpost.com/business/2021/08/31/ida-power-outages-orleans/>.

⁴ See *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support*

(continued....)

II. BACKGROUND

2. On Sunday, August 29, 2021, Hurricane Ida struck the Gulf Coast of the United States as a Category 4 hurricane, causing significant damage in the states of Louisiana and Mississippi. As one of the strongest storms to hit Louisiana since Hurricane Katrina in 2005, Hurricane Ida caused massive flooding, resulting in significant property damage and injuries.⁵ Ida also caused substantial communications service disruptions in Louisiana and Mississippi and the immediate effects of the storm are expected to continue for several days or weeks.⁶ When the storm made landfall, more than one million homes and businesses in Louisiana, including all of New Orleans, and Mississippi, were left without power when winds toppled an electricity transmission tower and knocked out hundreds of substations.⁷ The President signed emergency declarations for all of Louisiana and parts of Mississippi and subsequently, a major disaster declaration for all of Louisiana due to Hurricane Ida.⁸

3. Historically, the Wireline Competition Bureau (Bureau) has granted waivers of certain Universal Service Fund (USF) Program deadlines for areas affected by natural disasters.⁹ For the

(Continued from previous page) _____

Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd. 7456 (2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, *Order* 20 FCC Rcd 16883 (2005) (adopting temporary rules to provide rural and non-rural public and nonprofit health care providers in areas devastated by Hurricane Katrina, and in areas where evacuees are located, with assistance in order to help in the recovery efforts); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁵ Emma Newburger, CNBC, *Ida now a tropical storm as more than 1 million Louisiana utility customers are left without power* (updated Aug. 30, 2021), <https://www.cnbc.com/2021/08/29/hurricane-ida-makes-landfall-in-louisiana-as-a-powerful-category-4-storm.html>.

⁶ Madeline Holcombe, Holly Yan and Eric Levenson, CNN, *Ida left more than 1 million without power, possibly for weeks. And now comes the scorching heat* (Aug. 31, 2021), <https://www.cnn.com/2021/08/31/weather/tropical-depression-ida-tuesday/index.html>.

⁷ Kevin McGill, Chevel Johnson and Melinda Deslatte, The Associated Press, *Ida's Sweltering Aftermath: No Power, No Water, No Gasoline* (Sept. 1, 2021), <https://apnews.com/article/hurricane-ida-louisiana-new-orleans-mississippi-f6d6750d736af169ae09fa3142f92a4e>. See also, Rick Rojas and Campbell Robertson, The New York Times, *Ida's Heavy Rains Send Louisiana Residents on a Hunt for Clean Water* (Sept. 1, 2021), <https://www.nytimes.com/2021/09/01/us/hurricane-ida-water.html>.

⁸ FEMA, President Joseph R. Biden, Jr. Approves Major Disaster Declaration for Louisiana (Aug. 30, 2021), <https://www.fema.gov/press-release/20210830/president-joseph-r-biden-jr-approves-major-disaster-declaration-louisiana> (last visited Sept. 3, 2021); FEMA, President Joseph R. Biden, Jr. Approves Emergency Declaration for Mississippi (Aug. 28, 2021), <https://www.fema.gov/press-release/20210829/president-joseph-r-biden-jr-approves-emergency-declaration-mississippi> (last visited Sept. 3, 2021) and President Joseph R. Biden, Jr. Approves Emergency Declaration for Louisiana (Aug. 27, 2021), <https://www.fema.gov/press-release/20210830/president-joseph-r-biden-jr-approves-major-disaster-declaration-louisiana> (last visited Sept. 3, 2021).

⁹ See, e.g., *Schools and Libraries Universal Service Support Mechanism; Rural Health Care Universal Support Mechanism; Lifeline and Link Up Reform Modernization*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, *Order*, 32 FCC Rcd 7456, 7457, para. 2 (WCB 2017) (*Hurricanes Harvey, Irma, and Maria Order*); *Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-6, *Order*, 34 FCC Rcd 56, 57, para. 2 (WCB 2019) (*California Wildfires Order*); *Request for Waiver of Section 54.514 of the Commission's Rules by Florida Department of Management Services; Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, *Order*, 33 FCC Rcd 10186, 10188, para. 5 (WCB 2018) (*Florida Hurricanes Order*); *Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, *Order*, 32 FCC Rcd 9538, 9540, para. 4 (2017) (*FCC Hurricanes Harvey, Irma, and Maria Order*); *Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism*, CC Docket Nos. 96-45

(continued....)

purposes of the waivers we grant today, we define “Affected Disaster Areas” as the Louisiana parishes and Mississippi counties that the Federal Emergency Management Agency (FEMA) has designated as eligible for Individual or Public Assistance for the purposes of federal disaster relief as of the date of release of this Order, which includes all parishes and counties in those states.

III. DISCUSSION

4. In response to the damage caused by Hurricane Ida, we waive various provisions of the USF, Emergency Connectivity Fund Program, and Emergency Broadband Benefit Program rules for those FCC programs’ participants in the Affected Disaster Areas.¹⁰ Generally, the Commission’s rules may be waived for good cause shown.¹¹ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹² In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an overall basis.¹³

A. E-Rate Program

5. *E-Rate Program Deadlines.* For schools and libraries located in Affected Disaster Areas,¹⁴ we waive, on an emergency interim basis, the following deadlines that may occur after the effective date of this Order,¹⁵ and provide those affected with up to 150 calendar days from the effective date of this Order to submit the required filing:¹⁶

- Requests for review or waiver of decisions by USAC, directed to USAC or the Commission.¹⁷
- Filing FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act Certification (CIPA) Form).¹⁸

(Continued from previous page) _____
and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16885, para. 4 (2005) (*Hurricane Katrina Order*).

¹⁰ We recognize that entities in the Affected Disaster Areas may need additional relief relating to USF, Emergency Connectivity Fund, and Emergency Broadband Benefit Program obligations not addressed in this Order as they complete assessments of the damage to their networks; such entities should request specific relief to address these individualized circumstances from the Wireline Competition Bureau. Further, entities eligible for USF support located outside the Affected Disaster Areas that have experienced similarly catastrophic damage from Hurricane Ida may also request similar, narrowly-tailored relief from these or other requirements from the Bureau.

¹¹ 47 CFR § 1.3.

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹³ *Northeast Cellular*, 897 F.2d at 1166.

¹⁴ E-Rate-eligible entities located outside the Affected Disaster Areas that have experienced similarly catastrophic damage from Hurricane Ida may request similar, narrowly-tailored relief from these or other requirements from the Bureau.

¹⁵ Program participants located in the Affected Disaster Areas who may have already missed these deadlines due to damage or disruption caused by Hurricane Ida may submit the required filings up to 150 calendar days from the release date of this Order.

¹⁶ We note that Universal Service Administrative Company (USAC), the Administrator of the universal service support programs, including the E-Rate program, has already suspended many of its administrative deadlines for applicants in the Affected Disaster Areas pursuant to its natural disaster procedures.

¹⁷ 47 CFR § 54.720; 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

- Filing FCC Form 472 (Billed Entity Applicant Reimbursement (BEAR) Form) and Form 474 (Service Provider Invoice Form).¹⁹

6. *Service Implementation Deadline Extensions.* Additionally, we find that good cause exists to waive certain service implementation deadline rules, subject to the limitations herein, for applicants located in the Affected Disaster Areas. We find that the extensive damage to property, facilities, and resources resulting from Hurricane Ida will make it impossible for some applicants in the Affected Disaster Areas to complete the installation of internal connections and other non-recurring services by the September 30, 2021 deadline for Funding Year (FY) 2020, and that service installation and construction efforts may continue to be delayed or impaired as communities in the Affected Disaster Areas work to recover and rebuild. Accordingly, we extend the FY 2020 implementation deadline for non-recurring services, other than special construction, to September 30, 2022 for applicants in the Affected Disaster Areas.²⁰ For applicants located in the Affected Disaster Areas that have a special construction deadline of June 30, 2022, we extend the deadline to complete special construction and light the new fiber until June 30, 2023, subject to the applicant filing a valid FCC Form 500 certifying that construction for the special construction project was unavoidably delayed due to damage caused by Hurricane Ida.²¹

7. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Ida. We waive section 54.516(a) of our rules with respect to such destroyed records, which requires schools, libraries, consortia, and service providers to retain all documents related to their application for at least 10 years after the latter of the last day of the applicable funding year or the service delivery deadline for the funding request.²² Applicants and service providers will not be penalized for failure to retain records destroyed by Hurricane Ida. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by Hurricane Ida. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party upon request by USAC or the Commission. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by Hurricane Ida, including records relating to any relief granted by this Order.

(Continued from previous page) _____

¹⁸ Instructions for Completing the Schools and Libraries Universal Service, Receipt of Service Confirmation Form (FCC Form 486), OMB 3060-0853 at 4; *see also Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Order, 17 FCC Rcd 12443, 12445, para. 5 (2002).

¹⁹ 47 CFR § 54.514(a). Given the enormous damage inflicted by Hurricane Ida, consistent with precedent we find that extraordinary circumstances exist warranting a waiver of the invoicing deadlines. *See Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, *Order*, 32 FCC Rcd 7456, 7458, n.13 (2017) (waiving E-Rate invoice deadline for areas impacted by Hurricanes Harvey, Irma, and Maria); *see also Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd at 8965-66, paras. 238-40 (2014).

²⁰ 47 CFR § 54.507(d)(4). The implementation deadline for non-recurring services, other than special construction, for FY 2020 is September 30, 2021.

²¹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014). The applicant may file the FCC Form 500 any time before June 30, 2022.

²² 47 CFR § 54.516(a).

8. *Service and Equipment Substitutions.* Consistent with precedent, we also provide increased flexibility for service substitutions in the Affected Disaster Areas.²³ Section 54.504(d) of the Commission’s rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;²⁴ (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.²⁵ For applicants located in Affected Disaster Areas that need to replace a service or product that has been disrupted, destroyed, or rendered unusable by Hurricane Ida, we waive this rule to exclude the requirement that the substituted service or product must have the same functionality as the service or product that it is replacing.²⁶ This will allow applicants in the Affected Disaster Areas the maximum flexibility to substitute services based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),²⁷ so that they may use already approved E-Rate funding to replace damaged or destroyed equipment and restore services, subject to the limitations stated herein.²⁸ We believe this additional flexibility will allow applicants, given their specific understanding of their circumstances, to use funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives section 54.504(d)(1)(i) of the Commission’s rules for applicants while keeping the remaining aspects of our service substitution rule intact. Applicants must continue to ensure that a service substitution: (a) does not violate any contract provisions;²⁹ (b) does not

²³ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9543-44, para. 10 (2017) (providing increased flexibility for E-Rate program service substitutions in the wake of Hurricanes Harvey, Irma, and Maria).

²⁴ The Commission previously determined that a service or equipment change request does not have the same functionality if it “changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service).” *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

²⁵ 47 CFR § 54.504(d)(1)(iv).

²⁶ 47 CFR § 54.504(d)(1)(i). We remind applicants that they may only request service substitutions if the implementation deadline for the service or product to be replaced has not passed. See, e.g., 47 CFR §§ 54.507(d)(1), (d)(4); see also *Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014).

²⁷ In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission’s rules permit applicants to do so when: (a) it is allowed under an applicant’s state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. See *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket Nos. 02-6 et al., Sixth Report and Order, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

²⁸ Effective in Funding Year 2021, school districts and library systems are permitted to transfer equipment between schools within a district and libraries within a system without notifying USAC of the transfer. See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11238-39, para. 49 (2019); 47 CFR § 54.513(d). However, both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years as required by the Commission’s rules. *Id.*

violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.³⁰ Applicants must also request approval of service substitutions by submitting a service substitution request to USAC.

9. We find that the extraordinary property damage, personal injury, and disruptions in services caused by Hurricane Ida in the Affected Disaster Areas constitute extremely unusual circumstances warranting the temporary waiver of the rules and procedures described above. We find that a 150-day waiver period for the filing deadlines listed above and other relief granted by this Order are appropriate measures to accommodate the extraordinary circumstances caused by Hurricane Ida, while continuing to protect program integrity. Applicants or service providers in the Affected Disaster Areas that are unable to comply with these program deadlines or procedures at the end of this period may request additional, narrowly-tailored relief from these or other requirements from the Bureau.

B. Rural Health Care Program

10. For health care providers and service providers located in the Affected Disaster Areas, we also waive, on a temporary basis, the following Rural Health Care (RHC) Program rules: (1) the 60-day deadline to file appeals and requests for waiver; (2) the 14-day deadline to respond to USAC information requests; (3) the September 30, 2021 deadline for consortia participating in the Healthcare Connect Fund Program to file Annual Reports; and (4) the five-year documentation retention and production rules for participating health care providers and service providers whose documents were destroyed by Hurricane Ida. We provide affected health care providers and service providers with up to 150 calendar days from the effective date of this Order to submit the required filings described below.

11. *Deadline for Appeals and Requests for Waiver.* We waive the 60-day deadlines in section 54.720(a)-(b) of the Commission's rules for requests for review or waiver of decisions by USAC or directed to USAC or the Commission.³¹ We find that waiving the deadline for filing appeals and waivers is an appropriate measure to accommodate the extraordinary circumstances caused by Hurricane Ida. We understand that the disruptions caused by Hurricane Ida will continue to impact health care providers and service providers in the affected areas and find that any harm in giving petitioners additional time to submit their filings is outweighed by the significant public interest benefits. To reduce the burden on petitioners, we direct USAC to automatically provide petitioners with an additional 60 days to file appeals and waivers. This waiver will be in effect for all deadlines of appeals and waiver requests from August 30, 2021 through 150 calendar days from the release of this Order.

12. *Response Time for USAC Information Requests.* We waive the 14-day deadline for applicants in the affected areas to respond to information requests from USAC.³² This waiver applies to information requests related to funding requests, appeals and waivers, invoices, audits, and other documentation submitted by program participants. We understand that in response to Hurricane Ida, health care providers may have diverted their administrative resources or be unable to access facilities, which would impede their ability to respond timely to USAC information requests. This waiver will

(Continued from previous page) _____

²⁹ The additional flexibility provided for applicants located in the Affected Disaster Areas seeking substitutions for services and products damaged by Hurricane Ida is not intended to invalidate any contracts between applicants and service providers. Applicants are solely responsible for ensuring that requested service substitutions are permitted under their agreements with service providers.

³⁰ 47 CFR § 54.504(d). In the event that a service substitution results in a change in the pre-discount price for the supported service, support is based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. 47 CFR § 54.504(d)(2).

³¹ 47 CFR § 54.720(a)-(b).

³² See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 30 FCC Rcd 230, 230, para. 1 (2015) (*FCC Form 466 Documentation Order*).

apply to all information requests issued on or before August 30, 2021 regardless of the funding year for which those requests relate.

13. *Health Care Connect Fund Program – Annual Reporting.* We waive the September 30, 2021 deadline in section 54.618 of the Commission’s rules for consortia participating in the Healthcare Connect Fund Program to file Annual Reports.³³ We find that the property damage, personal injury, and disruptions in services caused by Hurricane Ida warrant a waiver of the deadline for the annual reporting requirement.

14. *Documentation Retention and Production.* We also recognize that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Ida. With respect to such destroyed records, we waive section 54.631(b) of the Commission’s RHC Program rules, which requires health care providers and service providers to retain all documents specified by the rule for at least five years after the last day of the delivery of supported services in a given funding year.³⁴ Program participants will not be penalized for failure to retain records destroyed by the Hurricane. Applicants and service providers are responsible, however, for obtaining such records, where available, from a third party upon request by USAC or the Commission. Program participants that rely on this waiver as a basis for not retaining or producing records upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by Hurricane Ida. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by the Hurricane, including records relating to any relief granted by this Order.

C. Lifeline Program

15. We next, on our own motion, waive the Lifeline non-usage rules for subscribers residing in the Affected Disaster Areas. We find that good cause exists to waive through November 30, 2021 sections 54.405(e)(3) and 54.407(c)(2) of the Commission’s rules for eligible telecommunications carriers (ETCs) serving Lifeline subscribers residing in the Affected Disaster Areas.³⁵ Given the extraordinary damage caused by Hurricane Ida, strict compliance with these rules would be impracticable and would risk de-enrollment of Lifeline subscribers during the recovery efforts to rebuild in the aftermath of the Hurricane.³⁶

16. To promote the maintenance and rebuilding of communities affected by the Hurricane and to facilitate continued access to telecommunications services for disaster victims, we find it is in the public interest to temporarily waive sections 54.405(e)(3) and 54.407(c)(2) of the Commission’s rules.³⁷ Under these rules, ETCs must de-enroll Lifeline subscribers who do not pay a monthly fee for their

³³ 47 CFR § 54.618.

³⁴ 47 CFR § 54.631(b).

³⁵ See 47 CFR §§ 54.405(e)(3), 54.407(c)(2). This Order is not meant to implicate the Lifeline COVID-19 waiver orders issued in 2020 and 2021. The Commission will consider those issues separately. See e.g. *Lifeline and Link Up Modernization*, WC Docket No. 11-42, Order, 2021 WL 2668477 (WCB 2021).

³⁶ See *Schools and Libraries Universal Service Support Mechanism, Rural Health Care Universal Service Support Mechanism, Lifeline and Link Up Reform and Modernization, Universal Service Contribution Methodology*, CC Docket No. 02-6, WC Docket No. 02-60, WC Docket No. 11-42, WC Docket No. 06-122, Order, 32 FCC Rcd. 7456 (WCB 2017) (waiving certain E-Rate, RHC, Lifeline and contribution rules and deadlines for areas impacted by Hurricanes Harvey, Irma, and Maria); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 32 FCC Rcd 6846 (WCB 2017) (waiving Lifeline rules for areas in Puerto Rico and the U.S. Virgin Islands impacted by Hurricane Irma); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 33 FCC Rcd. 11236 (WCB 2018) (waiving Lifeline rules for areas in Florida impacted by Hurricane Michael).

³⁷ 47 CFR §§ 54.405(e)(3), 54.407(c)(2).

Lifeline-supported service and do not use that service for 30 consecutive days.³⁸ Waiving these rules will help low-income consumers retain access to emergency communications services during this natural disaster and allows ETCs to continue providing Lifeline service to disaster victims in the affected areas without requiring those subscribers to de-enroll and re-enroll in the program as they continue to rebuild from the devastation of the Hurricane. At the expiration of the waiver period, Lifeline subscribers who are subject to the non-usage rule will have 30 days to use their Lifeline service for the purposes of section 54.405(e)(3) of the Commission's rules.³⁹

17. ETCs in the Affected Disaster Areas that are unable to comply with the Lifeline non-usage requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

D. High-cost Program

18. *Waiver of Performance Measures Testing and Pre-Testing for Third and Fourth Quarter 2021.* Recipients of high-cost universal service support with broadband build-out obligations must test the speed and latency performance at the supported locations and submit the testing results.⁴⁰ The purpose of the testing requirement is to ensure high-cost supported networks meet the required standards for the relevant support program. To capture any seasonal effects on a carrier's broadband performance, carriers must conduct one week of testing in each quarter of the calendar year—January through March (first quarter), April through June (second quarter), July through September (third quarter), and October through December (fourth quarter).⁴¹

19. To allow carriers to become accustomed to performance testing, the Commission implemented a pre-testing period that would occur prior to the commencement of each carrier's testing start date. During the pre-testing period, carriers must test the speed and latency of their networks quarterly for a weeklong period and submit the results within one week of the end of each quarter of pre-testing. However, no support reductions are assessed during the pre-testing period as long as carriers perform the pre-testing and report their results. Carriers that fail to conduct pre-testing and submit results in a timely fashion have five percent of their monthly support payments withheld until they come into compliance.⁴² Carriers in testing whose results show they are not meeting minimum requirements are subject to support withholding/reductions and additional reporting.⁴³

20. Connect America Fund Phase II (CAF II Model) recipients completed pre-testing at the end of 2020 and are in testing as of January 1, 2021.⁴⁴ Alternative Connect America Cost Model I (A-CAM I) and Revised Alternative Connect America Cost Model I (A-CAM I Revised) are in pre-testing until the end of 2021.⁴⁵

³⁸ See *id.*

³⁹ At the end of the waiver period the subscriber will have 30 days (beginning on December 1, 2021), to use their Lifeline service. If the subscriber does not use their Lifeline service during that 30-day timeframe, the 15-day notice period will begin on December 31, 2021.

⁴⁰ The Commission adopted detailed performance measures requirements in 2018 and an order on reconsideration in 2019. See *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018) (*First Performance Measures Order*), *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019) (*Performance Measures Reconsideration Order*).

⁴¹ See *First Performance Measures Order*, 33 FCC Rcd at 6520, para. 29.

⁴² See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10139, paras. 78-79.

⁴³ See *First Performance Measures Order*, 33 FCC Rcd at 6530-33, paras. 56-67, *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10133-38, paras. 65-75.

⁴⁴ See *Performance Measures Reconsideration Order*, 34 FCC Rcd at 10140, para. 81.

⁴⁵ *Id.*

21. For CAF II Model support recipients with eligible locations in the Affected Disaster Areas, we waive the requirement to test the speed and latency performance of their supported networks in the third and fourth quarters of 2021. For recipients of A-CAM I and A-CAM I Revised support with eligible locations in the Affected Disaster Areas, we waive the requirement to pre-test the speed and latency performance of their supported networks in the third and fourth quarters of 2021.

22. Given the substantial service disruptions and outages caused by Hurricane Ida, the ability of affected providers to conduct performance testing is extremely difficult and burdensome if not impossible. We previously said that we would generally consider requests “for waiver or extension [of performance testing] in cases where a major, disruptive event (e.g., a hurricane) negatively affects a provider’s broadband performance.”⁴⁶ We find that acting *sua sponte*—absent any request—is prudent due the extreme nature of Hurricane Ida, its impact, and recovery efforts, as this waiver relieves carriers from the additional burden of filing a petition. Further, while the Bureau prefers that carriers reschedule testing within the quarter when possible,⁴⁷ again the extreme nature of Hurricane Ida warrants waiving the requirements for the third and fourth quarter altogether rather than requiring carriers to reschedule. Waiving the testing and pre-testing requirements for third and fourth quarter of 2021 is in the public interest as it allows the affected carriers to reappportion resources to better meet their customers’ needs during storm recovery. Moreover, with this waiver, we are not relieving carriers from providing the required service levels to high-cost supported locations; rather, we are relieving them solely from the requirement to test and pre-test performance for the third and fourth quarters of 2021.⁴⁸

E. Emergency Connectivity Fund Program

23. *Emergency Connectivity Fund Program Deadlines.* For Emergency Connectivity Fund (ECF) program participants located in the Affected Disaster Areas,⁴⁹ we first waive, on an emergency interim basis, the deadline to submit a request for review or waiver of decisions by USAC, directed to USAC or the Commission and provide these participants with up to 150 calendar days from the effective date of this Order to submit their filing.⁵⁰ Section 54.1718(b) of the ECF rules requires an affected party requesting review of a decision by USAC or waiver to submit such request within 30 days from the date of USAC’s decision, which is shorter than the timeframe permitted under the E-Rate program rules.⁵¹ Given this shortened timeframe and recognizing that ECF program participants may have difficulty submitting their requests while dealing with the impact of Hurricane Ida, we find it is in the public interest to waive and extend this deadline by 150 days for program participants in the Affected Disaster Areas.⁵² For the same reason, we also direct USAC to extend its administrative deadlines associated with

⁴⁶ See *First Performance Measures Order*, 33 FCC Rcd at 6521, para. 33.

⁴⁷ *Id.*

⁴⁸ The CAF II Model carriers may be concerned about losing two quarters of testing data and how that will affect their compliance with testing obligations. Therefore, these carriers may still test their networks and submit the results to be part of the compliance calculations. However, pursuant to this waiver, they are not required to do so.

⁴⁹ See *supra* n.13. ECF-eligible entities located outside the Affected Disaster Areas that have experienced similarly catastrophic damage from Hurricane Ida may request similar, narrowly-tailored relief from these or other requirements from the Bureau.

⁵⁰ 47 CFR § 54.1718(b); 47 CFR § 1.106. Parties who rely on this waiver as a basis for filing their request for review or waiver beyond the required deadline should indicate such basis in their filing.

⁵¹ 47 CFR § 54.1718(b).

⁵² With the close of the first application filing window on August 13, 2021 and the issuance of the first wave of funding commitment decision letters expected soon, we anticipate that some affected applicants will need more time to submit appeals of USAC’s decisions than provided under our rules; and, therefore, we find a waiver of this deadline appropriate.

information requests issued to affected program participants, including Program Integrity Assurance-related requests, and provide them with an additional 150 days to respond to such requests.

24. *Documentation Retention and Production.* Recognizing that applicants and service providers in the Affected Disaster Areas may have lost records in the destruction caused by Hurricane Ida, we next waive section 54.1715(b) of our rules, which requires ECF program participants to retain all records related to their participation in the program for at least 10 years after the last date of service or delivery of equipment.⁵³ As with our waiver of the E-Rate records retention rule, ECF applicants and service providers will not be penalized for failure to retain records destroyed by Hurricane Ida. Applicants and service providers that rely on this waiver as a basis for not retaining or producing records, upon request from USAC or the Commission, will be required to certify that the records, and any copies of such records, were destroyed by the hurricane. Additionally, applicants and service providers are responsible for obtaining such records, where available, from a third party (e.g., consultant or service provider) upon request by USAC or the Commission. We note that the record retention requirements under our rules continue to apply to all records that were not destroyed by Hurricane Ida, including records relating to any relief granted by this Order.

25. *Service and Equipment Substitutions.* Additionally, in light of the destruction to equipment and services destroyed by Hurricane Ida, we provide additional flexibility to ECF program applicants to request service substitutions for eligible equipment or services, including connected devices, that have been disrupted, destroyed, or rendered unusable by Hurricane Ida. Section 54.1710(b) of the ECF rules allows USAC to grant a request by an applicant to substitute equipment or service for another where (i) the equipment or service has the same functionality and (ii) the substitution does not violate any contract provisions or state, local, or Tribal procurement law.⁵⁴ For applicants in the Affected Disaster Areas that need to replace equipment or services that have been disrupted, destroyed, or rendered unusable by Hurricane Ida, we waive this rule to exclude the requirement that the substituted equipment or service must have the same functionality as the equipment or service that it is replacing.⁵⁵ This will allow applicants in the Affected Disaster Areas the maximum flexibility to substitute much needed equipment or services (including service providers, where necessary) as quickly as possible, particularly where the availability of such items may be limited given the pandemic's impact on the global supply chain. The flexibility conferred by this measure effectively waives section 54.1710(b)(2)(i) of the Commission's rules for affected applicants while keeping the remaining aspects of the ECF service substitution rule intact, including the requirement that the service substitution request be in writing and that the substitution not violate any contract provisions or state, local, or Tribal procurement law.

F. Emergency Broadband Benefit Program

26. Program (EBB Program) households affected by Hurricane Ida, it is in the public interest to temporarily waive until November 30, 2021 section 54.1608(c) for households in the Affected Disaster Areas. Under this rule, a participating provider offering an EBB-supported service in which the household does not pay a monthly fee is required to certify that every such household has used their

⁵³ 47 CFR § 54.1715(b); *see also* 47 CFR § 54.720.

⁵⁴ 47 CFR § 54.1710(b).

⁵⁵ 47 CFR § 54.1710(b)(2)(i). While we waive the requirement that the substituted equipment or service have the same functionality as the equipment or service being replaced, we remind applicants that the substituted equipment or service must still be eligible for support under the ECF rules. Therefore, an applicant cannot request to replace a laptop computer destroyed in the hurricane with an ineligible smartphone. *See Establishing the Emergency Connectivity Fund to Close the Homework Gap*; WC Docket No. 21-93, Report and Order, FCC 21-58, 2021 WL 1921632, *11, para. 32 (May 11, 2021) (*Emergency Connectivity Fund Report and Order*). In addition, we remind applicants that if an equipment or service substitution results in a change in the amount of support, support shall be based on the lower of either the price for the equipment or service for which support was originally requested or the price of the new, substituted equipment or service. 47 CFR § 54.1710(b)(3).

supported service at least once during the service month being claimed, as usage is defined in section 54.407(c)(2) of the Commission's rules, in order to claim for reimbursement discounted service provided to that household in the service month.⁵⁶ We recognize that the widespread power outages and flooding will interfere with a household's ability to use their EBB-supported services, perhaps for an extended period of time. Allowing EBB participating providers in the Affected Disaster Areas the ability to claim for reimbursement the service provided to these households in the affected area, even if they otherwise could not be claimed, helps to ensure that their EBB-supported service will be available to them once they are able to regain access to that service. Starting with the September service month, providers can claim households in the Affected Disaster Areas even if the household fails to use their service as required by the Commission's rules. After the end of the waiver period, providers serving households in the Affected Disaster Areas must comply with the requirements of section 54.1608(c) and may not seek reimbursement for service provided to those households who fail to use their EBB-supported service and are receiving a service offering for which the provider does not assess or collect a monthly fee. EBB providers in the Affected Disaster Areas that are unable to comply with the EBB non-usage requirements at the end of this period for specific households may request additional, narrowly tailored relief from these requirements from the Bureau.

G. Preventing Waste, Fraud, and Abuse

27. We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund, Emergency Connectivity Fund, and Emergency Broadband Benefit programs (collectively, FCC programs). Although we grant the limited waivers described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with FCC program rules and requirements. We will require USAC to recover funds through its normal process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the FCC programs and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred, and that recovery is warranted. Additionally, in the event we discover any improper activity resulting from our action today, we will subject the offending party to all available penalties at our disposal, and including directing USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of the FCC programs 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

28. 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 sections 47 CFR §§ 54.405(e)(3), 54.407(c)(2), 54.504(d)(1)(i), 54.507(d)(4), 54.514(a), 54.516(a), 54.618, 54.631(b), 54.720(a)-(b), 54.1608(c), 54.1710(b)(2)(i), 54.1715(b), and 54.1718(b)(1)-(2) of the Commission's rules and the CAF Phase II Model testing requirements and A-CAM I and A-CAM I Revised pre-testing requirements are waived to the extent provided herein.

⁵⁶ 47 CFR § 54.1608(c).

29. 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

Kris Anne Monteith
Chief
Wireline Competition Bureau