

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

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

ORDER

Adopted: June 21, 2021

Released: June 21, 2021

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. To provide relief to E-Rate program participants affected by the coronavirus (COVID-19) pandemic, we grant the Schools, Health & Libraries Broadband (SHLB) Coalition’s Request for Waiver, in part, by waiving and extending the special construction service delivery deadline to June 30, 2022 for all funding year 2019 and 2020 applicants with deadlines that expire on June 30, 2021 or during calendar year 2021.1 In providing this relief, we seek to alleviate administrative burdens and minimize the disruption caused by the COVID-19 pandemic. Schools and libraries across the United States have been greatly impacted by the COVID-19 pandemic with many being closed for extended periods to protect their students and patrons and to help prevent the spread of the disease.2 We also recognize that other entities, such as state and local agencies, were similarly closed for periods of time during this unprecedented nationwide pandemic, which adversely impacted service providers’ ability to begin some projects.3 We do not, at this time, provide an extension of the special construction service delivery deadline to applicants from earlier funding years whose deadline we previously extended to June 30,

1 See Request for Waiver of the Service Delivery Deadline by the Schools, Health & Libraries Broadband (SHLB) Coalition, CC Docket No. 02-6 (filed Apr. 23, 2021) (SHLB Request for Waiver).

2 See, e.g., Map: Coronavirus and School Closures, Education Week (last updated Sept. 16, 2020), https://www.edweek.org/ew/section/multimedia/map-coronavirus-and-school-closures.html; Press Release, American Library Association, State of America’s Libraries (Apr. 2, 2021), https://www.ala.org/news/sites/ala.org.news/files/content/State-of-Americas-Libraries-Report-2021.pdf.

3 See, e.g., Federal, State, and Local Government Responses to COVID-19 (last updated Dec. 30, 2020), https://www.loc.gov/law/help/covid-19-responses/us.php (outlining federal, state, and local government actions across the country in response to COVID-19); see also Sarah Mervosh, Denis Lu, Vanessa Swales, See Which States and Cities have Told Residents to Stay at Home, The NY Times (last updated Apr. 30, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html (reporting that over 316 million people in at least 42 states, three counties, 10 cities, the District of Columbia and Puerto Rico were subject to stay at home orders and urged to remain at home in March and April 2020).

2021.⁴ However, these applicants may request a waiver from the Commission articulating specific facts and circumstances sufficient to justify the extension of the special construction service delivery deadline.

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 services, including connections necessary to support broadband connectivity to eligible schools and libraries.⁵ In 2014, the Commission expanded the high-speed broadband options available to applicants by equalizing the treatment of leased lit fiber and leased dark fiber under our rules,⁶ and making self-provisioned networks eligible for E-Rate support when they are the most cost-effective option for the applicant's connectivity needs.⁷ The Commission also adopted several safeguards, including service implementation deadlines, to ensure that E-Rate support is not used to purchase unnecessary services.⁸ Specifically, applicants may only receive E-Rate discounts for special construction charges related to leased lit or dark fiber if the fiber is lit by the end of the funding year⁹ (i.e., June 30),¹⁰ and special construction charges related to a self-provisioned network are only eligible for E-Rate support if the facilities are constructed and used by the end of the funding year.¹¹

3. Applicants may obtain a one-year extension of the June 30 deadline to complete special construction and light the fiber, or use a self-provisioned network, if they demonstrate that construction was "unavoidably delayed due to weather or other reasons."¹² An applicant seeking an extension on this basis must submit a request for an extension to USAC by the June 30 deadline.¹³ If USAC concludes that

⁴ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 2978, 2980, para. 6 (WCB 2020) (*COVID-19 E-Rate Deadline Order*) (extending several E-Rate program deadlines, including the service delivery deadline for special construction services).

⁵ 47 CFR §§ 54.501, 54.502.

⁶ The Commission equalized the treatment of leased lit fiber and leased dark fiber under E-rate program rules by allowing applicants to request universal service discounts for: (1) special construction charges related to leased dark fiber beyond the applicant's property line and (2) modulating electronics and other equipment necessary to light leased dark fiber. See *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, 15552, para. 36 (2014) (*2014 Second E-Rate Order*).

⁷ A "self-provisioned network" is a network that an eligible school or library hires a vendor to construct, and thereafter owns and maintains. See *2014 Second E-rate Order*, 29 FCC Rcd at 15555, para. 43; *Modernizing the E-rate Program for Schools and Libraries*, WC Docket. No. 13-184, Order, 32 FCC Rcd 1189, para. 9, n.35 (WCB 2017) (*FY 2017 ESL Waiver Order*).

⁸ *Id.*

⁹ See 47 CFR § 54.507(b), (d)(1) (stating that a recurring service must be used within the funding year for which discounts are sought to be eligible for support); *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16738, para.129 (2012) ("In the E-Rate program, fiber must be lit within the funding year for non-recurring charges to be eligible."); see also *2014 Second E-Rate Order*, 29 FCC Rcd at 15552, 15558, paras. 37, 49.

¹⁰ 47 CFR § 54.507(b) (establishing July 1 through June 30 as the funding year for the E-Rate program).

¹¹ See *2014 Second E-Rate Order*, 29 FCC Rcd at 15558, para. 49.

¹² See *id.* at 15555-56, 15560, paras. 38, 49.

¹³ See USAC, Schools and Libraries News Brief, June 30 Deadline to Complete FY2018 Special Construction Required to Light or Use the Fiber (dated May 17, 2019), https://www.usac.org/wp-content/uploads/e-rate/documents/SL_News_Brief/5_17_2019-News-Brief-Schools-Libraries-USAC.pdf (*SLD May 2019 News Brief*) ("Applicants seeking support for special construction related to leased dark fiber and self-provisioned networks may request a one-year extension of the June 30 deadline by demonstrating that construction was unavoidably delayed

(continued....)

a timely request for extension demonstrates that construction for the applicant's special construction project was unavoidably delayed due to weather or other reasons, USAC will grant the request and extend the applicant's deadline to complete special construction and light the fiber to June 30 of the following funding year.¹⁴

4. The COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.¹⁵ In response to this unprecedented pandemic, institutions throughout the country have taken steps to mitigate the spread of COVID-19 cases in their communities. In particular, many schools closed and transitioned to remote learning, and libraries closed to reduce the risk to their staff and patrons.¹⁶ Although most schools and libraries have reopened or are in the process of doing so,¹⁷ the impacts of the virus are still being felt. For example, widespread delays in the receipt of "communications equipment of all kinds, which extends not only to electronics (such as routers, optical network terminals, and customer premises equipment (CPE)) but also fiber" is causing delays in network construction.¹⁸ The impact of the pandemic is causing delays in construction projects across the country.¹⁹

5. On April 23, 2021, SHLB filed a request for waiver of the special construction service delivery deadline rule and asked that the deadline for special construction funding requests with calendar year 2021 deadlines be extended to June 30, 2022.²⁰ SHLB explained that while the Commission's previous special construction service delivery deadline extension was helpful, the ongoing impact of the pandemic left many service providers unable to complete projects by the June 30, 2021 deadline.²¹ Citing disruptions in the global supply chain and delays in permitting relating to shutdowns or reductions in the operations of governmental and Tribal entities, SHLB argued that a blanket waiver to address the special construction deadline issues would be the most efficient way to provide relief to the applicants impacted by such interruptions.²² On May 26, 2021, the Utah Education and Telehealth Network (UETN)

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due to weather or other reasons or the late issuance of [a funding commitment] (or nonissuance of [a funding commitment]).”).

¹⁴ *Id.*; see also 2014 Second E-Rate Order, 29 FCC Rcd at 15553, 15558, paras. 38, 49.

¹⁵ Centers for Disease Control and Prevention, *COVID Data Tracker*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited June 8, 2021).

¹⁶ See, e.g., *Rural Health Care Universal Service Support Mechanism, Schools and Libraries Universal Service Support Mechanism*, WC Docket No. 02-60, CC Docket No. 02-6, Order, 35 FCC Rcd. 2741, 2744, para. 6 (WCB 2020) (discussing closures).

¹⁷ See, e.g., *Map: Where Are Schools Required to Be Open for the 2020-2021 School Year*, Education Week (last updated Jun. 8, 2021), <https://www.edweek.org/leadership/map-where-are-schools-closed/2020/07>; American Library Association, *Guidelines for Reopening Libraries During the COVID-19 Pandemic* (last accessed Jun. 8, 2020), <http://www.ala.org/advocacy/intfreedom/reopeningguidelines>.

¹⁸ See, e.g., Mike Dano, *US Telecom Groups Warn of Network Construction Delays From Chip Shortages*, Light Reading (June 11, 2021) at <https://www.lightreading.com/cable-tech/us-telecom-groups-warn-of-network-construction-delays-from-chip-shortages/d/d-id/770165>.

¹⁹ See, *Coronavirus Has Cause Significant Construction Project Delays and Cancellations, Yet Demand for Skilled Labor is High, New Survey Finds*, Associated General Contractors (Sept. 2, 2020), <https://www.agc.org/news/2020/09/02/coronavirus-has-caused-significant-construction-project-delays-and-cancellations-yet#:~:text=AGC%20News-.Coronavirus%20Has%20Caused%20Significant%20Construction%20Project%20Delays%20And%20Cancellations%20Yet.Is%20High%20New%20Survey%20Finds&text=%E2%80%9CFew%20firms%20have%20survived%20unscathed,Simonson%2C%20the%20association's%20chief%20economist>.

²⁰ *SHLB Request for Waiver*.

²¹ *Id.* at 2.

²² *Id.* at 4-5

submitted a statement in support of SHLB's request for a special construction deadline rule waiver, explaining that they were also similarly situated and were experiencing delays with their special construction services.²³

III. DISCUSSION

6. Generally, the Commission's rules may be waived for good cause shown.²⁴ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.²⁵ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁶

7. Based on the unprecedented circumstances before us, we find that good cause exists to waive and extend the special construction service delivery deadline. In particular, we find that the mass disruption to daily life, including the closure of schools, libraries, and local and state agencies for an extended period of time and the adverse impact to service providers and manufacturers caused by COVID-19 pandemic present compelling and unique circumstances that merit a waiver of our rules. As SHLB explains, "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" have greatly delayed service providers from beginning any projects.²⁷ We extend the special construction service delivery deadline for all funding year 2019 and 2020 applicants with deadlines expiring on June 30, 2021 or during calendar year 2021, to June 30, 2022, regardless of whether the applicant may have previously received an extension with USAC or a waiver from the Commission.

8. We do not, however, extend the service delivery deadline for special construction for applicants from earlier funding years whose deadline we previously extended to June 30, 2021.²⁸ For these applicants, we previously extended the service delivery deadline for special construction services to June 30, 2021 in the *COVID-19 E-Rate Deadline Order*, and we find these applicants now have had two years or more to complete construction for these requests.²⁹ However, these applicants may submit waivers to the Commission to seek additional time to complete their special construction projects provided they can demonstrate construction was unavoidably delayed and that there is good cause to waive the service delivery deadline.

9. *Preventing Waste, Fraud, and Abuse.* We are committed to protecting against waste, fraud, and abuse in the E-Rate program. Although we grant the limited waiver described herein, E-Rate 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 process that we discover were not used properly. We emphasize that we retain the discretion to evaluate the uses of monies disbursed through the federal Universal Service Fund 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 will direct USAC to recover funds, assess retroactive fees and/or interest, or both. We remain committed to ensuring the integrity of

²³ Request for Waiver of the Service Delivery Deadline by the Schools, Health & Libraries Broadband (SHLB) Coalition by the Utah Education and Telehealth Network (UETN), CC Docket No. 02-6 (filed May 26, 2021) (*UETN Letter of Support*).

²⁴ 47 CFR § 1.3.

²⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

²⁷ *SHLB Petition for Waiver* at 3.

²⁸ See *COVID-19 E-Rate Deadline Order*, 35 FCC Rcd at 2980, para. 6.

²⁹ *Id.*

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

10. 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 47 CFR 54.507(d)(1), (4) of the Commission's rules is waived to the limited extent provided herein.

11. 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