



April 21, 2023

SUBMITTED ELECTRONICALLY VIA ECFS

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

Re: Ex Parte Filing

Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93

Dear Madam Secretary:

Pursuant to the Federal Communications Commission's ex parte rules, I hereby submit the following summary of the Schools, Health & Libraries Broadband Coalition's (SHLB) April 19, 2023 conversation with members of the Wireline Competition Bureau (WCB) to discuss the pace of approvals for applications submitted in the Emergency Connectivity Fund (ECF) program and the petition SHLB and the Consortium for School Networking (CoSN) filed requesting an extension of the service delivery dates covering requests made for eligible equipment, other non-recurring services, and recurring services submitted during the first, second, and third ECF application filing windows.¹ A copy of the petition is attached as Appendix A.

The following individuals participated in the following calls along with the undersigned: Sue McNeil, Johnnay Schrieber, Kristin Berkland, Kate Dumouchel, Jodie Griffin, Johnny Roddy, Veronica Garcia-Ulloa, and Molly O'Connor from the WCB; Gina Spade, Principal, Broadband Legal Strategies, LLC; Michelle Harken, Director of E-rate Compliance, CSM Consulting; and Michael Flood, SVP and GM, Kajet.

Mr. Flood presented data generated from USAC's ECF Program Data Tool representing the current pace and trends of ECF awards, which is reflected in a slide deck attached here as Appendix B. Based on the current trend of ECF awards and denials, SHLB believes that it is likely that there will be enough money remaining in the program to process and fund pending ECF applications. The last two ECF approval waves each averaged less than \$3 million, despite \$900 million in pending applications. SHLB continues to ask that the WCB waive and extend the current ECF service delivery dates as presented in the petition, and additionally recommends that the Commission direct USAC to devote resources to target processing of all pending applications

¹ See Request for Waiver by The Schools, Health & Libraries Broadband Coalition and The Consortium for School Networking, Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93 (Apr. 5, 2023) <https://www.fcc.gov/ecfs/document/104051359207045/1>.

by June 30, 2023.² This will require ECF funding waves of over \$80 million per week or nearly \$200 million if the Commission continues with its current schedule of releasing decisions every two weeks.


Ms. Corra discussed SHLB and CoSN's petition requesting a waiver and extension of the current service delivery deadlines for requests made for eligible equipment, other non-recurring services, and recurring services submitted during the first, second, and third ECF application filing windows. Specifically, the petition requests that the WCB i) extend the current June 30, 2023 service delivery deadline to June 30, 2024 for those Round 1 and 2 applicants that received a funding commitment decision letter or revised funding commitment decision letter on or after March 1, 2022, and ii) extend the current December 31, 2023 service delivery deadline to June 30, 2024, for Round 3 applicants. SHLB members have expressed the need for more time, given that many applicants are still pending approval, or many received approval with a narrow amount of time to utilize their funding prior to the current service delivery dates. Such timing constraints, coupled with delays caused by other factors like the COVID-19 emergency, ordering, receiving, and deploying equipment and services, and equipment or service substitutions, could put many applicants in jeopardy of not being able to fully utilize their approved ECF awarded funding.

The participants provided examples of various school districts that could benefit from an extension of the current service delivery dates. Ms. Harken provided an example of a large urban school district in California that has not received funding approval for their Window 3 ECF application even after going through numerous rounds of review by multiple reviewers and requests for escalation. Outreach from reviewers has resulted in intent to deny notifications and modification notifications with the intent to reduce funding even though sufficient documentation has been provided in previous rounds of reviews. Mr. Flood reiterated three examples originally included in the petition, including: a large urban school district in Georgia who received their FCDL shortly before Christmas 2022, but could not install and implement Wi-Fi in their bus fleet in time to utilize the full 12 months of funding, thereby placing deployment on hold; a rural, single-school district in Minnesota who received their FCDL in January 2023, with deployment in February 2023, that cannot utilize their approved 12 months of service; and a large public charter school in Florida who received two separate FCDLs in January and February of 2023 who will be unable to use its approved 12 months of services before the December 31, 2023 service delivery deadline.

Ms. Spade provided an example of an Alaskan applicant that received a Round 1 funding commitment in April 2022 and was able to start service for many of its students and teachers in September 2022. It sought additional funds for Internet access services in Round 3. Due to the delay in its application approval for Round 1, the district will not be able to receive funding for the full 24 months it was eligible to receive if the program deadline remains December 2023. If the Commission grants SHLB's petition, the district would be able to use some funding that was approved but that it will not have time to fully utilize due to the application approval delays.

² SHLB did not include the latter part of this request in its petition but includes it herein to ensure that all remaining applicants have the opportunity to fully utilize their funding and twelve months of service by the (requested) extended service delivery date of June 30, 2024.

Sincerely,



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Appendix A

Request for Waiver by The Schools, Health & Libraries Broadband Coalition and The Consortium for School Networking

See Attached Eight (8) Pages

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Establishing Emergency Connectivity Fund to)	
Close the Homework Gap)	WC Docket No. 21-93
)	
Request for Waiver by The Schools, Health)	
& Libraries Broadband Coalition and The)	
Consortium for School Networking)	

**REQUEST FOR WAIVER BY
THE SCHOOLS, HEALTH & LIBRARIES BROADBAND COALITION
AND THE CONSORTIUM FOR SCHOOL NETWORKING**

Pursuant to Section 54.719 of the Commission’s rules,¹ the Schools, Health & Libraries Broadband Coalition (SHLB)² and the Consortium for School Networking (CoSN) respectfully ask the Wireline Competition Bureau (Bureau) to waive Section 54.1711(e) of the Commission’s Emergency Connectivity Fund (ECF) program rules and extend the current service delivery dates for requests for ECF eligible equipment, other non-recurring services, and recurring services submitted during the first, second, and third application filing windows.³ The extension is necessary due to timing of the issuance of funding commitments, the ongoing nature of the COVID-19 emergency, and deployment delays experienced by some applicants and their service providers.

¹ 47 C.F.R. § 54.719(c); 47 C.F.R. § 54.722(a).

² The SHLB Coalition is a non-profit, broad-based public interest coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer advocates. See <http://shlb.org/about/coalition-members> for a list of SHLB Coalition members.

³ See 47 CFR § 54.1711(e).

Specifically, SHLB and CoSN request that the Bureau: extend the current June 30, 2023 service delivery deadline to June 30, 2024 for those Round 1 and 2 applicants that received a funding commitment decision letter (FCDL) or revised funding commitment decision letter (RFCDL) on or after March 1, 2022. In addition, SHLB and CoSN request that the Bureau extend the current December 31, 2023 service delivery deadline to June 30, 2024, for Round 3 applicants.

I. BACKGROUND

The COVID-19 pandemic created unprecedented challenges for all Americans, including the inability of many households to secure access to reliable broadband service and devices necessary to participate in remote work, learning, healthcare, and more. Since its inception, the ECF program has provided tremendously important federal aid to combat pandemic-related hardship by helping countless schools and libraries provide broadband services and equipment to students, school staff, and library patrons.

The first ECF program application filing window closed on August 13, 2021; the second window closed on October 13, 2021; and the third window closed on May 13, 2022. The Commission originally adopted June 30, 2022, as the service delivery date for those applicants who submitted requests for recurring services and for equipment and other non-recurring services during the first and second application filing windows. It subsequently waived and extended this June 2022 deadline an additional twelve months to June 30, 2023, pursuant to a request submitted by a group of stakeholders, including SHLB.⁴ The Commission adopted December 31, 2023, as the service delivery date for those applicants who submitted requests for

⁴ See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, Order, WC Docket No. 21-93 (Feb. 22, 2022) <https://www.fcc.gov/ecfs/document/022292706123/1> (*ECF Waiver Order*); see also *Petition of Schools, Health & Libraries Broadband Coalition, et al.*, WC Docket No. 21-93 (filed Jan. 28, 2022) <https://www.fcc.gov/ecfs/filing/101281737819629>.

recurring services and for equipment and other non-recurring services during the third application filing window covering funding for equipment and services purchased between July 1, 2022, and December 31, 2023.

Funds totaling \$7.171 billion have been dedicated to the ECF program. As of March 30, 2023, the Commission has approved ECF applications totaling over \$6.6 billion in funding.⁵ Of this amount, approximately \$4.14 billion is supporting applications submitted in the first window, \$833 million is supporting applications submitted in the second window, and \$1.65 billion is supporting applications submitted in the third window.⁶

Based on the data in USAC's ECF Program Data Tool, we believe that nearly 200 applications submitted in the first and second filing windows, and nearly 2,700 applications submitted in the third filing window, currently maintain a "pending" funding request status.⁷ In terms of funding amounts requested, approximately 3 percent of the total funding requested in 2021 in the first two windows are in applications that have not yet been decided, and nearly a third of the funding requested in the third window are in the same status almost a year after that filing window closed.⁸

⁵ News Release, Anne Veigle, FCC, FCC Announces Over \$2.8 Million in Emergency Connectivity Funding for Schools and Libraries (Mar. 30, 2023), <https://www.fcc.gov/document/fcc-announces-over-28-million-emergency-connectivity-funding>.

⁶ *Id.*

⁷ Universal Service Administrative Co., Emergency Connectivity Fund Program Data Tool (retrieved March 30, 2023) <https://opendata.usac.org/Emergency-Connectivity-Fund/Emergency-Connectivity-Fund-Program-Data-Tool/yug3-zpzs>. To calculate this data, SHLB filtered the ECF Program Data Tool by filing window (combining windows 1 and 2) and funding request status to "pending" and downloaded the corresponding data file. Duplicate application numbers from Column "A" of the data file were removed so that only each unique application was counted.

⁸ *Id.* (retrieved March 20, 2023). To calculate this data, SHLB divided the total funding amount pending for each filing window by the total amount requested for each filing window (combining windows 1 and 2).

II. FOR MANY ECF RECIPIENTS, THE AMOUNT OF TIME BETWEEN RECEIVING A FUNDING COMMITMENT DECISION LETTER AND THE CURRENT SERVICE DELIVERY DEADLINES MAY INHIBIT THEIR ABILITY TO FULLY USE THEIR REQUESTED ECF FUNDING

Although the Commission has made significant progress in funding ECF requests, there are ECF applicants who are either still awaiting application approval or who received an FCDL or RFCDL with a narrow amount of time to utilize their funding prior to the current service delivery dates. In these cases, eligible schools and libraries may not be able to receive their requested ECF supported equipment and/or receive their requested period of broadband service prior to the current service delivery deadlines. This outcome would ultimately deprive students and library patrons of the opportunity to obtain low-cost broadband equipment and/or their requested timeframe of connectivity.

For the remaining ECF requests that are currently pending, the ability of these applicants to receive ECF supported equipment and/or provide the full period of service prior to the current service delivery dates is directly in jeopardy, given that the June and December 2023 service delivery dates will occur in less than twelve months. And even if an applicant received an FCDL or RFCDL, it still may not be able to meet the existing service delivery deadlines or use its funding to the fullest extent. Certain factors, such as the amount of time between when an applicant received its FCDL and RFCDL and the service delivery date, combined with the time necessary for a recipient to order, receive, and distribute equipment and services once they are procured, could inhibit an ECF recipient from fully using their requested funding prior to the service delivery dates. For example, many applicants wait to enter contracts for the purchase of equipment and/or services until they receive funding approval. Alternatively, those that did enter into a contract may be required to renegotiate certain terms once they receive a FCDL or RFCDL, especially if pricing for equipment/services increased by the time an applicant received

funding approval. Additionally, an applicant may need to request equipment and/or service substitutions if those originally requested are no longer available. Any of these scenarios could result in an uncertain amount of delay after an applicant receives its FCDL or RFCDL. Further, applicants have been operating under the COVID-19 Public Health Emergency and any constraints and challenges related thereto,⁹ as well as any remaining manufacturing and global supply chain issues that contribute to order and delivery delays.¹⁰ All of these factors can impact and delay the time an ECF applicant needs to complete a project that has been approved. In these cases, even an applicant that received its FCDL or RFCDL exactly twelve months prior to the current applicable service delivery date would not be able to provide a full twelve months of ECF-supported service.

The following scenarios are illustrative of some of the issues faced by applicants, given the timing of approved funding commitments combined with other factors resulting in delay:

- A large urban school district in Georgia received its Window 3 FCDL in November of 2022 to deploy Wi-Fi on its school bus fleet. Installation, however, required an additional 1 to 2 months due to the size and availability of the buses, curbing the district's ability to provide a full twelve months of service to students under the current December 2023 deadline.¹¹
- A rural, single-school district in Minnesota received its Window 3 FCDL in January 2023, with deployment anticipated one month later, in February. The district will not

⁹ The Department of Health and Human Services announced that it is planning for the federal Public Health Emergency for COVID-19 to expire on May 11, 2023. *See* U.S. Department of Health & Human Services, Assistant Secretary for Public Affairs (ASPA), COVID-19 Public Health Emergency (PHE) (last reviewed Mar. 2, 2023), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html>.

¹⁰ The Commission has previously stated that factors like supply chain disruptions and the pandemic's ongoing impact present the types of circumstances that contribute to applicants' need for additional time and merit a waiver of its rules. *See* ECF Waiver Order at 9; *see also* Schools and Libraries Universal Service Support Mechanism, Order, CC Docket No. 02-6 (Sept. 19, 2022) <https://www.fcc.gov/document/wcb-extends-delivery-deadline-certain-fy202021-e-rate-services>.

¹¹ After deliberation, this district is concerned about the inability to utilize its full approved funding and has paused deployment, pending further evaluation. If the service delivery deadline were extended to 6/30/2024, it may reconsider.

be able to provide its approved full twelve months of service to students under the current December 2023 deadline.

- A large public charter school in Florida received two Window 3 approvals, one in January and one in February 2023, for its middle school and high school. The district will not be able to provide its approved full twelve months of service under the current December 2023 deadline.
- A rural school district in Louisiana received its RFCDL for a Round 1 special construction ECF application from USAC in September 2022. The service delivery deadline for special construction installation is September 2023, however the deadline for recurring services provided over those facilities is June 2023. The district will not be able to provide its approved full twelve months of service under the current June 2023 deadline.
- A California County Office of Education applied for the purchase of 1,453 Chromebooks and hotspot service for 720 devices in Window 3. It received its FCDL in December 2022. Because the request covers various programs that operate independently of one another (like alternative education, community day, and special education), the applicant required additional time to coordinate with each separate department to deploy funded equipment and services. As a result, it will not be able to utilize its approved full twelve months of service under the current December 2023 deadline.

III. SERVICE DELIVERY DEADLINE EXTENSIONS ARE APPROPRIATE FOR SOME ECF RECIPIENTS

To help applicants to fully utilize their ECF funding, SHLB and CoSN ask the Commission to waive Section 54.1711(e) of the ECF program rules and extend the current June 2023 service delivery date for the first and second filing windows, and the December 2023 service delivery date for the third filing window. For applications submitted in windows 1 and 2, we ask that the current June 30, 2023 service delivery date be extended an additional year to June 30, 2024 if the applicant received an FCDL or RFCDL on or after March 1, 2022.¹² For

¹² Those applicants that received an FCDL or RFCDL prior to March 1, 2022 for requests submitted in the first and second filing windows, or those with special circumstances, can still separately apply to the Commission for an individual waiver. This blanket extension, however, will reduce the number of appeals or waiver requests that the Commission receives as the deadline draws nearer.

applications filed in window 3, SHLB and CoSN ask that the current December 31, 2023 service delivery date be extended an additional six months to June 30, 2024, for all applicants.¹³

Generally, the Commission maintains discretion to waive any provision of its rules for good cause shown.¹⁴ When deciding whether to exercise this discretion, the Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁵

This waiver request is in the public interest because, if the current service delivery dates are not extended, the ECF program would currently provide minimal assistance, at best, to those applicants who are still waiting for funding request approval or to those who are inhibited from fully using their funds given the timing between when they received their FCDL or RFCDL's and the service delivery dates combined with other factors delaying the project as described herein. This outcome would ultimately harm the students and library patrons that could have received a supported device and/or the requested period of low-cost broadband connectivity, but who now may receive only a fraction of the request. This outcome would not serve the public interest, nor would it serve the program's goal to bring necessary broadband equipment and services to those in need to the fullest extent possible.

Additionally, if the Commission does not extend the service delivery dates, applicants will not be able to use all of their awarded funding, and the Commission will have spent less than the full \$7.17 billion in funding that was appropriated by Congress. It would be a far better

¹³ If the Public Health Emergency for the COVID-19 pandemic ends at the end of the day on May 11, 2023 (or sooner), the ECF program would end on June 30, 2024. *See* Establishing Emergency Connectivity Fund to Close the Homework Gap, Report and Order, WC Docket No. 21-93, para. 7 (rel. May 11, 2021).

¹⁴ 47 C.F.R. § 1.3.

¹⁵ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

policy outcome for the Commission to extend the deadline and allow applicants to utilize the full amount of their awarded funding rather than opening a fourth application window to award the remaining dollars.

IV. CONCLUSION

Accordingly, we ask the Commission to extend the current ECF service delivery dates as described above.¹⁶

Respectfully Submitted by:

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April 5, 2023

¹⁶ We note that a grant of this request as presented herein would also automatically extend the ECF invoice filing deadline date. Under the Commission’s rules, “[i]nvoices must be submitted to the Administrator within 60 days from the date of the funding commitment decision letter; a revised funding commitment decision letter approving a post-commitment change or a successful appeal of previously denied or reduced funding; or service delivery date, whichever is later.” 47 C.F.R. § 54.1711(d).

Appendix B

ECF Funding Summary

See Attached Four (4) Pages



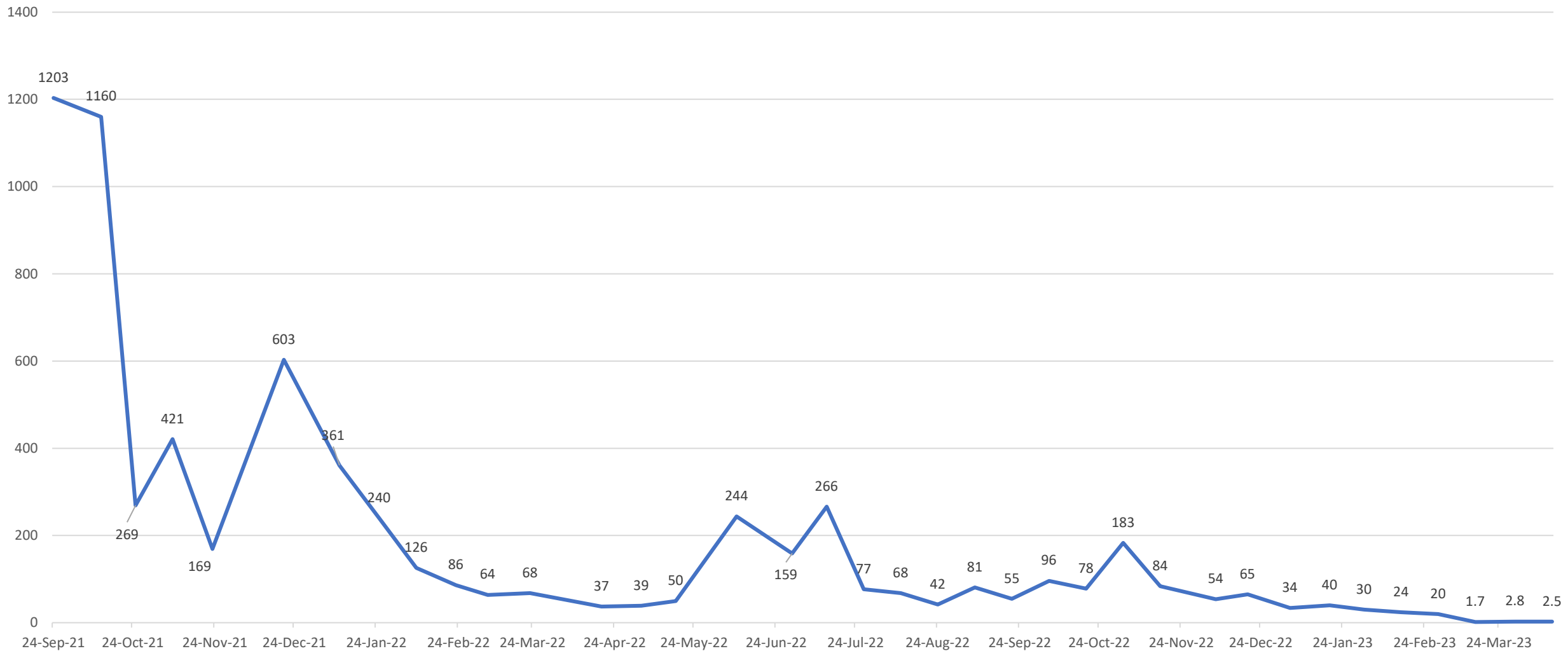
ECF Funding Summary

By the Numbers... What's left to award

Total Funding Available:	\$7,171M	<i>(source: Legislation)</i>
Total Funding Requested:	\$9,252M	<i>(source: FCC PR for Round 1, 2, & 3 application totals)</i>
Total Funded:	\$6,303M	<i>(source: FCC Open Data & ECF Program Data Tool)</i>
Total Pending:	\$903.9M	<i>(source: FCC Open Data & ECF Program Data Tool)</i>
Available to Award:	\$868M	<i>(source: Total Available – Total Remaining Funded)</i>
Reality is most likely north of \$1B		<i>(\$868M + additional cancellations)</i>

By the Numbers... Pace of awards

Commitments by Wave



ECF Service Delivery Deadline

- \$53.4M pending from ECF 1 + ECF 2, with a Service Delivery Deadline of 6/30/2023 (< 3 months)
- \$850.5M pending from ECF3, with a Service Delivery Deadline of 12/31/2023 (< 9 months)
- SHLB + CoSN filed for an extension of Service Delivery Deadlines to allow funded applicants to utilize their full funding (up to 12 months of service)

Pace of Approvals

- If the maximum allowable Service Delivery Deadline extension is to 6/30/2024, approvals need to conclude no later than 6/30/2023.
- Last 10 waves averaged **\$27M** each; Last 5 waves **\$10M** each; Last 2 waves **\$2.7M** each
- To approve **\$900M** by **6/30/2023** with waves every 2 weeks, waves must average **\$200M** (5 waves left)
 - *Alternatively, move to weekly waves of \$82M each for 11 more waves*

Conclusion: In order to comply with Congressional intent, the FCC must dramatically increase resources for the review and approval of outstanding applications.