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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02-6; DA 20-1091; FRS 17084]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) adopts, on an emergency basis, temporary rules to provide immediate relief to schools that participate in the E-Rate program as they continue to contend with the ongoing disruptions caused by the pandemic. These temporary rules make available additional E-Rate funding to schools in funding year 2020 to purchase additional bandwidth needed to meet the unanticipated and increased demand for on-campus connectivity resulting from the COVID-19 pandemic.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Order in CC Docket No. 02-6; DA 20-1091, adopted on September 16, 2020 and released on September 16, 2020. Due to the COVID-19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following Internet address:

<https://www.fcc.gov/document/fcc-opens-second-e-rate-application-window-funding-year-2020>.

I. INTRODUCTION

1. Schools across the United States continue to face unprecedented disruptions and challenges due to the coronavirus (COVID-19) pandemic. As the school year begins, many school districts are relying on remote learning, either in whole or in part, to educate students. This heightened reliance on remote learning has dramatically increased demand on school networks, creating an urgent need for additional bandwidth this school year.

2. Consistent with the relief the Federal Communications Commission (Commission) has previously provided to schools affected by natural disasters as well as recent actions the Commission has taken in response to the COVID-19 pandemic, the Bureau adopts, on an emergency basis, temporary rules to provide immediate relief to schools that participate in the E-Rate program as they continue to contend with the ongoing disruptions caused by the pandemic. These temporary rules make available additional E-Rate funding to schools in funding year 2020 to purchase additional bandwidth needed to meet the unanticipated and increased demand for on-campus connectivity resulting from the pandemic.

3. Specifically, given the urgent need for additional bandwidth this funding year and subject to the limitations set forth in the following, the Bureau directs the Universal Administrative Service Company (USAC) to open a second funding year 2020 filing window to allow schools to request additional funding for this limited purpose without having to undergo a new competitive bidding process. This window shall open **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and close on October 16, 2020. As explained in the following, the Bureau finds that the exigent circumstances faced by the schools contending with this full or partial shift to remote learning constitute good cause to adopt these temporary rules without notice and comment.

II. DISCUSSION

4. Recognizing the many challenges facing schools as they shift to full or partial remote learning during this school year, the Bureau directs USAC to open a second funding year 2020 application window to allow schools to request additional E-Rate discounts for the limited purpose of purchasing additional bandwidth to meet the unanticipated and increased demand for on-campus connectivity, subject to the parameters and limitations in the Order. Specifically, in light of the extraordinary and unforeseeable changes our nation's schools are facing since the start of the COVID-19 pandemic, and consistent with the Commission's prior actions in response to this unprecedented public health emergency and other extreme circumstances caused by natural disasters, the Bureau adopts temporary rules to allow schools needing more bandwidth to request additional E-Rate support without conducting a new competitive bidding process for bandwidth provided in funding year 2020.

5. *Second Funding Year 2020 Application Window.* The second funding year 2020

application window shall open **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and will remain open through October 16, 2020. The Bureau finds that this window will provide enough time for applicants participating in the second funding year 2020 application window—many of which have already contracted for additional bandwidth before the school year began—to apply for additional E-Rate discounts for funding year 2020 and, to the extent necessary, complete any competitive bidding that may be required under state and local laws.

6. In keeping the window open only through October 16, 2020, the Bureau also balances the need to provide immediate relief to applicants requiring additional bandwidth in funding year 2020 with its obligation to ensure the efficient administration of the E-Rate program, including minimizing any potential delays in opening the funding year 2021 administrative and regular application windows. Given the upcoming changes to the category two budget rules beginning in funding year 2021, the Bureau anticipates that applicants will need as much time as possible during the funding year 2021 administrative window to make necessary updates to their student count numbers for category two budget purposes. Thus, the Bureau seeks to avoid further delaying the opening of the administrative window by closing this second funding year 2020 filing window before that occurs. Both windows cannot be open at the same time. The Bureau expects demand for E-Rate funding to remain well below the cap for funding year 2020.

7. *Eligible Services.* During this second funding year 2020 application window, schools may only request E-Rate discounts for additional on-campus category one Internet access and/or data transmission services needed as a result of the COVID-19 pandemic. The Bureau limits the eligible services to narrowly tailor this competitive bidding exemption and relief to the most pressing issue facing schools. Consistent with section 254 of the Telecommunications Act directive that E-Rate may only be used to “enhance... access to advanced telecommunications and information services for... school classrooms,” the Bureau reminds applicants that off-campus use of eligible services, even if used for an educational purpose, is ineligible for support. If eligible based on the competitive bidding exemption outlined in the following, applicants may request discounts on services already provided in funding year 2020 as early as July 1, 2020.

8. *Competitive Bidding.* Competitive bidding is a cornerstone of the E-Rate program, ensuring that applicants are informed of their options and service providers have sufficient information to provide services, leading to cost-effective pricing, and guarding against waste, fraud, and abuse. The Bureau recognizes, however, that schools could not have anticipated the need for additional bandwidth when they competitively bid for services and submitted their applications during the initial funding year 2020 application window and that many are now facing tremendous connectivity challenges as the school year begins. To help them meet this urgent need, the Bureau will allow applicants to request E-Rate discounts for their bandwidth increases without conducting additional competitive bidding subject to the limitations in the following, while setting a limit on the price per megabit applicants request to serve as a safeguard against wasteful spending.

9. Specifically, schools may submit an FCC Form 471 during the second funding year 2020 application window requesting E-Rate discounts without initiating a new competitive bidding process for the requested services if the applicant: already sought bids for the services by posting an FCC Form 470; received a Funding Commitment Decision Letter from USAC approving a funding year 2020 funding request for eligible category one Internet access and/or data transmission services that relied on that FCC Form 470, or has such a funding request pending; and requests additional E-Rate discounts during the second application window to purchase additional bandwidth through the existing service provider or a new one. For the purposes of this second funding year 2020 application window only, USAC shall grant funding requests from applicants seeking funding where the price per megabit is the same or less than the original contract. Alternatively, if the price per megabit is higher than the original contract, USAC will limit the funding commitment to the price per megabit in the original contract. This temporary exemption to the Commission's competitive bidding rules does not relieve service providers of their obligation to offer the lowest corresponding price for services. The Commission also recognizes that many states and localities have waived local procurement rules in light of COVID-19. To the extent they have not, applicants may post an FCC Form 470 if necessary, to comply with local laws.

10. The Bureau's action is intended to expedite the ability of schools in urgent need of additional bandwidth to request funding and thereby continue providing vital educational services to

students during this pandemic. Applicants that wish to apply for this funding opportunity must submit the following information in the narrative section of the new FCC Form 471 funding request: the identification numbers for the funding year 2020 FCC Form 471 and funding request that previously relied on the FCC Form 470; and a statement confirming that the requested E-Rate discounts are for additional bandwidth needed as a result of COVID-19. To facilitate and expedite USAC's review, applicants are required to provide additional information in the narrative section about the price per megabit in the original and new funding requests and highlight any difference in pricing.

11. *Preventing Waste, Fraud, and Abuse.* The Bureau is committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Accordingly, all relief granted by the Order is subject to the limitations stated herein and conditioned upon compliance with all E-Rate program rules that are not specifically modified in this document. The Bureau requires all eligible E-Rate program participants to retain records documenting the services that they receive pursuant to the temporary rules described and consistent with the document retention rules. Applicants and service providers requesting E-Rate support during the second funding year 2020 application window are responsible for maintaining records that demonstrate their compliance with the temporary rules. Although the Bureau grants the temporary rules described in this document, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF program rules and requirements. The Bureau will require USAC to recover funds through its normal process that the Bureau discovers were not used properly. The Bureau emphasizes that it retains the discretion to evaluate the uses of monies disbursed through the USF 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 the Bureau discovers any improper activity resulting from its action in this document, the Bureau will subject the offending party to all available penalties at its disposal, and will direct USAC to recover funds, assess retroactive fees and/or interest, or both. The Bureau remains committed to ensuring the integrity of the E-Rate programs and will continue to aggressively pursue instances of waste, fraud, or abuse under its own procedures and in cooperation with law enforcement agencies.

12. *Effective Date.* Section 553 of the Administrative Procedure Act (APA) permits an agency to implement rules without public notice and opportunity for comment “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” As explained, the COVID-19 pandemic has caused unforeseeable changes to the bandwidth demands at schools, creating an urgent and immediate need for the relief provided by the Order. While public notice requirements are an essential part of the Commission’s rulemaking process, the school year is already underway, and schools need immediate action to make necessary plans and preparations for both this school year and the submission of their requests for E-Rate support for funding year 2021. The temporary rules that the Bureau adopts herein provide an efficient mechanism to assist schools as they face huge disruptions and financial challenges due to the pandemic that were unanticipated when E-Rate applicants sought discounts for services for funding year 2020, but are also narrowly tailored to allow for an efficient second application window without jeopardizing regular program funding or administration for funding year 2021. The Bureau’s action in this document is also consistent with the statutory mandate of the E-Rate program to enhance “access to advanced telecommunications and information services” to schools and furthers the public interest to provide discounts for needed eligible services, particularly to those applicants that could not have known that they would require this additional bandwidth during the competitive bidding process leading up to the initial funding year 2020 application window and when demand for E-Rate funding is well below the cap for funding year 2020. The Bureau finds, therefore, that good cause exists to forgo notice and comment on these rules.

13. For similar reasons, the Bureau finds that there is good cause to make the temporary rules adopted by the Order effective immediately upon publication in the Federal Register. Although rules generally must be published at least 30 days before they become effective, the APA and the Commission’s rules make an exception “for good cause found and published with the rule.” Given the unprecedented and immediate need for additional bandwidth presented by the COVID-19 pandemic, along with the fact that the instructional year has already begun, it is crucial that the Bureau begins offering relief as soon as possible. In addition, the Bureau finds that delaying the opening of the second

application window would delay the opening of the funding year 2021 administrative and application windows, resulting in slowdowns in the regular E-Rate program administration, with potentially adverse spillover effects.

III. PROCEDURAL MATTERS

A. Paperwork Reduction Act

14. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

B. Congressional Review Act

15. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. ORDERING CLAUSES

16. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 254 the Order IS ADOPTED, and the temporary rules SHALL BECOME EFFECTIVE [**INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**], pursuant to 5 U.S.C. 553(d)(3); 47 CFR 1.427(b).
FEDERAL COMMUNICATIONS COMMISSION

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