



November 20, 2021

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic, WC Docket No. 21-93
Petition for Expedited Waiver of 47 C.F.R. §§54.1711(d) and (e)

Dear Secretary Dortch:

The State E-rate Coordinators' Alliance (SECA) petitions for an expedited waiver of the Emergency Connectivity Fund (ECF) invoice deadline regulation, 47 C.F.R. §§54.1711(d) and (e) to ensure that all applicants can comply with the invoice deadline and avoid inadvertently missing the deadline, thereby putting their funding at risk. We request expedited relief because there is an impending deadline of November 23, 2021 for some FRNs should a literal interpretation of the existing regulation be applied or enforced.

We respectfully request the FCC to waive the invoice deadline regulation at 47 C.F.R. §54.1711(d) and (e) and prescribe that the Service Delivery Date for all funding requests other than special construction FRNs is the last date of the funding period, or June 30, 2022. This would simplify the program – for applicants, service providers and the ECF administrator – by deeming August 29, 2022 as the invoice deadline for most FRNs.¹

In the Public Notice released July 22, 2021 (WC Docket No. 21-93; DA 21-881), the FCC prescribed that the Service Delivery Date for equipment and non-recurring services for the first filing window is June 30, 2022 when the equipment or non-recurring services have not ordered or received when the Form 471 application was filed. The change was made “in order to streamline and simplify the application and invoicing processes” and “adopting a uniform service delivery date for equipment and other non-recurring services will provide certainty for these applicants and allow USAC to provide an invoice filing deadline to applicants at the time it provides the funding

¹ A later invoice deadline would govern FRNs that may be subject to a revised FCDL issued after June 30, 2022, and those non-recurring FRNs for construction of facilities that have a service delivery deadline of one year from the date of the FCDL. See 47 C.F.R. §54.1702(b) and ¶ 41 of Establishing Emergency Connectivity Fund to Close the Homework Gap, Report and Order, WC Docket No. 21-93 (FCC 21-58), Order released May 11, 2021 (“For future construction, they [applicants] must show that construction is completed and services provided within one year of a funding commitment decision.” (footnote deleted)).

commitment letter.”² This uniform deadline approach is how USAC has been implementing the program; to our knowledge, all ECF Funding Commitment Decisions Letters (FCDLs) issued to date list an invoice deadline of August 29, 2022.

Neither the Public Notice nor the revised invoice regulation, however, explicitly address the Service Delivery Date for equipment or non-recurring services that had been received *prior to* submitting the Form 471 application. Consequently, we are concerned that the language in the ECF final regulations (47 C.F.R. §§54.1711 (d) and (e)) will be or could be construed to impose an invoice deadline as early as **Tuesday, November 23, 2021** on applicants who received their FCDLs on September 24, 2021, and whose equipment or non-recurring service had already been received when they filed their Form 471 applications.

We came to this conclusion because §54.1711(d) states that invoices (reimbursement requests) must be submitted no later than 60 days from the FCDL date, a revised FCDL for a post-commitment approved change or the Service Delivery Date, whichever is later. For equipment received *prior to* the submission of the Form 471 application, there is no regulatory definition of Service Delivery Date, and therefore we presume the plain language definition would govern, meaning the actual Service Delivery Date. The actual Service Delivery Date for this subset of FRNs is before the FCDL date, which makes the FCDL date the operative date for computing the invoice deadline. Hence the 60-day invoice deadline for this group of FRNs funded in the first wave of FCDLs would be November 23, 2021 or 60-days from the FCDL date of September 24, 2021. This problem will arise for other applicants in the future, for both first and second window applications, whenever an applicant had already received their equipment prior to filing their Form 471, and they bump up against the 60-day invoice deadline from the date of their FCDLs.³

Because this invoice deadline has not been communicated to applicants, the FCDLs prescribe an invoice deadline of August 29, 2022, and a rolling invoice deadline would be confusing and difficult to implement, we believe that this literal interpretation should not be adopted or enforced. Such a potentially harsh result would be contrary to the agency’s laudatory and prolific efforts to make the ECF application process streamlined and easy to understand, so as to maximize the accessibility of the program to schools and libraries.

We believe that the potential ambiguity of the regulation, coupled with a differing deadline that has been issued on FCDLs, constitute the special circumstances that justify the waiver. The public interest will be served by providing a straightforward, easy-to-understand deadline, and will help facilitate compliance with the program, thereby fulfilling the Congressional intent to ensure all students and teachers have access to equipment and services sufficient for their remote learning and

² FCC ECF FAQ No. 9.6 focuses on the “received” language in the regulation, and states that the Service Delivery Date for FRNs where the equipment had not been *received* when the Form 471 application was filed is June 30, 2022. This makes sense because applicants would not have an actual Service Delivery Date for equipment ordered but not yet received prior to filing Form 471.

³ The comparable 60-day invoice deadline for equipment FRNs approved in Waves 2-4 are December 13, 2021, December 24, 2021, and January 7, 2022, respectively. Like the impending November 23, 2021 deadline, these other early deadlines have not been publicized.

education. Accordingly, we hope you will agree that an expedited waiver of the regulation is warranted.⁴

We respectfully request that the FCC grant the requested relief as soon as feasible, and if possible by November 23, 2021. We request that no invoice reimbursements be denied based on the literal interpretation of the regulation that we explained above pending the FCC's formal granting of this petition for expedited waiver.⁵ Further, the formal waiver is appropriate and necessary to ensure that approved reimbursements are not retroactively challenged as being non-compliant with program rules whenever there are post-commitment audits of ECF funding.⁶

We would be happy to address any questions you may have. Thank you in advance for considering this request.

Respectfully Submitted,



Debra M. Kriete, Esq., Chair
State E-Rate Coordinators' Alliance
c/o 1300 Bent Creek Blvd, Ste 102
Mechanicsburg, PA 17050
(717) 232 0222
dmkriete@comcast.net

cc: Sue McNeil
Ryan Palmer
Johnnay Schrieber
Gabriela Gross
Kate Dumouchel
Molly M. O'Connor

⁴ The waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

⁵ Pursuant to the Wireline Competition Bureau's authority to provide additional detail and specificity to the requirements of the Emergency Connectivity Fund Program in consultation with the Office of the Managing Director, we are hopeful that this requested relief will be forthcoming quickly. *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, ¶141 (May 11, 2021) (*Emergency Connectivity Fund Report and Order*). This is consistent with the approach used to issue the July 22, 2021 Public Notice DA-881.

⁶ *See* 47 C.F.R. §54.1714; *see also Emergency Connectivity Fund Report and Order* at ¶¶132-134.