

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 16, 2020

Released: September 16, 2020

By the Chief, Wireline Competition Bureau:

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.1 This heightened reliance on remote learning has dramatically increased demand on school networks, creating an urgent need for additional bandwidth this school year.2

2. Consistent with the relief the 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 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.3 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 below, we direct the Universal Service Administrative Company (USAC) to open a second funding year 2020 filing window to allow schools to request additional funding for this

1 See, e.g., Map: Where Are Schools Open?, Education Week (last updated Sept. 14, 2020), https://www.edweek.org/ew/section/multimedia/map-covid-19-schools-open-closed.html.

2 See Letter from Debra M. Kriete, Chairperson, State E-rate Coordinators' Alliance (SECA), to Chairman Pai, FCC, WC Docket No. 13-184 at 1 (filed Aug. 3, 2020) (SECA August 3 Letter) (requesting additional E-Rate support to meet applicants' increased bandwidth needs in funding year 2020 as a result of the pandemic); Letter from Keith Krueger, Chief Executive Office, Consortium for School Networking (CoSN) & Christine Fox, Deputy Executive Director, State Educational Technology Directors Association (SETDA), WC Docket No. 13-184 (filed Aug. 11, 2020) (CoSN/SETDA August 11 Letter) (seeking additional E-Rate support in funding year 2020 for increases to on-campus broadband connectivity due to demands related to the pandemic); Letter from Debra M. Kriete, Chairperson, SECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184 (filed Aug. 25, 2020) (SECA August 25 Letter); Letter from Debra M. Kriete, Esq., Chairperson, SECA, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, WC Docket No. 13-184 (filed Aug. 27, 2020) (SECA August 27 Letter).

3 See, e.g., Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Order, 32 FCC Rcd 9538, 9546, para. 15 (2017) (2017 Hurricanes Order); Federal-State Joint Board on Universal Service et al., CC Docket Nos. 96-45 and 02-6, WC Docket Nos. 02-60 and 03-109, Order, 20 FCC Rcd 16883, 16915, paras. 62-63 (2005) (Hurricane Katrina Order); Promoting Telehealth for Low-Income Consumers; COVID-19 Telehealth Program, WC Docket Nos. 18-213 and 20-89, Report and Order, 35 FCC Rcd 3366, 3375, para. 13 (2020) (COVID-19 Telehealth Program Report and Order). E-Rate is more formally known as the schools and libraries universal service support mechanism.

limited purpose without having to undergo a new competitive bidding process.<sup>4</sup> This window shall open upon publication of this Order in the Federal Register and close on October 16, 2020. As explained herein, we find 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.<sup>5</sup>

## II. BACKGROUND

4. *E-Rate Program Rules and Requirements.* 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.<sup>6</sup> E-Rate program rules provide that these entities must seek competitive bids for services eligible for support.<sup>7</sup> In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 to request discounts for E-Rate eligible services.<sup>8</sup> After submitting an FCC Form 470, applicants must wait at least 28 days before entering into an agreement for services.<sup>9</sup> Once competitive bidding is concluded and a contract signed, applicants must file an FCC Form 471 application before the close of the applicable funding year's filing window to request E-Rate support for the contracted services.<sup>10</sup> Pursuant to the Commission's rules, all applications submitted during this window must be treated as if they were simultaneously received.<sup>11</sup>

5. For funding year 2020, which runs from July 1, 2020 through June 30, 2021, USAC opened the filing window on January 15, 2020 and closed it on April 29, 2020.<sup>12</sup> During the window, USAC received 38,207 applications requesting \$2.91 billion in discounts for eligible services.<sup>13</sup> Given the timing of the funding cycle, applicants conducted competitive bidding and requested E-Rate funding for funding year 2020 before they were forced to fully or partially transition to remote learning for the current school year.<sup>14</sup>

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<sup>4</sup> We expect USAC to provide timely information about this window to applicants and announce its opening and closing through USAC's regular outreach mechanisms, including its News Briefs and on its website.

<sup>5</sup> See 5 U.S.C. § 553(b)(3)(B).

<sup>6</sup> 47 CFR §§ 54.501, 54.502.

<sup>7</sup> 47 CFR § 54.503.

<sup>8</sup> 47 CFR § 54.503(c).

<sup>9</sup> 47 CFR § 54.503(c)(4).

<sup>10</sup> 47 CFR §§ 54.504(a); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (Dec. 2018) (FCC Form 471).

<sup>11</sup> 47 CFR § 54.507(c) (requiring USAC to implement an initial filing period and any additional filing periods as it deems necessary).

<sup>12</sup> USAC originally announced that the filing window would be open from January 15, 2020 to March 25, 2020. See USAC, News Brief, *E-rate Funding Year 2020 Application Filing Window Opens January 15, 2020* (Jan. 9, 2020), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=930>. On March 13, 2020, the Wireline Competition Bureau (Bureau) extended the E-Rate FCC Form 471 application filing window for funding year 2020 by an additional 35 days to give E-Rate applicants more time to submit their applications in light of the COVID-19 pandemic. See *Wireline Competition Bureau Directs USAC to Extend E-Rate Application Window for Funding Year 2020 Due to Potential Coronavirus Disruptions*, CC Docket No. 02-6, Public Notice, 35 FCC Rcd 2089 (WCB 2020) (*FY2020 Application Filing Window Extension PN*).

<sup>13</sup> See Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6, at Attach. (filed May 1, 2020).

<sup>14</sup> SECA August 3 Letter at 1 (noting that schools have had to increase their on-campus connectivity during the pandemic and incurred these costs after they filed their funding year 2020 FCC Form 471 applications); see also

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6. *Prior Relief to E-Rate Program Participants Affected by Natural Disasters.* In some limited circumstances, the Commission has opened an additional filing window to allow schools and libraries affected by natural disasters to request additional E-Rate discounts to rebuild and restore eligible services damaged or lost as a result of a hurricane. In 2005, for example, the Commission adopted temporary rules and opened a second funding year 2005 filing window to help meet the needs of schools and libraries damaged by Hurricane Katrina, as well as the needs of schools and libraries serving students and patrons displaced by the hurricane.<sup>15</sup>

7. Similarly, in 2017, in the wake of Hurricanes Harvey, Irma, and Maria, the Commission adopted temporary rules and opened a second funding year 2017 filing window to make additional E-Rate support available to schools incurring additional costs to restore services or to meet the increased bandwidth demand caused by displaced students.<sup>16</sup> In the *2017 Hurricanes Order*, the Commission provided an exemption to the program's competitive bidding rules to allow the purchase of needed eligible services, including increased bandwidth.<sup>17</sup>

8. *Continuing Impact of COVID-19 and Prior Relief.* The COVID-19 pandemic is an outbreak of a respiratory illness that has spread throughout the United States.<sup>18</sup> Efforts to slow the spread of the disease have resulted in a dramatic disruption of many aspects of everyday life, including the operations of schools, libraries, and health care providers.

9. In response, the Commission has provided swift relief to schools and libraries that receive E-Rate support, as well as to health care providers responding to a surge in demand for telehealth services. In March, the Bureau issued a reminder to schools and libraries closed as a result of COVID-19 that they may allow the general public to use their E-Rate-supported Wi-Fi networks while on the school's campus or the library's property.<sup>19</sup> Following the issuance of this guidance, in April, the Bureau issued an order waiving and extending various program deadlines, including the service implementation deadline for special construction, to ease burdens on schools and libraries and allow them to focus their time and resources on transitioning to remote learning.<sup>20</sup> In addition, the Bureau adopted—and recently extended—a temporary waiver of the E-Rate program gift rule through the end of 2020 to continue to enable service providers to offer, and schools and libraries to solicit and accept, additional broadband connections, Wi-Fi hotspots and other devices, networking equipment, system upgrades, or other things of value to support remote learning efforts.<sup>21</sup>

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USAC, News Brief, *Application Window Extended and Additional Time Given for PIA Reviews Due to COVID-19*, <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=942> (Mar. 13, 2020) (announcing the extension of the funding year 2020 filing window to April 29, 2020 and notifying applicants that the last day to file an FCC Form 470 for funding year 2020 is April 1, 2020).

<sup>15</sup> *Hurricane Katrina Order*, 20 FCC Rcd at 16904-05, paras. 41-42.

<sup>16</sup> *2017 Hurricane Order*, 32 FCC Rcd at 9544, 9548, paras. 11, 20.

<sup>17</sup> *See id.* at 9546, para. 15.

<sup>18</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19) Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html> (last visited Sept. 15, 2020).

<sup>19</sup> *See Wireline Competition Bureau Confirms that Community Use of E-Rate-Supported Wi-Fi Networks is Permitted During School and Library Closures Due to COVID-19 Pandemic*, CC Docket No. 02-6, WC Docket No. 13-184, Public Notice, 35 FCC Rcd 2879 (WCB 2020).

<sup>20</sup> *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 2978 (WCB 2020) (extending several E-Rate program deadlines).

<sup>21</sup> *See 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 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Order*) (waiving the E-Rate and RHC programs gift rules through September 30, 2020); *Rural Health Care Universal Service Support Mechanism; Schools and Libraries Universal Service Support Mechanism*,

(continued....)

10. Further, to implement the Congressional appropriation of emergency funding to support health care providers responding to the pandemic, in April, the Commission established the COVID-19 Telehealth Program to help eligible providers deliver critical connected care services to patients.<sup>22</sup> Given the urgent need to get these services to patients during the pandemic, the Commission did not require applicants to conduct a competitive bidding process to solicit and select eligible services or devices.<sup>23</sup>

11. Now, as the new school year begins and the disruptions caused by the pandemic persist, schools across the country are increasingly relying on remote learning, either exclusively or partially, to educate their students. Some schools have decided to provide instruction on a remote basis only,<sup>24</sup> while others have chosen a hybrid model of instruction with some students at a school building and others learning remotely from home.<sup>25</sup> Many school districts are also allowing students to choose full-time remote learning in order to provide options for those that may be at higher risk of serious illness or that live with immunocompromised adults.<sup>26</sup>

12. In light of this dramatic and unanticipated reliance on remote learning this fall, many schools require additional bandwidth to meet the increased demand for simultaneous on-campus connectivity for teachers, students, and staff.<sup>27</sup> For example, schools are moving to 1:1 student to device ratios to reduce the risks associated with sharing devices within school, live streaming classroom instruction to students at home in hybrid models or to students who have elected to stay home for health reasons, and increasing the number of cloud-based educational tools and platforms used.<sup>28</sup> All of these actions can significantly increase the on-campus bandwidth needs of the school. However, due to the

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WC Docket No. 02-60, CC Docket No. 02-6, Order, DA 20-1021 (WCB 2020) (*RHC and E-Rate Gift Rules Waiver Extension Order*) (extending the waiver of each program's gift rule through the end of the year).

<sup>22</sup> See *COVID-19 Telehealth Program Report and Order*, 35 FCC Rcd at 3368, para. 4.

<sup>23</sup> *Id.* at 3382, para. 31.

<sup>24</sup> See *School Districts' Reopening Plans: A Snapshot*, Education Week (last updated Sept. 15, 2020), <https://www.edweek.org/ew/section/multimedia/school-districts-reopening-plans-a-snapshot.html> ("As of September 2, 73% of the 100 largest school districts, have chosen remote learning only as their back-to-school instructional model, affecting over 8 million students."); see also, e.g., Los Angeles Unified School District, *Joint Statement from Los Angeles Unified, San Diego Unified School District Regarding Online Start to School Year* (July 13, 2020), <https://achieve.lausd.net/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=4466&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=91406&PageID=1> (announcing that the Los Angeles Unified and San Diego Unified School Districts will start the 2020-2021 school year with full-time remote learning).

<sup>25</sup> See, e.g., Cypress Fairbanks Independent School District, *LEAD Safely 2020-2021*, <https://www.cfid.net/en/lead-safely-2020-21> (last visited Sept. 15, 2020) (outlining the Texas school district's reopening plan, which offers an option for on-campus learning, as well as an option for remote learning for students); NYC Department of Education, *Welcome to the 2020-2021 School Year*, <https://www.schools.nyc.gov/school-year-20-21/return-to-school-2020/welcome-to-the-2020-2021-school-year> (last visited Sept. 15, 2020) (stating that New York City public schools will use a blended learning model where students will learn on-campus for part of the week and remotely on the other days of the week).

<sup>26</sup> See, e.g., NYC Department of Education, *Choosing Remote Instruction for Fall*, <https://www.schools.nyc.gov/school-year-20-21/return-to-school-2020/choosing-remote-instruction-for-fall> (last visited Sept. 15, 2020) (allowing New York City public school students to opt for full-time remote learning "at any time, for any reason").

<sup>27</sup> SECA August 3 Letter at 1; CoSN/SETDA Letter at 1.

<sup>28</sup> See, e.g., SECA August 25 Letter at 2; David Saleh Rauf, *Coronavirus Pushes Schools Closer to a Computer for Every Student*, Education Week (June 2, 2020), <https://www.edweek.org/ew/articles/2020/06/03/coronavirus-pushes-schools-closer-to-a-computer.html> (discussing how the COVID-19 school closures and the shift to remote learning have prompted a surge in 1:1 student to device technology model in schools around the country).

timing of the E-Rate funding cycle, applicants have been unable to request E-Rate discounts on increased connectivity for the school year that would otherwise be eligible.

### III. DISCUSSION

13. Recognizing the many challenges facing schools as they shift to full or partial remote learning during this school year, we direct 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 this Order.<sup>29</sup> 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, we adopt 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.

14. *Second Funding Year 2020 Application Window.* The second funding year 2020 application window shall open upon publication of this Order in the Federal Register and will remain open through October 16, 2020. We find 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.<sup>30</sup>

15. In keeping the window open only through October 16, 2020, we also balance the need to provide immediate relief to applicants requiring additional bandwidth in funding year 2020 with our 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.<sup>31</sup> Given the upcoming changes to the category two budget rules beginning in funding year 2021, we anticipate 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, we seek to avoid further delaying the opening of the administrative window by closing this second

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<sup>29</sup> See SECA August 3 Letter (seeking E-Rate discounts for on-campus connectivity and an extension of the gift rule waiver for funding year 2020); CoSN/SETDA August 11 Letter (seeking E-Rate discounts for schools to acquire the on-campus broadband connectivity needed as a result of the pandemic). To the extent these requests regarding funding for additional bandwidth in funding year 2020 do not conform to the parameters and limitations of the second funding year 2020 application window detailed herein, the requests are denied.

<sup>30</sup> See SECA August 25 Letter at 3 (stating that many schools have already signed contracts and amendments for additional bandwidth and noting that many states and schools have suspended their own competitive bidding requirements as result of these exigent circumstances).

<sup>31</sup> Last year, the administrative window, during which applicants update their profiles in the E-Rate Productivity Center in advance of the upcoming application window, opened on October 11, 2019 and closed shortly before the opening of the funding year 2020 application window, which opened on January 15, 2020. See USAC, News Brief, *The EPC Administrative Window is Open*, [https://www.usac.org/wp-content/uploads/e-rate/documents/SL\\_News\\_Brief/10\\_11\\_2019-News-Brief-Schools-Libraries-USAC.pdf](https://www.usac.org/wp-content/uploads/e-rate/documents/SL_News_Brief/10_11_2019-News-Brief-Schools-Libraries-USAC.pdf) (Oct. 11, 2019); USAC, News Brief, *E-rate Funding Year 2020 Application Filing Window Opens January 15, 2020* (Jan. 9, 2020), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=930>.

funding year 2020 filing window before that occurs.<sup>32</sup> Both windows cannot be open at the same time. We expect demand for E-Rate funding to remain well below the cap for funding year 2020.<sup>33</sup>

16. *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. We limit the eligible services to narrowly tailor this competitive bidding exemption and relief to the most pressing issue facing schools.<sup>34</sup> 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,” we remind applicants that off-campus use of eligible services, even if used for an educational purpose, is ineligible for support.<sup>35</sup> If eligible based on the competitive bidding exemption outlined below, applicants may request discounts on services already provided in funding year 2020 as early as July 1, 2020.<sup>36</sup>

17. *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. We recognize, 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, we will allow applicants to request E-Rate discounts for their bandwidth increases without conducting additional competitive bidding subject to the limitations below,<sup>37</sup> while setting a limit on the price per megabit applicants request to serve as a safeguard against wasteful spending.

18. 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: (1) already sought bids for the services by posting an FCC Form 470; (2) received a Funding Commitment Decision Letter from USAC approving a funding year 2020

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<sup>32</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219, 11226, para. 18 (2019) (*Category Two Report and Order*).

<sup>33</sup> See *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2020*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 2062 (WCB 2020) (announcing a cap of \$4,226,120,519 for funding year 2020); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6, at Attach. (May 1, 2020) (estimating the total demand for funding year 2020 to be \$2.91 billion). Based on a survey of E-Rate applicants, SECA estimates that 10 to 15% of school districts require additional bandwidth and have either already purchased the bandwidth or anticipate needing to do so, resulting in approximately \$68.9 to \$103.4 million in E-Rate support. See SECA August 27 Letter at 2.

<sup>34</sup> See SECA August 3 Letter at 1-2 (seeking E-Rate funding for additional on-campus Internet connectivity).

<sup>35</sup> See 47 U.S.C. §§ 254(h)(1)(B), (h)(2) (E-Rate-funded services must be used for “educational purposes” and the Commission’s rules must “enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for ... school classrooms ... and libraries.”); see also *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 34 FCC Rcd 11959, 11967 (WCB 2019) (adopting the eligible services list for funding year 2020, which requires that off-campus use be cost-allocated from a funding request, among other things); 47 CFR § 54.504(e) (detailing the requirement to cost-allocate ineligible services from requests).

<sup>36</sup> See SECA August 3 Letter at 2 (stating that schools have already signed contract amendments or new contracts for additional internet bandwidth).

<sup>37</sup> See SECA August 25 Letter at 3 (stressing that requests for additional bandwidth be exempted from competitive bidding given that applicants have already amended their contracts; states have limited competitive bidding requirements in light of the emergency; and school officials, particularly those without consultants, lack the resources to conduct competitive bidding at the beginning of an extremely busy school year).

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,<sup>38</sup> and (3) requests additional E-Rate discounts during the second application window to purchase additional bandwidth through the existing service provider or a new one.<sup>39</sup> For the purposes of this second funding year 2020 application window only,<sup>40</sup> 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 our competitive bidding rules does not relieve service providers of their obligation to offer the lowest corresponding price for services.<sup>41</sup> We also recognize that many states and localities have waived local procurement rules in light of COVID-19.<sup>42</sup> To the extent they have not, applicants may post an FCC Form 470 if necessary to comply with local laws.<sup>43</sup>

19. Our 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: (1) the identification numbers for the funding year 2020 FCC Form 471 and funding request that previously relied on the FCC Form 470; and (2) 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.<sup>44</sup>

20. *Preventing Waste, Fraud, and Abuse.* We are committed to guarding against waste, fraud, and abuse in the Universal Service Fund (USF) programs. Accordingly, all relief granted by this Order is subject to the limitations stated herein and conditioned upon compliance with all E-Rate program rules that are not specifically modified herein.<sup>45</sup> We require all eligible E-Rate program participants to

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<sup>38</sup> If a funding year 2020 funding request was denied (or the funding commitment is rescinded) due to competitive bidding violations, any funding request filed during the second funding year 2020 application window that relies on pricing based on that earlier competitive bidding process will also be denied on the same basis.

<sup>39</sup> See, e.g., *2017 Hurricanes Order*, 32 FCC Rcd at 9546, para. 15 (adopting temporary rules to allow applicants impacted by Hurricanes Harvey, Irma, and Maria to restore service during the school year). Although we expect most applicants to request additional bandwidth from their existing service providers, we are allowing requests from new providers in the event that the schools' existing service providers are unable to provide sufficient bandwidth to meet the demand. See SECA August 25 Letter at 3 (stating that in most cases, schools are signing agreements with existing service providers that were previously competitively bid and found to be the most cost-effective); SECA August 3 Letter at 2 (noting that many schools have had to act swiftly to implement new models of learning and, as a result, have already signed contract amendments or new contracts with service providers for additional bandwidth).

<sup>40</sup> Applicants that seek additional funding in funding year 2020 without conducting competitive bidding must seek bids for any additional bandwidth requested for funding year 2021 if their needs are beyond the scope of the original FCC Forms 470.

<sup>41</sup> See 47 CFR §§ 54.500, 54.511(b).

<sup>42</sup> See, e.g., SECA August 25 Letter at 3 (stating that local requirements have been suspended due to the COVID-19 emergency).

<sup>43</sup> Applicants seeking eligible services pursuant to the limitations in this Order are exempted from the E-Rate program requirement to wait 28 days before selecting a service provider. 47 CFR § 54.503(c)(4).

<sup>44</sup> This information can also be provided in other per unit terms. For instance, an applicant seeking discounts for an additional 1 Gbps circuit could provide the per-circuit prices in the narrative.

<sup>45</sup> See, e.g., 47 CFR § 54.504(a)(1)(iii) (requiring applicants to secure access to all of the resources necessary to make effective use of the services purchased); 47 CFR § 54.523 (requiring applicants to pay the non-discounted portion of the cost of eligible E-Rate services).

retain records documenting the services that they receive pursuant to the temporary rules described above and consistent with the document retention rules.<sup>46</sup> 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 we grant the temporary rules described herein, program participants and service providers remain otherwise subject to audits and investigations to determine compliance with USF 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 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 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 the E-Rate programs and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

21. *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.”<sup>47</sup> As explained above, 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 this Order. While public notice requirements are an essential part of our 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 we adopt 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. Our action today 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.<sup>48</sup> We find, therefore, that good cause exists to forgo notice and comment on these rules.

22. For similar reasons, we find that there is good cause to make the temporary rules adopted by this 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.”<sup>49</sup> 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 we begin offering relief as soon as possible. In addition, we find that delaying the opening of the second application window would delay the opening of

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<sup>46</sup> See 47 CFR § 54.516(a).

<sup>47</sup> 5 U.S.C. § 553(b)(3)(B) (allowing for implementation without notice and comment or publication in the Federal Register if good cause exists).

<sup>48</sup> See *Wireline Competition Bureau Announces E-Rate and RHC Programs’ Inflation-Based Caps for Funding Year 2020*, CC Docket No. 02-6, WC Docket No. 02-60, Public Notice, 35 FCC Rcd 2062 (WCB 2020) (announcing a cap of \$4,226,120,519 for funding year 2020); Letter from Craig Davis, Vice President, Schools and Libraries Division, USAC, to Kris Monteith, Chief, Wireline Competition Bureau, FCC, CC Docket No. 02-6, at Attach. (May 1, 2020) (estimating the total demand for funding year 2020 to be \$2.91 billion).

<sup>49</sup> 5 U.S.C. § 553(d); 47 CFR § 1.427.



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

#### **IV. CONGRESSIONAL REVIEW ACT**

23. 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 this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

#### **V. ORDERING CLAUSES**

24. 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 this Order IS ADOPTED, and the temporary rules SHALL BECOME EFFECTIVE immediately upon publication of this Order in the Federal Register, pursuant to 5 U.S.C. § 553(d)(3); 47 CFR § 1.427(b).

25. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau