

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Schools and Libraries Universal Support Mechanism |) | CC Docket No. 02-6 |
| |) | |
| Federal-State Joint Board on Universal Service |) | CC Docket No. 96-45 |
| |) | |
| Changes to the Board of Directors of the National Exchange Carrier Association, Inc. |) | CC Docket No. 97-21 |
| |) | |

**COMMENTS OF THE SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB)
COALITION**

September 25, 2023

EXECUTIVE SUMMARY

The Schools, Health & Libraries Broadband (SHLB) Coalition¹ respectfully submits these comments responding to the Commission’s July 2023 Report and Order (Order) and Further Notice of Proposed Rulemaking (Further Notice) concerning the E-rate Program (E-rate) for Tribal libraries and other applicants.² SHLB requests the Commission take the following actions:

- Regarding the E-rate invoicing process, SHLB asks the Commission to i) eliminate the “extraordinary circumstances” standard for waiving the invoicing deadline and use the Commission’s general waiver standard instead; ii) allow USAC to grant an automatic one-time, 120-day extension of the invoicing deadline when an applicant or service provider requests an extension or submits an invoice within 15 days of the original deadline; iii) allow USAC to accept invoices resubmitted up to 60 days after their denial; iv) establish a procedure for applicants when their service providers refuse to submit invoices or charge applicants the full amount up front instead of the non-discount share; v) direct USAC to send program participants at least one email reminder of the invoicing deadline, beginning at least three weeks before the deadline; vi) and waive the invoicing rule now to allow USAC to grant extensions automatically if an extension request or associated invoice is submitted no later than the 15th day after the original deadline, pending resolution of this rulemaking.
- SHLB urges the Commission to review its current recovery process and adopt specific, transparent, and streamlined rules for USAC to follow. The Commission should also reexamine its decision to dismiss pending E-rate submissions if a participant is on red light status and instead *defer action* on pending E-rate submissions without dismissing them.
- SHLB agrees with the Commission that current program rules create challenges for applicants planning to transition their E-rate funded services from one provider to another during the funding year. SHLB thus urges the Commission to adopt a

¹ The SHLB Coalition is a broad-based public interest coalition of more than 330 organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include schools, libraries, representatives of health care providers and telehealth networks, state broadband offices, private sector companies, state and national research and education networks, consulting firms and consumer organizations. See <http://shlb.org/about/coalition-members> for a current list of SHLB Coalition members.

² See *Schools and Libraries Universal Support Mechanism, Federal-State Joint Board on Universal Service*, and *Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order (*Order*) and Further Notice of Proposed Rulemaking, FCC 23-56 (rel. July 21, 2023) (*Further Notice*).

specific, transparent process so that applicants know what they need to do when transitioning between service providers.

- Regarding mid-year bandwidth increases, while SHLB agrees the Commission's proposal would benefit applicants, SHLB recommends that the Commission allow applicants to request funding for the higher bandwidth for the entire year and simply invoice for the correct bandwidth provided and the correct charges when they are able to anticipate making a change to their bandwidth during a funding year. The Commission should also allow applicants with multi-year contracts to increase their bandwidths without conducting an additional competitive bidding process.
- Regarding an applicant's need to purchase cost-effective service from two different providers as part of the same procurement, SHLB urges the Commission to confirm its prior decision in *Macomb*.
- To further simplify the E-rate program, the Commission should clarify that the cost-allocation exemption described for cabling applies to *all equipment* that is part of a local area network (LAN) primarily serving an eligible purpose but that might also connect to E-rate ineligible equipment. Additionally, it should create a competitive bidding exemption for E-Rate funding requests under \$10,000 submitted by libraries and expand its competitive bidding exemption for Category Two purchases of \$3,600 or less per funding year to apply to schools.
- SHLB additionally suggests that a rolling Category Two funding application deadline might alleviate hardship on E-rate applicants and offer them more flexibility to access Category Two funding. SHLB additionally recommends that the Commission answer certain questions, such as how the Commission could provide clear information about other E-rate deadlines and if a rolling deadline would benefit certain applicants, such as Tribal, smaller, or more rural applicants.
- To continue to provide much needed support to libraries, the Commission should apply the eligibility rules and conditions it established in the *Order* for Tribal colleges and university libraries to other libraries in colleges and universities that serve as a public library in their community, especially when there is no other library option.
- SHLB also encourages the Commission to clarify now the requirements for applicants when they receive spam or automated responses that do not provide specific details and pricing for the services they are requesting.

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The Schools, Health & Libraries Broadband (SHLB) Coalition respectfully submits these comments responding to the Commission’s Order and Further Notice for Tribal libraries and other applicants. Our mission is to advocate for sound public policy to bring broadband connectivity to our nation’s valued anchor institutions, which are largely supported by E-rate and other programs funded through the Universal Service Fund. E-rate has provided *vital* assistance to schools and libraries, many of which often struggle to secure additional, consistent monetary resources to serve the broadband needs of their communities. We are pleased that the Commission is taking steps to further improve the program, especially for Tribal libraries, smaller schools and libraries, and new applicants. In a world that embraces rapid technological advances, future E-rate policies must strive to meet our students and library patrons *where they are* – providing them with the tools they need to be successful in modern society. Through our comments, SHLB aims to offer thoughtful insight about those actions and considerations that could not only improve the operation of E-rate but also provide meaningful service to those who benefit from the program.

SHLB previously joined with the State E-rate Coordinators’ Alliance (SECA) and several other parties in filing comments in this proceeding (Joint Comments).³ We continue to support that filing and submit these comments to respond to the questions posed in the *Further Notice*.

³ See Comments in Response to Notice of Proposed Rulemaking to Simplify the E-rate Program for Tribal and Other Applicants filed by State E-rate Coordinators’ Alliance, Schools, Health & Libraries Broadband Coalition, Consortium for School Networking, and State Educational Technology Directors Association, CC Docket Nos. 02-6, 96-45, 97-21 (filed Apr. 24, 2023) (*Joint Comments*).

I. THE PROCESS FOR TRANSITIONING SERVICES FROM ONE PROVIDER TO ANOTHER DURING THE E-RATE FUNDING YEAR SHOULD BE IMPROVED

As the Commission recognizes in the *Further Notice*, current program rules create challenges for applicants planning to transition their E-rate funded services from one provider to another during the funding year.⁴ This is particularly difficult when the service to which an applicant transitions is more expensive, causing an increase in the amount of E-rate support the applicant would receive. This is a fairly common problem that E-rate applicants face and, as the Commission recognized, it is difficult to accurately predict months in advance exactly when a future service cutover will occur. Some applicants have used “workarounds” but their success can depend upon the timing of USAC’s review and whether the applicant can find a helpful USAC reviewer or supervisor. SHLB urges the Commission to adopt a specific, transparent process so that applicants know what they need to do when transitioning between service providers.

Specifically, the Commission seeks comment on a proposal that would allow applicants to request E-rate support based on the amount of the more expensive service and then file a post-commitment request to change the service provider once the cutover dates are known. While this approach could work, it may result in confusion for applicants and USAC in situations where an applicant is switching to a service that requires special construction. The applicant would have to include a funding request for its existing monthly service, if it is more expensive than the new service, as well as the special construction request for the future service provider, resulting in funding requests with two different service providers but no apparent monthly recurring services for the new provider.

⁴ *Further Notice*, ¶ 44.

In addition, SHLB is concerned that when an applicant requests the post-commitment change to a new service provider, USAC will at that time begin to review the competitive bidding process and other details of that contract that could result in additional and potentially significant delay in approving the post-commitment request and related invoicing. As long as the post-commitment change happens on a timely basis so that applicants can be timely paid on their invoices, this process should be acceptable. SHLB encourages the Commission to consider metrics to ensure the timely processing of the requests.

The Commission could also consider allowing applicants to submit funding requests for both existing and future services, with invoicing allowed only for the services actually received. If the Commission allows this approach, it could consider an amendment to the Form 471 to allow applicants to indicate that they are requesting transitional services. This would allow the amount of these requests to be identified and taken into account when calculating demand in a funding year.

Finally, when the cutover between service providers occurs in the middle of a month, the Commission should direct USAC to fund the full month of service. Currently, USAC will only reimburse applicants and service providers on a monthly basis. For example, if the cutover occurs on March 15, USAC will pay for Carrier A's services in March, but only for the first 14 days when it provided service. Carrier B's services begin on March 15, but USAC will not pay for Carrier B's services until April 1. The applicant still owes Carrier B for the second half of the month but cannot receive E-rate funding. The Commission should direct USAC to allow transitions on any day of the month without penalizing the applicant for mid-month transitions. It is not reasonable to expect service providers to perform cutovers only on the first or last day of the month when working with E-rate customers.

II. THE COMMISSION SHOULD CONFIRM ITS DECISION IN *MACOMB* THAT APPLICANTS MAY SEEK SERVICES FROM MULTIPLE PROVIDERS AS PART OF THE SAME PROCUREMENT

The Commission seeks comment regarding an applicant's need to purchase cost-effective service from two different providers as part of the same procurement – an issue originally presented in the *Joint Comments*.⁵ In many cases, schools or libraries might need to purchase service from multiple providers in the same procurement. For example, an applicant might require a second service provider when the first/original cannot provide the needed bandwidth to serve increased capacity needs. Additionally, when a school or library maintains a second Internet connection, they find that it is best practice to reduce single points of failure, which means using a different provider for the second connection.

As previously stated in the *Joint Comments*, we believe that when the same type of service is needed and is cost-effective, the Commission's decision in *Macomb* established that funding for both services may be approved.⁶ However, the *Macomb* decision is not being applied correctly, because USAC often denies funding on the basis that these requested services are duplicative.⁷ SHLB thus urges the Commission to confirm its decision in *Macomb*, clarifying that applicants may seek needed services from multiple providers as part of the same

⁵ *Joint Comments*, at 31-32.

⁶ *Id.*, See *Macomb Intermediate Unit Technology Consortium Request for Review*, File No. SLD-441910, CC Docket No. 02-6, Order FCC 07-64, ¶¶ 8-9 (released May 8, 2007) (*Macomb*).

⁷ *Joint Comments*, at 31-32. USAC also often questions these arrangements, which delays the funding commitment, even if it eventually approves the request. Most often when this happens, the applicant is changing service providers in the middle of the year. To avoid this, the Commission should direct USAC to investigate only situations where the total bandwidth requested is higher than the estimated bandwidth needed for that school's population or library's service area, according to measures provided by the State Educational Technology Directors Association (SETDA).

procurement, so long as the applicant is limited to E-rate funding based on the cost of the least expensive service.⁸

The Commission also asks whether further guidance is needed for applicants seeking redundant or resilient circuits provided by a single carrier.⁹ While we understand the Commission’s concerns regarding the prohibition against duplicative services, we caution against conflating the terms “duplicative” and “redundant” or “resilient.”¹⁰ Unlike duplicative services, redundant and resilient networks do not provide the same functionality for the same population in the same location during the same time, but rather provide alternative paths for communications traffic. For example, an applicant might receive a network that splits necessary bandwidth between two circuits instead of only using one circuit for the total bandwidth. Such a network is not duplicative, it is simply engineered this way to prevent a complete loss of service in the case of a limited outage. An example of this type of network is a “ring” network; it is a better design because of the redundancy and resiliency it provides.

III. THE COMMISSION SHOULD ALLOW COMPETITIVE BIDDING EXEMPTIONS FOR PURCHASES UNDER CERTAIN FUNDING REQUEST AMOUNTS FOR SCHOOLS AND LIBRARIES

In the *Further Notice*, the Commission proposes two competitive bidding exemptions for certain E-rate funding requests. The first, proposed by the American Library Association, would create a competitive bidding exemption for E-Rate funding requests under \$10,000 submitted by

⁸ If a single provider cannot meet all of an applicant’s bandwidth needs, there should be no limitation on the cost of the service.

⁹ *Further Notice*, ¶ 47.

¹⁰ In the telecommunications context, redundant does not mean “unnecessary” or refer to an extra circuit, sitting unused. It means providing an alternative communications path for the traffic. See Gardner Glossary, <https://www.gartner.com/en/information-technology/glossary/network-redundancy> (Sept. 22, 2023) (“Network redundancy is a communications pathway that has additional links to connect all nodes in case one link goes down.”).

libraries.¹¹ SHLB supports this proposal, considering that any risk of waste, fraud, and abuse (typically safeguarded by the competitive bidding process) would be mitigated by the fact that libraries requesting E-rate funding for less than \$10,000 could be subject to and must comply with their own state and local procurement and bidding requirements.¹² The second proposal would exempt schools from competitive bidding requirements for Category Two purchases of \$3,600 or less per funding year.¹³ The Commission adopted this exemption for Tribal and other small or rural libraries in the *Order*.¹⁴ SHLB supports expanding this exemption to schools for the same reasons the Commission cited about Tribal and other small or rural libraries; alleviating rigorous bidding requirements for a low amount of requested funding could more effectively support schools, especially smaller ones, “when they are making limited purchases of equipment to install or upgrade their Wi-Fi networks.”¹⁵ By simplifying these competitive bidding requirements, both proposals could ultimately encourage greater participation in the program.

IV. THE COMMISSION SHOULD ALLOW APPLICANTS TO RECEIVE E-RATE FUNDING FOR MID-YEAR BANDWIDTH INCREASES

In the *Further Notice* the Commission seeks comment on a proposal to allow applicants to increase the bandwidth of their E-rate supported services during a funding year.¹⁶ Specifically, the Commission notes that applicants are permitted to request funding for increases in bandwidth if they have sought bids for and signed contracts that include a range of

¹¹ *Further Notice*, ¶ 50.

¹² Comments in Response to Notice of Proposed Rulemaking to Simplify the E-rate Program for Tribal and Other Applicants filed by the American Library Association, CC Docket Nos. 02-6, 96-45, 97-21, at 6-7 (filed Apr. 24, 2023).

¹³ *Further Notice*, ¶ 50.

¹⁴ *Order*, ¶ 19.

¹⁵ *Id.*

¹⁶ *Further Notice*, ¶¶ 51-52.

bandwidths.¹⁷ However, the Commission recognizes that “applicants are not always able to anticipate changes in their bandwidth needs.”¹⁸ There are two issues here: changing bandwidths during a funding year and changing bandwidths during the term of a multiyear contract.

The Commission seeks comment on allowing applicants to request bandwidth increases during the E-rate funding year without the need for a new competitive bidding process via a service substitution, so long as applicants use their existing service provider and do not increase the committed funding amount. SHLB agrees that this would be a beneficial change. However, SHLB recommends that when applicants are able to anticipate making a change to their bandwidth during a funding year, they should be allowed to request funding for the higher bandwidth for the entire year and simply invoice for the correct bandwidth provided and the correct charges. The Commission’s proposal that would not allow an increased funding amount for a higher bandwidth should apply only when the bandwidth increase is truly unexpected, and the applicant did not request the higher funding amount on its initial application.

The Commission suggests in the *Further Notice* that bandwidth changes would require a new competitive bidding process.¹⁹ This statement seems to conflict with the Commission’s well-established position that bandwidth changes are not “cardinal changes” to a contract that require a new competitive bidding process when the contract contemplates changes to the bandwidth, even if it does not include the specific bandwidth or its price.²⁰ SHLB encourages

¹⁷ *Id.*, ¶ 51.

¹⁸ *Id.*

¹⁹ *Id.*, ¶ 51, n. 172.

²⁰ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourth Order on Reconsideration, 13 FCC Rcd 5318, ¶¶ 224-28 (1997) (citing *AT&T v. Wiltel*, 1 F.3d 1201, 1205-06 (Fed. Cir. 1993) (finding that a contract modification that upgraded T1 dedicated transport circuits to T3 circuits was not a cardinal change)).

the Commission to continue to allow applicants the maximum flexibility to increase their bandwidths as necessary to best serve students and library patrons. There are likely to be cases where the pricing for a specific bandwidth is neither included in a response to the Form 470 or detailed in the contract between an application and service provider. In such cases, the Commission could clarify that if the price of a particular bandwidth is not included in the existing contract, the E-rate eligible cost could be determined by calculating the price in some reasonable way based on the price of the original bandwidth.²¹ Because the applicant would still be paying its non-discount share, the applicant would have every incentive to negotiate the best deal. Service contracts often have early termination liability provisions that require customers to pay the entire amount for the remainder of the contract, so an applicant would not simply be able to re-bid before the next funding year in order to increase its bandwidth. Without this ability to increase bandwidth, applicants would be stuck with their existing bandwidth for the term of the contract, which would be inconsistent with the goals of the program.²²

If the Commission intends to change its longstanding position to instead require competitive bidding for all bandwidth changes, however, it should also clarify that this change does not negate the ability of applicants to increase their bandwidths and the funding requested

²¹ For example, the Commission could direct applicants and service providers to calculate a per-megabit price for the new bandwidth that would be at or lower than the per-megabit price of the original bandwidth.

²² Similarly, the Commission should allow applicants to add locations to their contracts when the location is new. Sometimes new buildings or locations are not known when the applicant has to submit its application in March before the funding year begins. The Commission should allow applicants to add those locations during the funding year and allow the associated increase in the funding request. This would be similar to a situation where a location was omitted in error and the Commission has allowed the location and additional funding to be added to the application. In addition, the Commission should clarify that applicants do not have to conduct a competitive bidding process for new school or library branch locations when the district or library system is within the term of a multi-year contract. It would be burdensome to conduct a competitive bidding process for one location. In addition, depending upon the network configuration, it could be impractical for a district or library to have to work with two service providers just because it had to conduct a competitive bidding process for one location.

when their bidding processes and contracts specifically allow such changes and include the new bandwidths and pricing.

V. THE COMMISSION SHOULD CONSIDER SIMPLIFICATION OPPORTUNITIES REGARDING COST ALLOCATION

In the *Further Notice*, the Commission asks for comment about changes it could make to further simplify the E-Rate program, particularly for new and smaller applicants, including suggestions related to cost allocation. The Commission should clarify that the cost-allocation exemption described for cabling in the *Order* applies to *all equipment* that is part of a LAN primarily serving an eligible purpose but that might also connect to E-rate ineligible equipment. In the *Order*, the Commission confirmed that expenses associated specifically with cabling “drops” or “jacks” that might often be connected to ineligible equipment, but are nonetheless part of a LAN primarily serving an eligible purpose, are eligible for E-Rate and do not require cost allocation.²³ In doing so, it maintained that the eligibility determination for such equipment “should be based on the purposes of the network as a whole, rather than for each cabling ‘drop’ or ‘jack’.”²⁴ We support this approach and believe it will make it easier for applicants (large and small) to calculate eligible and ineligible costs in their future funding requests.

Having said that, there is equipment other than cabling, like switches, that might also connect to E-rate ineligible equipment but would nonetheless be part of a LAN primarily serving an eligible purpose. Because the Commission’s analysis in the *Order* specifies cabling, however, it is unclear whether it applies to similarly situated equipment, like switches. SHLB knows of no reason to treat cabling differently for this purpose than other types of equipment within the same network. The Commission should therefore clarify that the cost-allocation standard adopted in

²³ *Order*, ¶ 28.

²⁴ *Id.*

the *Order* for cabling also applies not just to cabling, but to any similarly situated equipment that is that is part of a LAN primarily serving an eligible purpose.

VI. THE COMMISSION SHOULD OFFER E-RATE APPLICANTS MORE FLEXIBILITY TO ACCESS CATEGORY TWO FUNDING

In the *Further Notice*, the Commission asks whether a rolling Category Two funding application deadline or second application filing window would simplify the E-rate program.²⁵ SHLB is concerned that E-rate applicants underutilize or even forgo their Category Two funding at times within a five-year E-rate funding cycle due to complexities associated with meeting E-rate's funding application deadline²⁶ and suggests that, if the Commission were to implement a rolling Category Two funding application deadline, it could help reduce some of the issues.²⁷ For example, applicants might need to request Category Two funding for eligible equipment or non-recurring services when a new school or library is constructed, or when an existing network is upgraded. While the applicant does its best to anticipate necessary construction timelines, the exact timing of a school or library project often depends on multiple factors that, unfortunately, might not line up with the E-rate application window. One such factor includes the timeline necessary for an applicant to receive general project, building, and other permitting approvals. These approvals might further hinge on city/district/county council meetings that could be themselves prolonged or delayed: multiple agenda items could compete for attention, members might request additional time to consider the details of the project, or weather conditions could cause unexpected meeting cancellations. Additionally, the *need* for a project may vary

²⁵ *Further Notice*, ¶ 48.

²⁶ For example, Open Data shows Arizona library applicants that are eligible to receive a collective \$17 million Category Two budget. By August of 2023, however, those libraries had utilized only \$3.3 million (reflected as the "Funded C2 Budget Amount").

²⁷ We believe that a rolling deadline would be preferable to opening a second window because it would give applicants maximum flexibility to complete and submit their funding requests.

depending on a host of factors, including times when a piece of equipment fails or the building requires repair suddenly, prompting the school or library to work within a timeline that might fall completely outside of the E-rate funding cycle.²⁸ Outside of emergency repairs, applicants also have to complete projects during certain *times* of the year. For instance, a school might need to wait to perform upgrades during the summer months, when students are not on campus, but a library (which tends to be busier in the summer) might need to wait until the building is closed to perform repairs or upgrades.

Beyond factors related strictly to a project's need and timing, applicants might have trouble finalizing applications during the E-rate funding window due to the unavailability of IT personnel or sheer lack of staffing and related resources at the school or library (or within the district). While some larger applicants might have dedicated IT staff or others to help complete application requirements, smaller applicants might have to rely on a single person to navigate the entire process. This person might have competing priorities and responsibilities at the school or library that affect his or her ability to meet the filing deadline. Additionally, even if this person is successful in navigating the project planning, bidding, and application processes by the requisite deadlines, such focus on E-rate could take time away from completing other programming at the library or school, to the detriment of students and patrons.

A rolling Category Two deadline would allow applicants the opportunity to request funding when they are ready (such as when necessary approvals have been obtained and construction timelines can be finalized) or when the need arises (such as for emergency repairs).

²⁸ For example, a library in Navajo County, Arizona burnt down around May of a certain year and needed to rebuild. They secured the approvals needed to cover their non-discounted share of potential E-rate funding if they could rebuild right away, but they were too late to apply in the current E-rate cycle and could not wait for the next cycle.

It would also provide additional time for applicants lacking IT personnel or resources that might struggle to navigate the application process by the current deadline.

Regarding implementation of such a change, we are mindful that the Commission should consider the following issues:

- How would a rolling Category Two application deadline affect other deadlines within E-rate, such as those imposed for service delivery or invoicing? Having various deadlines could cause room for confusion and potential error if applicants and vendors do not have clear information about when these deadlines would fall.
- How would a rolling Category Two application deadline affect the Commission's ability to determine funding demand? The Commission implemented the filing window to determine overall demand within the program as compared to the cap on funding available. However, we understand that demand is not exceeding the overall program cap,²⁹ suggesting that risk of an inflated demand imposed by a rolling Category Two deadline would be unlikely.
- Would certain applicants (such as Tribal, smaller, or more rural applicants) take advantage of a rolling Category Two application deadline? Not all school and library applicants operate under the same conditions, and some might prefer to apply for both Category 1 and Category 2 funding under the current filing windows. The Commission could consider implementing a pilot program with a rolling Category Two deadline to see if such a solution could help applicants and shed light on who would need it/utilize it.

If the Commission makes changes to the Category Two application window, it should ensure that these questions are addressed. We also recommend that the Commission should ensure that USAC conducts additional, in-person E-rate trainings to help applicants – especially Tribal, smaller, and new schools and libraries – understand current E-rate rules (and any changes to the Category Two application deadline).

We look forward to additional considerations regarding a rolling Category Two deadline that other commenters might share during this proceeding. We are also appreciative of the

²⁹ *Wireline Competition Bureau Directs USAC to Fully Fund Eligible Category One and Category Two E-rate Requests*, CC Docket No. 02-6, Public Notice, DA 23-425 (WCB, May 19, 2023) (estimating total demand for E-rate Funding Year 2023 of \$2.944 billion, under the funding cap of \$4.768 billion).

important assistance that E-rate provides for schools and libraries and maintain that the goal of the program should be to ensure that all eligible applicants are fully able to utilize this crucial resource.

VII. THE COMMISSION SHOULD CLARIFY ITS RULES REGARDING SPAM BIDS AS PART OF THIS PROCEEDING

In the *Further Notice*, the Commission requests information about spam bids or other automated responses that applicants might receive to their FCC Form 470 but that do not contain information on the services they request.³⁰ Here, the Commission refers to its open proceeding regarding a proposal for an E-rate competitive bidding portal³¹ and asks whether the portal would provide applicants with a helpful repository for competitive bid documents.³² As provided in previous comments in that proceeding, SHLB strongly opposes the implementation of the E-rate bidding portal.³³ While we understand that the Commission’s goal is to simplify programmatic features of the E-rate program, we do not believe a bidding portal would provide a *helpful* repository for competitive bid documents, nor would it alleviate the underlying issue of providers sending spam bids or automated responses. Rather, the bidding portal would remove an applicant’s direct access and control over the competitive bidding process. The portal would be especially unhelpful for the schools and libraries in those states that already impose specific document retention and procurement requirements. Instead, SHLB encourages the Commission to clarify now the requirements for applicants when they receive spam or automated responses

³⁰ *Further Notice*, ¶¶ 55-56.

³¹ *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455, Notice of Proposed Rulemaking, 36 FCC Rcd 17892 (2021).

³² *Further Notice*, ¶ 56.

³³ Comments in Response to Notice of Proposed Rulemaking Promoting Fair and Open Competitive Bidding in the E-Rate Program filed by the Schools, Health & Libraries Broadband Coalition, WC Docket No. 21-455 (filed Apr. 27, 2022).

that do not provide specific details and pricing for the services they are requesting, and not to wait to do so in relation to its bidding portal proceeding.

VIII. THE COMMISSION SHOULD APPLY E-RATE ELIGIBILITY RULES TO LIBRARIES IN COLLEGES AND UNIVERSITIES THAT SERVE AS A PUBLIC LIBRARY IN THEIR COMMUNITY

In the *Order*, the Commission adopted a proposal to make Tribal college and university libraries eligible for E-rate funding, subject to certain conditions, when they also serve more generally as a public library in their community.³⁴ We applaud the Commission's actions and agree that this would not only provide needed support to those libraries but would also ensure a great benefit to the communities that rely on those facilities for their evolving technology and digital opportunity needs. The Commission asks in the *Further Notice* whether there are other college or university libraries, similar to Tribal college and university libraries, that also serve their communities as a public library.³⁵ While SHLB understands that the E-rate program does not support the broader connectivity requirements of the higher education institutions, we ultimately support E-rate eligibility for those libraries in colleges and universities that serve as a public library in their community, especially when there is no other library option. In those situations, we believe that the eligibility rules and conditions the Commission established in the *Order* for Tribal colleges and university libraries could apply.³⁶

³⁴ *Order*, ¶¶ 12-17.

³⁵ *Further Notice*, ¶ 70.

³⁶ *See Order*, ¶¶ 14-16.

IX. THE COMMISSION SHOULD MODIFY THE E-RATE INVOICING DEADLINE WAIVER STANDARD AND MAKE OTHER CHANGES TO IMPROVE THE INVOICING PROCESS

The *Further Notice* seeks comment on potential improvements to the invoice filing deadline rule.³⁷ Specifically, the Commission requests comment on the Joint Commenters’ proposal to allow applicants to request an extension of the invoicing deadline from USAC within 15 days after the original deadline.³⁸ The Commission also seeks comment on the “extraordinary circumstances” standard for granting requests for waiver of the invoicing deadline that the Commission adopted in 2014 and other ways to streamline the process.³⁹

SHLB applauds the Commission’s review of the invoicing deadline rule. As the Commission has noted, the strict standard adopted in 2014 led to a dramatic increase in requests filed for waiver of the invoicing deadline and has caused many applicants and service providers to lose funding at the very end of the process, after the work is completed and all other deadlines have been met. Revising the invoicing deadline rule as described in the *Further Notice* would align it better with the Commission’s approach to other E rate filing deadlines, such as the deadlines for filing the Form 471 and the Form 486.⁴⁰ Accordingly, SHLB urges the Commission to adopt the 15-day grace period discussed in the *Further Notice* and to take the following additional actions as well.

Eliminate the “extraordinary circumstances” standard for waiving the invoicing deadline. This is the most important action in this proceeding that the Commission can take to

³⁷ *Further Notice*, ¶¶ 71-73.

³⁸ *Id.* ¶ 72; *see also Joint Comments*, at 37-39. Under the current rule, applicants may seek an extension of the invoicing deadline from USAC on or before the original deadline, but once the deadline has passed applicants must seek relief from the Commission.

³⁹ *Further Notice*, ¶¶ 72-73.

⁴⁰ *See Joint Comments*, at 37-38.

ensure that applicants receive funding as Congress intended. Adopting the 15-day grace period will provide relief for program participants that realize within two weeks of the invoicing deadline that the deadline has passed. It will not, however, help program participants that do not realize they have missed the deadline until later. For this reason, the Commission should eliminate the “extraordinary circumstances” standard for waiving the invoicing deadline and use the Commission’s general waiver standard instead, as it does for requests for waiver of all other E rate deadlines and rules.

There are many reasons why a program participant may not immediately realize that it has missed the invoicing deadline. The invoicing deadline is four months after the most recent action related to the funding application. By the time the invoicing deadline approaches, there may have been changes in the personnel responsible for E-rate applications. Sometimes applicants file invoices for dozens of funding requests at a time and may accidentally omit one.⁴¹ In addition, many invoices are due in October, which is simply a busy time for applicants: they are focusing on their procurements for the upcoming funding year, potentially responding to PIA questions about their applicants for the current funding year, or possibly ordering and installing new Category Two equipment approved in the current funding year.

In short, it is easy for even an experienced program participant or consultant to miss the invoicing deadline and not realize it until after the deadline has passed, by which time the only recourse is to file a waiver request with the Commission. Under the current standard of review, almost none of those waiver requests are granted; while the Commission has not defined “extraordinary circumstances,” it has generally granted waivers of the invoicing deadline only in

⁴¹ Petition for Waiver of FCC Form 472 Filing Deadline by Utah Education and Telehealth Network, CC Docket 02-6, *available at* <https://www.fcc.gov/ecfs/filing/1108944109750>, at 2-3 (filed Nov. 8, 2019).

cases of sudden and unforeseen illness or death, or where the petitioner’s ability to meet the deadline was impeded by the COVID-19 pandemic.⁴²

SHLB urges the Commission to eliminate the extraordinary circumstances standard for invoicing deadline waiver requests and replace it with the same public interest standard that applies to requests for waivers of any other E rate deadline. This approach would be consistent with the Commission’s precedent on procedural rules, which are “codified to enhance operation of the [E rate] program.”⁴³ Outside of the invoicing rule, the Commission routinely grants requests for waiver in cases where the only error is procedural, even when the error relates to a substantive rule.⁴⁴ The invoicing deadline is a procedural rule, missing the invoicing deadline is a procedural error, and it is unfair to punish applicants and service providers for a mistake that the Commission would forgive if it related to any other stage in the E-rate application process.

⁴² See, e.g., *Petition for Reconsideration by Jefferson-Madison Regional Library, et al.*, CC Docket No. 02-6, Order on Reconsideration, 32 FCC Rcd 4626, 4631, ¶ 12 (Wireline Comp. Bur. 2017) (emphasizing the suddenness and unexpectedness of the invoice filer’s illness, contrasting it with the denial of waiver requests filed by other petitioners who, despite the severity of their circumstances, nonetheless “had knowledge that the invoicing responsibilities needed to be covered by others”).

⁴³ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15815 ¶ 19 (2004) (*Fifth Report and Order*); see also, e.g., *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School, et al., Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316, 5323 ¶ 8 (2006); *Requests for Waiver of Decision of the Universal Service Administrator by Acorn Public Library District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474, 15476-77 ¶ 5 (Wireline Comp. Bur. 2008).

⁴⁴ See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Radford City Schools, Radford, Virginia; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 23 FCC Rcd 15451 ¶ 4 (Wireline Comp. Bur. 2008) (granting a waiver of the requirement that FCC Form 470 be filed before FCC Form 471, noting that a missing certification is a procedural rather than a substantive violation); *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools; Albert Lea, Minnesota, et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533, 4537-38 ¶¶ 5-6 (Wireline Comp. Bur. 2009) (granting requested waivers where the applicants made minor errors filling out applications, including an incorrect contract date, classification of service, and incorrect application number).

While it may have been well intentioned, the adoption of the extraordinary circumstances standard has cost program participants millions of dollars in E-rate funding with no corresponding benefit to the program. There is simply no good reason to treat the invoicing deadline differently from other E-rate deadlines, and doing so is especially perverse because it results in the rescission of funding commitments at the very end of the application process, after all other program requirements have been met and the service provider has completed the work.⁴⁵ A return to the general public interest standard would be fairer to applicants, consistent with Congress's goals for the program, consistent with other E-rate deadlines, and it would cause no harm to the E-rate program. For these reasons, the Commission should eliminate the extraordinary circumstances standard for requests for waiver of the invoicing deadline and use the Commission's general public interest waiver standard instead.

Ensure that the 15-day grace period applies to filed invoices, as well as requests for extensions. The Commission should allow USAC to grant an automatic one-time, 120-day extension of the invoicing deadline when an applicant or service provider requests an extension or submits an invoice within 15 days of the original deadline. That is, if a program participant files an invoice within 15 days of the deadline without having first requested an extension of the deadline, USAC should grant the automatic extension and accept that invoice.

It is important to apply the grace period to filed invoices as well as extension requests because program participants may not be aware that they missed the invoicing deadline and therefore may file the invoice without having first requested an extension of the deadline. These program participants may receive an invoice rejection letter from USAC after the 15-day grace

⁴⁵ Application for Review by Federal Technology Solutions, Inc., CC Docket No. 02-6, <https://www.fcc.gov/ecfs/document/1224850909576/1>, at 11 (Dec. 24, 2022).

period has elapsed, when it is too late to request an extension. Making clear that the grace period applies both to extension requests and to filed invoices will prevent this scenario and ensure that program participants that file their invoices within 15 days of the deadline are not penalized for not having first sought an extension.

Allow USAC to accept resubmitted invoices. The Commission sought comment on whether the Commission should allow applicants and service providers an additional 30 days to resubmit invoices rejected after the invoicing deadline. SHLB urges the Commission to adopt this reform and allow USAC to accept invoices resubmitted up to 60 days after their denial – consistent with the time period applicants and services providers have to submit an appeal. SHLB believes resubmitting an invoice to USAC would be preferable to submitting an appeal because it appears that two different groups of people at USAC handle invoices and appeals. If an appeal is filed, USAC has to first identify the issue as a resubmitted invoice and direct the invoice to the invoice reviewers, which would add at least an additional step – and additional time – to the process. USAC’s online filing system should be capable of accepting a new invoice submitted within 60 days of full or partial rejection of a previously submitted invoice. The Commission should also direct USAC to provide detailed information regarding the reason it rejected the invoice so that applicants and service providers can address those issues instead of trying to guess what error was made.

Require service providers to provide SPI billing. It should go without saying that service providers should comply with program rules.⁴⁶ SHLB supports the Commission's proposal to amend the rules to clarify the Commission’s intent regarding the SPI process.⁴⁷ In

⁴⁶ *Further Notice*, ¶ 75.

⁴⁷ *Id.*

addition, SHLB is aware of situations where a service provider has refused to invoice USAC, even though the applicant had selected the SPI invoicing process. There is no procedure to enforce Commission rules in those cases, so it would be helpful if applicants knew what to do in those situations. The Commission should establish a procedure that applicants can use to seek help when their service providers refuse to submit invoices as required by the E-rate rules or when their service providers charge them the full amount up front instead of the non-discount share.

Direct USAC to remind program participants of the invoicing deadline. Currently, USAC does not send program participants a reminder when the invoice filing deadline is approaching. A simple email reminder would help program participants meet the deadline and would likely reduce the number of waiver requests the Commission receives as a result. SHLB therefore urges the Commission to direct USAC to send program participants at least one email reminder of the invoicing deadline, beginning at least three weeks before the deadline.⁴⁸ This reminder should also include instructions on how to obtain an extension of the deadline.

Provide immediate relief to program participants while the Commission is considering changes to the rule. In the *Further Notice*, the Commission provided some relief to program participants, directing the Wireline Competition Bureau (Bureau) not to act on waiver requests filed within 15 days of the original invoicing deadline until the Commission provides “further guidance regarding the disposition of those waiver requests at the resolution of this proceeding.”⁴⁹ SHLB respectfully asks that the Commission take immediate action to provide additional relief by waiving the invoicing rule to allow USAC to grant extensions automatically

⁴⁸ SHLB recommends that this reminder be emailed to every registered user in each EPC portal that has one or more FRNs for which invoices have not yet been submitted.

⁴⁹ *Further Notice*, ¶ 72.

if an extension request or associated invoice is submitted no later than the 15th day after the original deadline, pending resolution of this rulemaking.⁵⁰ In addition, the Commission should immediately change the standard the Bureau uses to review invoicing appeals. The Commission may waive its own rules on an interim basis while considering changes to those rules and has done so before.⁵¹ Implementing these changes now would allow program participants to receive funding more promptly, rather than having to wait until the completion of the rulemaking.

X. THE COMMISSION SHOULD ADD MUCH-NEEDED CLARITY AND CONSISTENCY TO THE RECOVERY PROCESS

SHLB appreciates that the Commission requested comment on the recovery process issue. SHLB urges the Commission to adopt specific procedures for USAC to follow when seeking recovery of funding and to revise the consequences of the “red light” rule so that applicants do not lose an entire year’s worth of funding after their debt to the federal government has been repaid.

⁵⁰ 47 C.F.R. §54.514(b). For the reasons explained above, this relief should apply to invoices filed within 15 days of the deadline, as well as extension requests.

⁵¹ For example, the Commission waived the E-rate rules on its own motion to allow community use of E-rate-supported services while seeking comment on whether to change the rules permanently to permit such use. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740 (2010) (waiving the rules that required applicants to certify on their FCC Forms 470 and 471 that the services requested would be used solely for educational purposes). The Commission later revised the rules to make the change permanent. *See Schools and Libraries Universal Service Support Mechanism*, Sixth Report and Order, WC Docket No. 02-6, 25 FCC Rcd 18762, 18775-76 ¶¶ 25-26 (2010) (revising the rules to allow community use of E-rate-supported services).

In addition, in the *Second E-rate Modernization Order*, the Commission temporarily suspended the requirement to amortize special construction charges that were \$500,000 or more over a four-year period. *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 ¶¶ 17-21 (2014). The Commission then initiated a Notice of Proposed Rulemaking to eliminate the amortization requirement permanently, while the suspension of the requirement continued in effect. *See E-Rate Program Amortization Requirement*, Notice of Proposed Rulemaking, WC Docket 19-2, 34 FCC Rcd 785 (2019). In 2020, the Commission permanently eliminated the requirement. *See E-Rate Program Amortization Requirement*, WC Docket No. 19-2, 35 FCC Rcd 672 (2020).

The Commission should adopt specific, transparent, and streamlined program rules for the recovery of funds. As the Commission noted, it adopted an order in 2000 establishing a broad framework for recovering funding.⁵² USAC and the Commission, however, are not following the process detailed in that order, due to changes to the recovery process. For example, the process calls for USAC to seek recovery only from the service provider, but USAC routinely seeks recovery from applicants due to later changes in the program. Another example is that the process calls for USAC to issue two demand letters and then refer the matter to the Commission. However, instead of referring the matter to the Commission, USAC now sends recovery actions to the U.S. Department of the Treasury for collections, which makes it even more difficult for program participants to repay what they owe.⁵³ In addition, the timeline set forth in the 2000 Order was set when appeals were due within 30 days. When the Commission changed the appeal deadline to 60 days, it did not change the time frame for notification letters. As such, USAC has sometimes sent letters to parties regarding their alleged debt before they have even had a chance to appeal. The 2000 Order does not provide USAC with direction regarding the timeline when parties appeal. The Order also calls for the Commission to notify parties of their appeal rights, which no longer happens because the Commission does not have a role in the process.

⁵² *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order, 15 FCC Rcd 22975, (2000) (*2000 Commitment Adjustment Order*); see also *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21, 96-45, Order, FCC 99-291, 12 FCC Rcd 18400 (1999).

⁵³ The U.S. Treasury needs a specific debt collection number in order to find a debt. USAC has not always provided that number to parties trying to pay off their debts, leaving them unable to comply with USAC's request.

Because of the many changes in the program since the issuance of the 2000 Order, the Commission should take this opportunity to review the recovery process and outline a specific process and timeline as it did in 2000 but taking into account the current recovery process and other rule changes. Among the other changes suggested in these comments, USAC's letter notifying applicants and service providers of its proposed recovery should include, at a minimum: (1) whether USAC is seeking recovery of funds (instead of saying USAC will notify parties of that decision later); (2) from which party or parties it is seeking recovery of funds; (3) the specific reason for the recovery action with the relevant Commission rules clearly applied to the applicant and/or service provider's specific facts; (4) instructions on how to seek a review of USAC's decision, either with USAC or the Commission; (5) the next steps in the recovery process; and (6) the consequences for failure to pay.

Currently, USAC sends Commitment Adjustment Letters (COMADs), which specifically state they are not seeking recovery, but then the Commission expects applicants to appeal those letters without having all of the information necessary to make a decision whether to appeal.⁵⁴ If USAC is not seeking recovery, it would not make sense for an applicant or service provider to appeal the decision. Sometimes, USAC also sends Recovery of Improperly Disbursed Funds (RIDF) letters, but not always. Instead, USAC sometimes skips ahead to demand letters even

⁵⁴ USAC itself notes that it will tell the party it is seeking recovery for the first time in the demand letter. *See* Universal Service Administrative Company, Schools and Libraries Program, Semi-Annual Audit Recovery Report, CC Docket No. 02-6, ¶ 1 (filed March 31, 2023) (USAC Semi-Annual Audit Recovery Report) (“If the applicant and/or service provider does not appeal the Notification Letter within sixty (60) days of the date the letter is sent, USAC issues the First Demand Payment Letter on the 61st day. **Then USAC notifies the applicant and/or the service provider (whichever party is determined to be responsible for the rule violations) that USAC intends to seek financial recovery.**”) (emphasis added)). *Application for Review of a Decision of the Wireline Competition Bureau by Net56, Inc., Palatine, Illinois, Schools and Libraries Support Mechanism*, CC Docket No. 02-6, Memorandum Opinion and Order, 32 FCC Rcd 963, ¶ 4-5 (2017) (*Net56 Order*).

though the COMAD letter does not indicate there would be recovery and which party was expected to pay. Even worse, the Commission has reversed its prior decision that specifically allowed demand letters to be appealed without even acknowledging it was changing its prior rule and providing insufficient rationale for the reversal.⁵⁵ This unclear and inconsistent process leaves applicants and service providers confused as to the process and sometimes unwittingly lands them on the “red light” list when they believe they are still waiting for USAC to tell them if recovery is even warranted.

Further complicating the process, program participants do not always receive these notifications from USAC in a timely or uniform manner, with some correspondence posted in a participant’s E-rate Productivity Center (EPC) portal, some being sent by email, and others sent through the U.S. mail. Some applicants never receive a notice at all.⁵⁶ This haphazard process

⁵⁵ *Net56 Order*, 32 FCC Rcd 963, ¶ 5 (“A Demand Payment Letter is not the decision being appealed; it is issued for the purpose of recovering funds that USAC or the Commission have previously determined were erroneously disbursed.”). *But see Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Order, 15 FCC Rcd 366, ¶ 16 (2000) (“We note that, consistent with the Commission’s obligations under the DCIA, following USAC referrals to the Commission, the Commission will issue letters demanding repayment from service providers that are obligated to pay erroneously disbursed funds, and informing the service providers of their right to seek review by the Commission.”); *Fifth Report and Order*, 19 FCC Rcd at 15821, ¶ 40 (“Parties are already free today to challenge any action of USAC – including the issuance of a demand for recovery of funds – by filing a request for review with this Commission pursuant to section 54.722 of our rules.”).

⁵⁶ SHLB is concerned that WCB may be misinterpreting the debt collection rules to mean that USAC does not have to provide any notice before demanding repayment of debt. *See, e.g., Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93 and 02-60, Public Notice, DA 23-246 at 2 n.6 (Wireline Comp. Bur., Mar. 31, 2023) (“We also reiterate that waiver of the red light rule is not justified by asserting that the parties were late in paying the debt because they failed to receive the notifications. *See, e.g., Net56 Order*, 28 FCC Rcd 13122, 13126, ¶ 6 (denying E-Rate applicant’s request for a waiver of the red light rule and dismissing their funding year 2010 application where the applicant’s only justification for not paying the debt was that it was never notified by USAC”). That cannot be correct as it is a fundamental right of alleged debtors to be informed of any debt they may owe the government, as well as the basis for that debt. 47 C.F.R. § 1.1911(a) (“Written demand as described in paragraph (b) of this section, and which may be in the form of a letter, order, memorandum, or other form of written communication, will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate to resolve the debt.” (emphasis added)).

results in confusion for applicants and service providers, which can delay repayment or cause program participants to submit their appeals late.

To make matters worse, sometimes there is a significant delay between steps in the recovery process. For example, USAC can take months and even years between a COMAD letter and a demand letter (sometimes with no RIDF in between). As a result, the applicant that receives a demand letter has no idea what the demand is for, what the issue was, and simply does not have enough information to repay the debt, if it is even actually owed.⁵⁷ Getting the information from USAC is also often difficult,⁵⁸ and the applicant is left unable to pay the funds back because it does not have enough information to justify getting a check issued for payment.

Each year, USAC submits to the Commission procedures for recovering funding, but USAC's submission is high-level and does not provide detail on the various stages of recovery.⁵⁹ SHLB would be happy to work with the Commission to develop new procedures to ensure applicants and service providers are timely notified of any debt USAC believes is owed to the fund.

The Commission Should Revise the Consequences of the Red Light Rule as Applied to E-rate Applicants. The Commission should reexamine its decision to dismiss pending E-rate submissions if a participant is on red light status.⁶⁰ In 2003, the Commission adopted a rule providing that “the Commission shall withhold action on any application or request for benefits made by an entity that is delinquent in its non-tax debts owed to the Commission and shall

⁵⁷ Petition for Reconsideration by Lamar Consolidated ISD, CC Docket 02-6, *available at* <https://www.fcc.gov/ecfs/document/1083035333405/1>, at 6-7 (filed Aug. 30, 2019).

⁵⁸ *Id.*

⁵⁹ *See* Universal Service Administrative Company, Schools and Libraries Program, Administrative Procedures, CC Docket No. 02-6 (filed October 31, 2022).

⁶⁰ *Fifth Report and Order*, 19 FCC Rcd at 15821-22, ¶ 42.

dismiss such applications or requests if the delinquent debt is not resolved.”⁶¹ The Commission applied that decision in the E-rate context by directing USAC to dismiss pending “requests for funding commitments” if not paid “within 30 days of the notice provided for in our commitment adjustment procedures.”⁶²

While the Commission’s stated goal was to “strengthen incentives” for compliance with program rules, unfortunately, the application of the Commission’s directive to dismiss pending applications has resulted in arbitrary and punitive results. Due to the timing of the annual E-rate application filing window, dismissal of a pending funding request after the funding window has closed may result in the loss of all E-rate support for the applicant for the entire funding year, even if the debt is paid shortly after the deadline identified by USAC.⁶³ Similarly, dismissed invoices may not be resubmitted after the invoice filing deadline has passed. This results in E-rate participants sustaining a significant monetary penalty of thousands of dollars that cannot be restored after their red light debt is paid.

As noted above, the timeline for dismissal of pending applications and invoices is also unclear. USAC’s audit procedures state that it will issue a Notice of Dismissal, warning applicants that their applications, invoices or other pending actions may be dismissed if they do

⁶¹ *Id.* at 41.

⁶² *Id.* Because the commitment adjustment procedures have changed since 2004, it is unclear what notice starts the 30-day clock. As noted above as well, all 30-day time periods should be changed to 60 days.

⁶³ Sometimes the dismissal comes months after the funding commitment should have been issued by USAC; that is, if the funding request had been timely processed, it would not have been pending when the red light rule applied.

not timely pay their debt.⁶⁴ But USAC also believes that once it issues the Notice of Dismissal, it must dismiss the pending items, whether the debtor pays in the next 30 days or not.⁶⁵

Applicants may be hindered in their attempts to promptly pay due to difficulties in timely obtaining from USAC additional information about the recovery requested, particularly when the recovery pertains to funding that was committed or issued many years prior, or they may simply need additional time to obtain internal approval to pay. The Commission has acknowledged that schools and libraries may have administrative requirements and hurdles that delay their ability promptly to repay funding recovery amounts, “expressly recogniz[ing] that a school or library’s ability to pay outstanding debts may be dependent on action by state or local officials on budgetary requests, and the timing of such budgetary action may be considered in determining satisfactory repayment options.”⁶⁶ Given this, the Commission should instead defer action on pending E-rate submissions without dismissing them. This change would allow Tribal libraries and other participants to receive E-rate support after their debt has been fully paid. This process would actually encourage debtors to pay more quickly than if their applications are dismissed because payment will result in their ability to receive E-rate support.

⁶⁴ See USAC Semi-Annual Audit Recovery Report, ¶ 4.

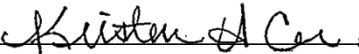
⁶⁵ Request for Review and/or Waiver by the Metropolitan Nashville Public Schools, CC Docket 02-6, available at <https://www.fcc.gov/ecfs/document/102098258662/1>, at 2 (filed Oct. 20, 2017).

⁶⁶ *Fifth Report and Order*, 19 FCC Rcd 15808, 15821 ¶ 42.

XI. CONCLUSION

SHLB commends the Commission for presenting many considerations and solutions to streamline the E-rate program, and we are grateful for the opportunity to provide comments in this proceeding. We are optimistic that many of these future reforms will not only ease programmatic requirements for smaller and more rural applicants, but help to extend the program's reach and serve those who are in need of support.

Respectfully submitted,



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