

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

In the Matter of
Request for Review and/or Waiver of Decision of
the Emergency Connectivity Fund Program
Administrator by
Trinity County Connectivity Consortium
Trinity County, CA
Establishing Emergency Connectivity Fund to
Close the Homework Gap
ECF202104936
WC Docket No. 21-93

ORDER

Adopted: July 3, 2024

Released: July 3, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we address a request for review and/or waiver from the Trinity County Connectivity Consortium (Petitioner) seeking review of the denial of a funding request for network construction through the Emergency Connectivity Fund (ECF) program. The ECF program is a temporary emergency program with limited, appropriated funding. When the ECF program was created, the Federal Communications Commission (Commission) designed it to quickly provide funding for commercially available Internet access services, with a narrow exception for network construction to connect students to Internet access only in areas where there were no commercially available Internet access service options. The Petitioner sought \$25.5 million in ECF funding for the construction of sixteen wireless towers in its area, which would later be used to contract with third-party long-term evolution (LTE) or 5G mobile broadband providers to provide mobile broadband coverage in the area. After review of the record, we deny the Petitioner’s request for review and/or waiver, finding that the requested network construction is ineligible for support through the ECF program.

II. BACKGROUND

2. As part of the American Rescue Plan Act of 2021, Congress appropriated \$7.171 billion to the Emergency Connectivity Fund and directed the Commission to promulgate rules providing for the distribution of funding to eligible schools and libraries for the purchase during the COVID-19 emergency period of eligible equipment and/or advanced telecommunications and information services for use by

1 Request for Review by Trinity County Connectivity Consortium of Decision of Universal Service Administrator and/or Waiver, Establishing Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93 (filed May 1, 2023) (Request for Review).

2 See Establishing the Emergency Connectivity Fund to Close the Homework Gap, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8716-18, paras. 40-41 (2021) (ECF Report and Order).

students, school staff, and library patrons, including at locations other than a school or library.<sup>3</sup> On May 10, 2021, the Commission adopted a Report and Order establishing the rules for the ECF program to distribute the funding to eligible schools and libraries.<sup>4</sup>

3. Consistent with the American Rescue Plan Act, in the *ECF Report and Order*, the Commission determined the equipment and services eligible for support from the program to be Wi-Fi hotspots, modems, routers, devices that combine a modem and router, connected devices, and commercially available Internet access services delivered via Wi-Fi hotspots with wireless broadband connectivity or via leased modems with fixed broadband connectivity, generally delivered from a local Internet service provider.<sup>5</sup> ECF program funding was limited to requests for eligible equipment and services to meet the unmet needs of students, school staff, and library patrons that otherwise lacked access to equipment and/or Internet access services sufficient to engage in remote learning during the COVID-19 emergency period.<sup>6</sup>

4. The *ECF Report and Order* also provided a limited exception for network construction where there is no commercially available Internet access service option.<sup>7</sup> In only that limited instance, support for network construction would be permitted in order to quickly bring Internet connectivity to the students, school staff, and library patrons that do not have any other Internet access options.<sup>8</sup> In light of the decision to forego any requirement to conduct competitive bidding in order to allow entities to more quickly connect students, school staff, and library patrons during the COVID-19 emergency, the Commission adopted certain evidentiary requirements for ECF Program requests for network construction, to reduce the risk of using the limited emergency funding on time-consuming infrastructure construction projects that may be better suited for other funding programs or where there are commercially available Internet access services.<sup>9</sup> Under the limited exception for network construction, applicants must demonstrate that there are no commercially available Internet access service options sufficient to support remote learning from one or a combination of providers.<sup>10</sup> Applicants seeking support for network construction must define the geographic area that will be served and assess the estimated number of students and school staff or library patrons to be served.<sup>11</sup> Applicants must be able to provide clear evidence demonstrating how they determined that an existing fixed or mobile broadband network was not available and that they sought service from existing providers serving the area prior to constructing a new network, and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library patrons.<sup>12</sup> Network construction was also only available for projects that could be completed and services provided within one year from the date of the funding commitment decision letter approving the construction.<sup>13</sup>

5. The Commission and the Universal Service Administrative Company (USAC) opened an

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<sup>3</sup> American Rescue Plan Act, 2021, H.R. 1319, Pub. L. No. 117-2, 117th Cong., tit. VII, § 7402(a)(1)-(2) (2021) (enacted), available at <https://www.congress.gov/bill/117th-congress/house-bill/1319/text> (American Rescue Plan Act) (enrolled bill).

<sup>4</sup> See generally *ECF Report and Order*, 36 FCC Rcd at 8708-13, paras. 29-35.

<sup>5</sup> See *id.* at 8708, 8712-13, paras. 28, 35.

<sup>6</sup> See *id.* at 8736-37, para. 81.

<sup>7</sup> See *id.* at 8716-17, para. 40.

<sup>8</sup> See *id.* at 8716-17, para. 40.

<sup>9</sup> See *id.* at 8716-18, paras. 40-41.

<sup>10</sup> See *id.* at 8717-18, para. 41.

<sup>11</sup> See *id.* at 8717-18, para. 41.

<sup>12</sup> See *id.* at 8717-18, para. 41.

<sup>13</sup> See *id.* at 8717-18, para. 41.

initial application filing window from June 29, 2021 to August 13, 2021,<sup>14</sup> and a second application filing window from September 28, 2021 to October 13, 2021.<sup>15</sup> During the first two windows, applicants requested over \$6.4 billion in ECF support.<sup>16</sup> The Wireline Competition Bureau (Bureau) opened a third filing window from April 28, 2022 to May 13, 2022 and received requests for over \$2.8 billion.<sup>17</sup> The COVID-19 public health emergency expired at the end of the day on May 11, 2023,<sup>18</sup> and, per the statute, June 30, 2024 was the sunset date for the ECF program.<sup>19</sup>

6. Trinity County Connectivity Consortium (Consortium) is a consortium comprised of eight school districts in Northern California. The Consortium describes the area as covering over one million acres of land in Humboldt and Trinity County, as well as the Hoopa Valley Reservation.<sup>20</sup> It also describes the region as mountainous and sparsely populated, with students living in rural towns that are unserved by service providers.<sup>21</sup> It explains that over 62% and 58% of students in Trinity and Humboldt County, respectively, qualify for free and reduced lunch, and that a majority of students served by the Consortium would have difficulty affording services if they were available.<sup>22</sup> The Consortium estimates nearly a third of the students it serves are of Native American descent.<sup>23</sup> Finally, the Consortium states that over 81% of their students were unable to receive direct instruction due to a lack of Internet access, resulting in some instances of teachers mailing packets home to students.<sup>24</sup>

7. On July 27, 2021, the Consortium filed an ECF application requesting \$25,552,000 to construct 16 wireless towers in the area of the Consortium.<sup>25</sup> The Consortium estimated that 1,500 students lacked a broadband connection.<sup>26</sup> The Consortium provided nine topographical maps to estimate the geographic area where the towers would be constructed.<sup>27</sup> In the “Trinity County Connectivity

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<sup>14</sup> News Release, FCC, *FCC Announces Emergency Connectivity Fund Application Window Will Open on June 29* (June 15, 2021), <https://www.fcc.gov/document/emergency-connectivity-fund-application-window-opens-june-29> (*First ECF Application Window News Release*).

<sup>15</sup> News Release, FCC, *FCC Announces Over \$5 Billion in Funding Requests Received in Emergency Connectivity Fund Program* (Aug. 25, 2021), <https://www.fcc.gov/document/fcc-announces-over-5-billion-emergencyconnectivity-fund-requests> (*Second ECF Application Window News Release*).

<sup>16</sup> See 47 CFR § 54.1710; *ECF Report and Order*, 36 FCC Rcd at 8734, 8737, paras. 78, 83.

<sup>17</sup> *Wireline Competition Bureau Announces Third Application Filing Window for the Emergency Connectivity Fund Program*, WC Docket No. 21-93, Public Notice, DA 22-309, 2022 WL 867322, at \*1 (WCB Mar. 23, 2022) (*Third ECF Application Window PN*).

<sup>18</sup> Department of Health and Human Services (HHS), COVID-19 Public Health Emergency (PHE), <https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html> (last visited June 25, 2024).

<sup>19</sup> See *Wireline Competition Bureau and Office of the Managing Director Provide Guidance on Emergency Connectivity Fund Program Upon Termination of the Emergency Period*, WC Docket No. 21-93, Public Notice, DA 23-406 (WCB May 12, 2023) (*ECF Sunset Guidance Public Notice*) (announcing that the expiration of the COVID-19 period requires that all purchases of eligible equipment and services must be made by June 30, 2024, in order for the purchase to be eligible for reimbursement from the ECF program).

<sup>20</sup> Request for Review at 4.

<sup>21</sup> Request for Review at 4.

<sup>22</sup> Request for Review at 5.

<sup>23</sup> Request for Review at 5.

<sup>24</sup> Request for Review at 5-6.

<sup>25</sup> ECF Application No. ECF202104936, Trinity County Connectivity Consortium (July 27, 2021).

<sup>26</sup> ECF Application No. ECF202104936, Trinity County Connectivity Consortium, at 2 (July 27, 2021).

<sup>27</sup> Request for Review, Exhibit A, Site Maps.

Project” description submitted with the application, the Consortium explains that the intent, after construction of the 16 towers, “is to contract with a service provider to expand its wireless network” in order to allow students to connect to the internet at home.<sup>28</sup> On July 25, 2022, USAC denied the application, finding that it was unable to determine whether the request was eligible based on the information provided by the applicant.<sup>29</sup> The Petitioner timely appealed the decision to USAC, which denied the appeal on April 3, 2023, stating that the Consortium did not provide sufficient information to show that USAC erred in the original decision.<sup>30</sup> The Petitioner then filed its Request for Review with the Wireline Competition Bureau (Bureau) on May 1, 2023.<sup>31</sup> The Consortium also met with Commission staff for three *ex parte* presentations on May 31, September 14, and December 19.<sup>32</sup>

8. In the Request for Review, the Petitioner states that the Consortium provided clear evidence to support its request for funds to build the wireless towers.<sup>33</sup> First, the Consortium states that it sought service from existing providers and certified that such providers were unable or unwilling to provide sufficient services.<sup>34</sup> It states that in addition to the certification, it provided screenshots of provider websites showing no service was available at certain student addresses, and that it was unable to get letters from service providers stating that they were unwilling or unable to provide service.<sup>35</sup> The Consortium also provides descriptions and copies of two different types of coverage maps it provided to USAC – the first depicting coverage based on manual cellular surveys conducted by Trinity Consortium personnel and the second was another map based on FCC data available at the time.<sup>36</sup> Finally, the Consortium states that it prepared and analyzed surveys of parents, staff, and community members.<sup>37</sup> In sum, the Consortium argues that they provided clear evidence that there is no commercially available Internet access sufficient for remote learning. In the alternative, the Consortium seeks a waiver that would allow the application to be granted based upon the provided documentation.<sup>38</sup> It states that the public interest would be served by funding the project.

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<sup>28</sup> Request for Review, Exhibit A, Project Narrative.

<sup>29</sup> Letter from USAC, to Rachel White, Trinity County Connectivity Consortium, concerning ECF Application No. ECF202104936 (July 25, 2022) (Funding Commitment Decision Letter).

<sup>30</sup> Letter from USAC, to Rachel White, Trinity County Connectivity Consortium, concerning ECF Application No. ECF202104936 (Apr. 3, 2023) (Revised Funding Commitment Decision Letter, or RFCDL). The RFCDL also cited to section 54.1715(b) of the ECF program rules and paragraphs 90 and 119-20 of the *Emergency Connectivity Fund Order*, both of which are related to record retention requirements for program participants. We agree with the Consortium that these citations are not applicable to this appeal and were cited in error on the RFCDL.

<sup>31</sup> Request for Review by Trinity County Connectivity Consortium of Decision of Universal Service Administrator and/or Waiver, WC Docket No. 21-93 (May 1, 2023) (Request for Review).

<sup>32</sup> Letter from Jessica Gylstrom, Telecommunications Law Professionals PLLC, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed June 2, 2023) (June 2<sup>nd</sup> *Ex Parte*); Letter from Jessica Gylstrom, Telecommunications Law Professionals PLLC, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed Sept. 18, 2023) (Sept. 18<sup>th</sup> *Ex Parte*); Letter from Jessica Gylstrom, Telecommunications Law Professionals PLLC, to Ms. Marlene H. Dortch, Secretary, FCC, WC Docket No. 21-93 (filed Dec. 21, 2023) (Dec. 21<sup>st</sup> *Ex Parte*).

<sup>33</sup> Request for Review at 12-18.

<sup>34</sup> Request for Review at 14.

<sup>35</sup> Request for Review at 14-15.

<sup>36</sup> Request for Review at 15-17.

<sup>37</sup> Request for Review at 17-18.

<sup>38</sup> Request for Review at 24-25.

### III. DISCUSSION

9. Based on our *de novo* review of the record,<sup>39</sup> we find that the Petitioner's funding request was ineligible for support from the Emergency Connectivity Fund because it is requesting funding for wireless tower deployment only, and without providing service or connectivity to students and school staff. We therefore deny the Petitioner's Request for Review. In addition, and in the alternative, we find that the Consortium did not provide sufficient information, as required by the *ECF Report and Order*, regarding the availability of fixed or mobile services for students and school staff in the geographic area that they proposed to serve in order for USAC or the Bureau to determine the eligibility of the request. Finally, we also deny the Petitioner's request for waiver of the program rules, finding no special circumstances present to alter the type of projects for which Emergency Connectivity Fund support could be used.

10. First, we find that the Petitioner's application, which requests funding to build 16 wireless towers but does not connect students or school staff with unmet need to such services, is inconsistent with the purpose of the limited exception for network construction to quickly connect students with unmet need during the COVID-19 emergency period. The Emergency Connectivity Fund program was designed to provide emergency funding for equipment and commercially available Internet services for students, school staff, and library patrons with unmet need during the COVID-19 emergency period. If approved, this funding request would build 16 wireless towers, but offer no Internet service to the students or school staff with unmet need, as required by the *ECF Report and Order*.<sup>40</sup> We find this request is inconsistent with the limited exception set out in the *ECF Report and Order* for network construction and therefore ineligible for funding through the ECF program. Based on the application and subsequent appeal documents, the intent of the project is to eventually contract with a mobile broadband provider to offer LTE or 5G service via the 16 towers.<sup>41</sup> The Consortium's ECF request does not provide details regarding how the funding would result in such service being provided to or targeted to students or school staff with unmet need. After questions from Bureau staff for more information about how they planned to provide service to students with unmet need, in a June 2<sup>nd</sup> *ex parte* filed with the Commission, the Consortium states that it plans to work with its students and families to ensure that they are able to afford any broadband service being introduced as a result of an ECF-funded network.<sup>42</sup> Ultimately, the Consortium is requesting funding to build wireless towers in their county at large with an eventual hope to have LTE or 5G service offered. Students and school staff would still be left to find ways to access and pay for a service from this proposed wireless network until and after construction is completed and a contract with a mobile broadband provider is established. Thus, we find this request for network construction ineligible for the ECF program.

11. In addition, and in the alternative, we also find that the Consortium did not provide enough information for USAC to determine whether all of the proposed towers that it is seeking to construct meet the requirements set out in the *ECF Report and Order*.<sup>43</sup> Even if the Consortium were

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<sup>39</sup> The Bureau must conduct a *de novo* review of requests for review of decisions issued by USAC. 47 CFR § 54.1718(e).

<sup>40</sup> See *ECF Report and Order*, 36 FCC Rcd at 8716-17, para. 40.

<sup>41</sup> Request for Review, Exhibit A, Project Narrative.

<sup>42</sup> June 2<sup>nd</sup> *Ex Parte* at 3.

<sup>43</sup> See *supra* para. 4. First, applicants must provide clear evidence demonstrating how they determined that an existing fixed or mobile broadband network was or is not available, including by seeking service from existing service providers serving the area prior to constructing the network. Applicants seeking support for network construction must define the geographic area that will be served and assess the estimated number of students and school staff to be served. Eligible entities must be able to provide clear evidence demonstrating how they determined that an existing fixed or mobile broadband network was not available and that they sought service from existing providers serving the area prior to constructing a new network, and that such providers were unable or unwilling to provide services sufficient to meet the remote learning needs of their students, school staff, or library

(continued....)

providing Internet service to students, school staff, or library patrons through this request, it did not provide sufficient information for USAC to review whether the service would be provided to students and school staff with unmet needs – that is, students and school staff that otherwise lacked access to equipment and/or Internet access services sufficient to engage in remote learning during the COVID-19 pandemic. The Consortium estimated that 1,500 students with unmet need would be provided with a broadband connection as a result of the ECF support for the wireless tower construction. In their application, and in the subsequent appeals, the Consortium provided nine maps with hand-drawn circles indicating where coverage was unavailable.<sup>44</sup> They also provided additional coverage maps,<sup>45</sup> generally including areas that were included in their application, as well as screen shots from service provider websites checking whether service was available from a small sample of addresses.<sup>46</sup>

12. However, based on the information provided, the Consortium has not provided sufficient information for USAC nor the Bureau to determine whether the proposed construction would serve students and school staff with unmet need. While they seek over \$25.5 million in funding to provide service for an estimated 1,500 students, they provided less than 20 addresses for which they had clearly checked for coverage from service providers in the area.<sup>47</sup> The maps provided did not clearly show where the requested towers, nor where the student households were generally located in order for USAC or the Bureau to determine whether the construction would provide service to students or staff without access to fixed or mobile service offerings. The Consortium states that it contacted service providers and was unable to get responses indicating that the service providers were unable or unwilling to provide service,<sup>48</sup> however, there is no documentation of seeking service from fixed or wireless service providers. The applicant states that Frontier Communications is the main provider in the area, but does not indicate which other fixed or mobile providers they contacted.<sup>49</sup> While the Request for Review notes that the Consortium prepared and analyzed surveys from students or parents, the surveys do not appear to have been provided to USAC nor the Bureau in order to help determine whether the construction would be eligible. The application and appeals state that the Consortium did a manual cellular service survey in areas with a high number of student residences.<sup>50</sup> However, the application narrative and appeal do not provide sufficient information for USAC or the Bureau to determine which service provider networks were tested, where, nor how. In sum, there is insufficient information for USAC or the Bureau to determine whether any of the areas described have alternative service offerings or whether the proposed construction would actually be able to provide broadband connections to the students and school staff with unmet need.

13. Finally, we deny the Consortium's request for a waiver of the Commission's rules. The Commission may exercise its discretion to waive a rule where the particular facts demonstrate that (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the

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patrons. Network construction was also only available for projects that could be completed and services provided within one year of the funding commitment decision letter approving the construction.

<sup>44</sup> Request for Review, Exhibit D.

<sup>45</sup> Request for Review, Exhibit D.

<sup>46</sup> Request for Review, Exhibit D.

<sup>47</sup> In addition, when reviewing the FCC Broadband Map for the neighborhoods near the sample addresses provided, other service providers appear to be offering service. Without additional detail about the locations with unmet need, nor the geographical area to be served, we are unable to determine whether these providers (e.g., Velocity Communications, LLC in Weaverville, CA) were contacted or are able to provide service to the students in the area.

<sup>48</sup> Request for Review at 14.

<sup>49</sup> Request for Review, Exhibit D.

<sup>50</sup> Request for Review at 15-16, Exhibit D.

public interest.<sup>51</sup> Here, we recognize the challenges the students and school staff in these areas have faced due to the lack of access to Internet connectivity at home, for availability or affordability reasons. The Commission provided a limited exception for new construction in areas without any commercially available service,<sup>52</sup> but the Consortium's requested solution is for a large wireless infrastructure project that does not fit within the Emergency Connectivity Fund eligibility requirements. While the Bureau is sympathetic to the desire to deploy wireless infrastructure in the area, the intent of the Emergency Connectivity Fund was to specifically target connectivity for students and school staff, while other universal service programs are focused on general deployment in hard-to-serve areas.<sup>53</sup> We also recognize that outreach and communications with the Consortium could have more clearly explained the ineligibility of the request, but we do not find that this confusion merits special circumstances that would justify altering the eligibility of the wireless infrastructure without service in this instance.

#### IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS 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, and 1.3 of the Commission's rules, 47 CFR §§ 0.91, 0.291, and 1.3, that the Request for Review and/or Waiver filed by Trinity County Connectivity Consortium on May 1, 2023 is DENIED.

15. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>51</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>52</sup> *ECF Report and Order*, 36 FCC Rcd at 8716-18, paras. 40-41.

<sup>53</sup> While not a determining factor to this decision, we note that certain documents provided by the Consortium indicate that the research and pricing had been developed prior to the pandemic, providing additional indication that the project's goal of being general deployment of broadband infrastructure.