

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
E-rate Deployed Ubiquitously 2011)
Pilot Program) WC Docket No. 10-222

ORDER

Adopted: February 15, 2012

Released: February 15, 2012

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant in part and deny in part a request for waiver filed by the e-Bookroom Initiative (“e-BI”) concerning the Learning On-The-Go (also known as the E-rate Deployed Ubiquitously (EDU) 2011) Pilot Program.¹ For the reasons discussed below, we grant e-BI’s request to provide an extension of the time for pilot participants to meet certain E-rate procedural deadlines to facilitate the ongoing administration and utilization of the funds committed to the pilot participants for funding year 2011.² We thus waive the Commission’s rules and direct the Universal Service Administrative Company (USAC) to extend any of its relevant procedural deadlines, as provided below, for those pilot participants that had not begun their pilot projects before October 1, 2011.³ We deny, however, e-BI’s request to provide additional support to the pilot participants beyond the funds that have already been committed to each of the pilot projects.⁴

¹ See Letter from Winston E. Himsworth, Executive Director, CentralEd, to Marlene H. Dortch, Secretary Federal Communications Commission, WC Docket No. 10-222 and CC Docket No. 02-6 at 1 (filed Dec. 8, 2011) (e-BI Request for Waiver) (seeking an extension of the pilot program and an expansion of the participants’ funding commitments). e-BI is an association of schools and other educational organizations formed to promote the adoption of standardized, school-friendly, e-textbook licensing terms for the K-12 market. e-BI was initially formed by 38 of the applicants for the Commission’s EDU2011 pilot program, 10 of whom were selected as EDU2011 participants. *Id.* at appendix B.

² See e-BI Request for Waiver at 2. The E-rate program is more formally known as the schools and libraries universal service support program. The Commission delegated authority to the Wireline Competition Bureau (Bureau) to implement the pilot program and to waive any other E-rate rules, to the extent necessary, to effectuate the pilot program. See *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18786, para. 47 (2010) (*Schools and Libraries Sixth Report and Order*).

³ See 47 C.F.R. § 54.507(d); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 13510, 13512, para. 7 (2001) (*Permanent Extension Order*); USAC website, Schools and Libraries, Service Delivery Deadlines and Extension Requests, available at <http://www.universalservice.org/sl/applicants/step11/service-deadlines-extension-requests.aspx> (last visited Feb. 6, 2012) (Service Delivery Deadline Guidance); USAC website, Schools and Libraries, Invoice Deadlines and Extension Requests, available at <http://www.universalservice.org/sl/applicants/step11/invoice-deadlines-extension-requests.aspx> (last visited Feb. 6, 2012) (Invoice Deadline Guidance).

⁴ See e-BI Request for Waiver at 2.

II. BACKGROUND

2. The E-rate program currently supports, among other services, wireless Internet access on school and library grounds, but Commission rules require applicants to cost-allocate support for use of wireless Internet access off the school's or library's premises.⁵ On September 28, 2010, the Commission released the *Schools and Libraries Sixth Report and Order* upgrading and modernizing the E-rate program to encourage the expansion of fast, affordable Internet access in schools and libraries across the country.⁶ As part of the *Schools and Libraries Sixth Report and Order*, the Commission launched a pilot program to investigate the merits and challenges of wireless off-premises connectivity services for mobile learning devices, and to help the Commission determine whether and how those services should ultimately be eligible for E-rate support.⁷ As part of the pilot program, the Commission authorized up to \$10 million for funding year 2011 to support a small number of innovative, interactive off-premise wireless connectivity projects for schools and libraries.⁸ The Commission delegated implementation of the pilot program to the Wireline Competition Bureau (Bureau).⁹

3. On November 8, 2010, the Bureau released a public notice announcing the application filing deadline and setting forth the application criteria.¹⁰ On March 9, 2011, the Bureau released a public notice announcing the 20 selected applicants for the wireless pilot program.¹¹ On July 11, 2011, the Bureau provided additional information on the 20 projects selected to participate in the wireless pilot program and established reporting requirements that recipients must comply with during the trial period.¹²

⁵ See USAC website, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism for Funding Year 2012, available at http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2012.pdf, at 8 (last visited Feb. 6, 2012) (Funding Year 2012 ESL); USAC website, Schools and Libraries, Cost Allocation Guidelines for Products and Services, available at <http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx> (last visited Feb. 6, 2012); see also Funding Year 2012 ESL at 15 (homes or other non-school or non-library sites are provided as examples of ineligible locations) and 9, 26 (explanation of cost allocation). The Commission's current rules presume that services used on school or library premises are serving an educational purpose. *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208, paras. 17-18 (*Schools and Libraries Second Report and Order*); 47 C.F.R. § 54.500(b). But see *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, n.28 (identifying specific exceptions for offsite cost allocation).

⁶ See *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd 18762.

⁷ *Id.* at 18785-87, paras. 44-50.

⁸ See *Schools and Libraries Sixth Report and Order* at 18785-86, para. 46. Funding year 2011-2012 started on July 1, 2011, and ends on June 30, 2012.

⁹ *Id.* at 18786, para. 47.

¹⁰ See *Wireline Competition Bureau Announces Application Deadline for the E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program*, WC Docket No. 10-222, Public Notice, DA 10-2128 (rel. Nov. 8, 2010). On December 17, 2010, the Commission extended the deadline for paper and electronic filings due on December 17, 2010 to December 20, 2010, because the Commission's website and related electronic filing systems and documents became unavailable in the afternoon of December 17, 2010. See *Extension of Deadline, Electronic and Paper Filings*, Public Notice (rel. Dec. 17, 2010).

¹¹ See *Wireline Competition Bureau Announces Selected Applications for the E-rate Deployed Ubiquitously (EDU) 2011 Wireless Pilot Program*, WC Docket No. 10-222, Public Notice, DA 11-439 (rel. Mar. 9, 2011).

¹² See *E-rate Deployed Ubiquitously (EDU) 2011 Pilot Program*, WC Docket No. 10-222, Order, 26 FCC Rcd 9526 (Wireline Comp. Bur. 2011) (*Learning On-The-Go Order*).

The Bureau indicated that, upon successful completion of the E-rate application process, selected projects would receive a total of up to approximately \$9 million for the 2011-2012 funding year. Projects were selected to receive support for wireless off-premises Internet access to promote initiatives to improve, for example, off-campus access to e-textbooks for students, connectivity for netbooks for students living in remote, isolated areas, access to flexible, online education programs for home-bound students unable to attend classes, and to help library patrons find and apply for jobs.¹³ The Bureau required all selected project participants to submit an interim report to the Commission by February 24, 2012 and a final report to the Commission by October 31, 2012.¹⁴

4. By September 2011, only approximately one-third of pilot participants had received a funding commitment decision from USAC, with the majority of the pilot participants receiving funding commitment decisions in October and November 2011.¹⁵ Only half of the participants started their projects at the beginning of the school year. Under the Commission's rules, a pilot participant was permitted to start receiving services beginning July 1, 2011 prior to the receipt of their funding commitment decision letter, and be reimbursed for those services. In these instances, a pilot participant could receive up to a full year of funding during the 2011-2012 funding year. A pilot participant, however, that did not begin its project until receipt of the funding commitment decision letter cannot use fewer than twelve months of funding in the 2011-2012 funding year and then "carry over" the unused funding into the next funding year.¹⁶ In addition, applicants or service providers must submit the relevant invoice forms no later than 120 days after the date of the FCC Form 486 notification letter or 120 days after the last day to receive service, whichever is later.¹⁷ An applicant may request an extension of the invoice filing deadline.¹⁸

5. On December 8, 2011, the e-BI asked the Commission to commit additional funding to the program and waive the June 30, 2012 deadline for the delivery of recurring services for pilot program participants.¹⁹ Specifically, e-BI argues that, if the pilot program is not extended, then EDU2011

¹³ *Id.* at 9526, para. 1.

¹⁴ *Id.* at 9532, para. 13. Among other things, project participants are required to report on the costs and benefits of the wireless projects and the effectiveness of the measures that were taken to ensure compliance with the Children's Internet Protection Act and to protect against waste, fraud, and abuse. *Id.*

¹⁵ Specifically, six project participants (Aurora Public Schools, Katy Independent School District, City School District of New Rochelle, Orleans Parish School Board, Sioux City Community Schools, and Southern Tier Library System) received their funding commitments on September 20, 2011; Michigan Technical Academy received its funding commitment on September 27, 2011; three project participants (Riverside Unified School District, Summit Academy for Alternative Learners, and Westwood Community Schools) received their funding commitments on October 12, 2011; two project participants (Haralson County Board of Education and San Diego Unified School District) received their funding commitments on November 1, 2011; three pilot participants (Greater Southern Tier BOCES, Onslow County Schools, and Piedmont City School District) received their funding commitments on November 8, 2011; and five pilot participants (Boys' Latin of Philadelphia, Clay County School District, Foxfire Center for Student Success, Mohican School in the Out-of-Doors, Inc., and Roy Municipal Schools) received their funding commitments on November 22, 2011.

¹⁶ *See* 47 C.F.R. § 54.507(d).

¹⁷ *See* Invoice Deadline Guidance.

¹⁸ *Id.*

¹⁹ *See* e-BI Request for Waiver (seeking an extension of the pilot program and an expansion of the participants' funding commitments).

participants who waited for funding approval before beginning or expanding their wireless projects will receive funding for less than the entire funding year.²⁰ e-BI states that, assuming that discounts for recurring services will be fully used for less than three quarters of a year, the actual funding disbursements for the EDU2011 would total only \$5.1 million – less than half the program’s maximum allocation.²¹ e-BI asks that the Commission extend the existing EDU2011 pilot program for a full additional year (through June 30, 2013) and allow pilot participants to receive additional funding, up to the \$10 million amount authorized in the *Schools and Libraries Sixth Report and Order*.²² e-BI argues that this will provide for a trial period closer to two years and should yield a much truer test of the benefits of 24x7 Internet access availability to students and library patrons.²³ e-BI further believes that expanding the pilot program could be achieved without additional applications or reviews simply by waiving the last date to receive service for EDU2011 funding from June 30, 2012 to June 30, 2013, and by expanding the participants’ funding commitments proportionately.²⁴

III. DISCUSSION

6. In this order, we grant in part and deny in part e-BI’s request. Specifically, we extend the time for pilot participants that did not begin their pilot projects before October 1, 2011 to meet certain E-rate procedural deadlines to facilitate the ongoing administration and utilization of the funds committed to these pilot participants. At the same time, we deny e-BI’s request to provide additional support to the pilot participants beyond the funds USAC has already committed.

7. First, we conclude that a limited waiver of the June 30, 2012 service delivery deadline is appropriate for those pilot participants that did not begin their pilot projects before October 1, 2011 due to the timing of the receipt of their funding commitment letters. This waiver will allow each of those participants to receive up to 12 months of service for their pilot projects.²⁵ As indicated above,²⁶ the goal of the pilot program is to investigate the merits and challenges of wireless off-premises connectivity services for mobile learning devices to help the Commission determine whether and how those services should ultimately be eligible for E-rate support. The Commission’s intent was to provide support so that the participants’ projects could be implemented during one school year.²⁷ Without a full school-year

²⁰ *Id.* at 1.

²¹ *Id.* at 2.

²² *Id.*; *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd 18762.

²³ e-BI Request for Waiver at 2.

²⁴ *Id.*

²⁵ *See* 47 C.F.R. § 54.507(d); *see also Permanent Extension Order*, 16 FCC Rcd 13510, 13512, para. 7; Service Delivery Deadline Guidance. Generally, the Commission may waive any provision of its rules on its own motion and for good cause shown. 47 C.F.R. § 1.3. A rule may be waived 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) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969). In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular*, 897 F.2d at 1166; *Network IP v. FCC*, 548 F.3d 116, 127-28 (D.C. Cir. 2008). *Accord, Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

²⁶ *See supra* para. 2.

²⁷ *See Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18785-87, paras. 44-50.

program, the Commission may not receive sufficient data to adequately assess the effectiveness of the projects and whether funding for off-premises Internet access delivered via portable wireless devices should be continued or expanded.²⁸

8. We are therefore concerned that pilot participants that received funding commitments and began their pilot projects after their school year started will, absent a waiver, be unable to complete the full intended trial. The E-rate funding year runs from July 1 through June 30 of the subsequent calendar year. Because program rules require applicants to use E-rate funding for monthly recurring charges within the funding year in which they were committed, the pilot participants who did not start their projects by the end of September 2011 will be unable to fully utilize the funds committed for their pilot project absent a waiver of the service delivery deadline of June 30, 2012 for funding year 2011.²⁹ We therefore find that waiver of section 54.507(d) of the Commission's rules is necessary to provide for the intended yearlong trial of the off-premise wireless connectivity services, and thus is in the public interest.³⁰ Therefore, we grant in part e-BI's request for waiver seeking additional time for those pilot participants that had not begun their pilot projects before October 1, 2011 to complete their one-year projects.

9. Second, we authorize USAC to waive any other of its procedural deadlines and requirements as may be necessary to effectuate the intent of this order. For example, E-rate procedures require applicants or service providers to submit the relevant invoice forms no later than 120 days after the date of the FCC Form 486 notification letter or 120 days after the last day to receive service, whichever is later.³¹ Thus, some pilot participants may need to submit invoices after the relevant invoicing deadline. In those cases, USAC shall reimburse pilot participants for all appropriately submitted invoices for services received through February 28, 2013, up to the amount committed for their pilot project. Other pilot participants may need to extend the term of their contracts so they can receive service beyond the contemplated one-year period of the program.³² Applicants should submit these changes as necessary to USAC.

10. Although we extend the service delivery deadline and the invoicing deadline for some pilot participants, pilot participants that began their projects before November 1, 2011 are still required to timely submit an interim report to the Commission by **February 24, 2012** and a final report to the Commission by **October 31, 2012**.³³ For those applicants who did not begin their pilot projects before November 1, 2011, the interim report to the Commission will be due **October 31, 2012**, and the final report will be due **April 30, 2013**.

11. Finally, in extending the time for the pilot participants to meet certain E-rate procedural deadlines, we decline to increase the project participants' funding commitments.³⁴ The commitments for

²⁸ See e-BI Request for Waiver.

²⁹ See 47 C.F.R. § 54.507(d).

³⁰ *Id.*

³¹ See *supra* para. 4; Invoice Deadline Guidance.

³² For example, see USAC website, Schools and Libraries, Contract Guidance, available at <http://www.usac.org/sl/applicants/step04/contract-guidance.aspx> (last visited Feb. 6, 2012).

³³ See *supra* para. 3.

³⁴ See e-BI Request for Waiver at 2 (seeking an expansion of the participants' funding commitments proportionately).

the pilot participants total approximately \$8 million, slightly under the cap of \$10 million authorized by the Commission for the pilot program for funding year 2011. We received no data or other persuasive evidence that this amount is insufficient for the projects we selected as part of the pilot program. We see no reason to increase the amount of funding provided to these pilot participants above what already was requested and committed. We thus deny in part e-BI's request for waiver seeking an expansion of the pilot participants' funding commitments.³⁵

IV. ORDERING CLAUSES

12. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1-4, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, and 403, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that this order IS ADOPTED.

13. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3 and 54.722(a), that section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d) IS WAIVED and any relevant USAC procedural deadlines ARE EXTENDED to the extent provided herein for the Learning On-The-Go pilot program participants.

14. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), that the request for waiver filed by e-BI on December 8, 2011 IS GRANTED IN PART and DENIED IN PART to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Sharon Gillett
Chief
Wireline Competition Bureau

³⁵ See e-BI Request for Waiver at 2.