

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

In the Matter of	)	
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Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
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**ORDER**

**Adopted: October 26, 2017**

**Released: October 30, 2017**

By the Commission: Commissioner O’Rielly issuing a statement.

**I. INTRODUCTION**

1. In this Order, we adopt, on an emergency basis, temporary rules to provide immediate relief to schools and libraries contending with the devastation caused by Hurricanes Harvey, Irma, and Maria (Hurricanes), which struck the United States and its territories in August and September 2017. These temporary rules make available targeted support to schools and libraries that are forced to rebuild facilities and replace equipment damaged by the Hurricanes, and provide increased flexibility for eligible services to be restored through service substitutions.<sup>1</sup> We also make additional E-rate support available for schools that are incurring additional costs for eligible services, e.g., for increased bandwidth demand, because they are serving students that have been displaced by the storms, even though they may not be contending with substantial physical damage caused by the Hurricanes. As explained herein, we find that the exigent circumstances faced by the schools and libraries contending with the consequences of these natural disasters constitute good cause to adopt these temporary rules without notice and comment.<sup>2</sup>

**II. BACKGROUND**

2. In August and September 2017, Hurricanes Harvey, Irma, and Maria struck the United States and its territories, resulting in unprecedented destruction to areas of Texas, Florida, and Georgia, and to virtually all of Puerto Rico and the United States Virgin Islands (USVI).<sup>3</sup> Preliminary analyses estimate the Hurricanes caused between \$150 billion and \$200 billion in damage,<sup>4</sup> including, but not

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<sup>1</sup> E-rate is more formally known as the schools and libraries universal support mechanism.

<sup>2</sup> See 5 U.S.C. § 553(b)(3)(B). See also *infra* Section III.D.

<sup>3</sup> See, e.g., Angela Fritz, Harvey. Irma. Maria. Why is this Hurricane Season so Bad?, The Washington Post (Sept. 23, 2017), [https://www.washingtonpost.com/news/capital-weather-gang/wp/2017/09/23/harvey-irma-maria-why-is-this-hurricane-season-so-bad/?utm\\_term=.578bc853973f](https://www.washingtonpost.com/news/capital-weather-gang/wp/2017/09/23/harvey-irma-maria-why-is-this-hurricane-season-so-bad/?utm_term=.578bc853973f).

<sup>4</sup> Clay Dillow, The Hidden Cost of Hurricanes, Fortune (Sept. 22, 2017), <http://fortune.com/2017/09/22/hurricane-maria-irma-harvey-damage-cost/> (estimates taken from Moody’s Analytics).

limited to, catastrophic damage to communications facilities.<sup>5</sup> In the hardest hit areas, schools and libraries have either been destroyed or shut down indefinitely,<sup>6</sup> or have begun a long process of rebuilding and replacing the facilities and equipment necessary to serve their students.<sup>7</sup> Indeed, many residents of Puerto Rico and USVI still do not have access to power or fresh water.<sup>8</sup>

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<sup>5</sup> See, e.g., FCC, Communications Status Report for Areas Impacted by Hurricane Harvey (Aug. 26, 2017), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-346368A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-346368A1.pdf) (at least 149,909 subscribers were without cable or wireline service following Hurricane Harvey); FCC, Communications Status Report for Areas Impacted by Hurricane Irma (Sept. 13, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0913/DOC-346710A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0913/DOC-346710A1.pdf) (at least 8 million cable and wireline subscribers were out of service in affected areas in Alabama, Florida, and Georgia following Hurricane Irma); FCC, Communications Status Report for Areas Impacted by Hurricane Maria (Sept. 21, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db0921/DOC-346840A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0921/DOC-346840A1.pdf) (due to widespread power outages, widespread wireline and cable outages are expected as well throughout Puerto Rico and USVI); see also FEMA Blog, Overview of Federal Efforts to Prepare for and Respond to Hurricane Maria, Saturday, Oct. 7, 2017 Update (Oct. 7, 2017), [https://www.fema.gov/blog/2017-09-29/overview-federal-efforts-prepare-and-respond-hurricane-maria?utm\\_source=hp\\_promo&utm\\_medium=web&utm\\_campaign=disaster](https://www.fema.gov/blog/2017-09-29/overview-federal-efforts-prepare-and-respond-hurricane-maria?utm_source=hp_promo&utm_medium=web&utm_campaign=disaster) (as of Oct. 7, 2017, telecommunications service has been restored to approximately 58 percent of customers in Puerto Rico).

<sup>6</sup> See, e.g., Alejandra Matos, Texas Schools Duffer Financial Blow from Harvey, Houston Chronicle (Oct. 9, 2017), <http://www.houstonchronicle.com/news/article/Texas-schools-suffer-financial-blow-from-Harvey-12265207.php> (estimating costs of at least \$1.64 billion over the next two years to help schools damaged by Hurricane Harvey rebuild and avoid financial losses); Kyra Gurney, Some Florida Keys Schools to Open Monday. For Others Hit by Irma, it Could Be Much Longer, Miami Herald (Sept. 19, 2017), <http://www.miamiherald.com/news/weather/hurricane/article174184716.html> (some schools in the Florida Keys will remain closed until early October; opening dates depend on the rebuilding process); Ernice Gilbert, Mapp Tells Trump Territory Needs up to \$750 Million to Rebuild after Hurricanes Irma and Maria, The Virgin Islands Consortium (Oct. 4, 2017), <http://viconsortium.com/featured/mapp-tells-trump-territory-needs-up-to-750-million-to-rebuild-after-hurricanes-irma-and-maria/> (four USVI public schools have been condemned following the storms, and others need to be assessed to ensure they are safe before reopening); see also Catherine Ngai, Thousands of Texas Students Displaced as Schools Assess Storm Damage, Reuters (Sept. 8, 2017), <https://www.reuters.com/article/us-storm-harvey-education/thousands-of-texas-students-displaced-as-schools-assess-storm-damage-idUSKCN1BJ2C8> (tens of thousands of Texas students must relocate after Hurricane Harvey); Jenny Jarvie, Puerto Ricans Fleeing Their Hurricane-Ravaged Island are Pouring into the U.S. Mainland, Los Angeles Times (Oct. 10, 2017), <http://www.latimes.com/nation/la-na-puerto-rico-orlando-20171010-story.html> (anticipating that a number of Puerto Ricans will move to Florida, New York, Illinois, and Pennsylvania, and stating there is uncertainty regarding whether they will eventually return to Puerto Rico).

<sup>7</sup> See, e.g., Letter from Senators Marco Rubio and Bill Nelson to Leaders of the Senate and House Appropriations Committees, 3-4 (Oct. 6, 2017) (on file at <https://www.rubio.senate.gov/public/cache/files/b06b3652-ce0e-410e-926a-52189aec7e0d/C14F14A654D2A355FF9DA20283710E96.17.10.06-fl-disaster-supplemental-request-letter.pdf>) (Florida educational institutions reported widespread damages to schools and infrastructure due to Hurricane Irma, with assessments not yet complete); Caitlin R. McGlade, Hurricanes Force Hundreds of Kids to Flee to South Florida for School, Sun Sentinel (Oct. 6, 2017), <http://www.sun-sentinel.com/news/weather/hurricane/fl-hurricane-displaced-students-come-to-schools-20171003-story.html> (Puerto Rico Education Secretary has received damage reports on less than half of Puerto Rico's schools); Ed O'Keefe, Speaker Paul Ryan to Tour Puerto Rico's Hurricane Devastation Friday, Wash. Post (Oct. 10, 2017), [https://www.washingtonpost.com/news/powerpost/wp/2017/10/10/speaker-paul-ryan-to-tour-puerto-ricos-hurricane-devastation-friday/?utm\\_term=.94aecc1ec1e2](https://www.washingtonpost.com/news/powerpost/wp/2017/10/10/speaker-paul-ryan-to-tour-puerto-ricos-hurricane-devastation-friday/?utm_term=.94aecc1ec1e2) (Puerto Rico's Governor asked Congress to allocate another \$1.4 billion to rebuild the territory's hospitals, schools, and other social programs).

<sup>8</sup> FEMA, Overview of Federal Efforts to Prepare for and Respond to Hurricane Maria, Saturday, Oct. 7, 2017 Update (Oct. 7, 2017), [https://www.fema.gov/blog/2017-09-29/overview-federal-efforts-prepare-and-respond-hurricane-maria?utm\\_source=hp\\_promo&utm\\_medium=web&utm\\_campaign=disaster](https://www.fema.gov/blog/2017-09-29/overview-federal-efforts-prepare-and-respond-hurricane-maria?utm_source=hp_promo&utm_medium=web&utm_campaign=disaster) (stating that power has been restored to at least 11.7 percent of customers in Puerto Rico, 14.4 percent of customers on St. Thomas, and 12 percent on St. Croix); Carmen Sesin, FEMA Gives \$70M to Puerto Rico for Water Restoration Amid Safety Concerns, NBCNews (Oct. 11, 2017), <https://www.nbcnews.com/storyline/puerto-rico-crisis/fema-gives-70m>

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3. Although the hardest hit communities are still determining the full extent of the damage caused by the Hurricanes,<sup>9</sup> some state agencies have already requested the Commission's assistance as they begin to repair or rebuild communications networks for their affected schools.<sup>10</sup> The Texas Education Agency (TEA) notes that over 1.9 million students were directly impacted and displaced by Hurricane Harvey.<sup>11</sup> Meanwhile, the Puerto Rico Department of Education (PRDOE) reports that, as of October 4, 2017, phone and Internet services were still out for most of Puerto Rico,<sup>12</sup> and that every school in Puerto Rico was damaged by the storms.<sup>13</sup> The state agencies ask that the Commission provide immediate relief, not only to the schools directly impacted by the Hurricanes, but also to those schools providing support to students displaced by the storms.<sup>14</sup>

4. Both the Universal Service Administrative Company (USAC) and the Commission have taken steps to support the recovery efforts of E-rate applicants affected by the Hurricanes. USAC has suspended many of its administrative deadlines for applicants in the affected areas pursuant to its natural disaster procedures. By doing so, applicants will have additional time within which to respond to certain USAC information requests. On October 6, 2017, the Wireline Competition Bureau (Bureau) released an order conditionally granting, on an emergency basis, certain waivers for schools and libraries located in counties that FEMA has declared eligible for individual disaster assistance in the wake of the Hurricanes.<sup>15</sup> Specifically, the Bureau conditionally waived and extended several filing and service implementation deadlines,<sup>16</sup> and conditionally waived the Commission's recordkeeping requirements for

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[puerto-rico-water-restoration-amid-safety-concerns-n809801](#); Cassandra Santiago and AJ Willingham, It's Been More than a Month Since St. John in US Virgin Islands Has Had Any Power, CNN (Oct. 20, 2017), <http://www.cnn.com/2017/10/19/us/st-john-without-power-since-irma-trnd/index.html> (noting that the hurricanes caused widespread damage to the electric transmission and distribution system in the Virgin Islands and that the entire island of St. John is still without power, but noting that "a few schools" may have service restored soon).

<sup>9</sup> See Letter from Julia B. Keleher, Secretary of Education, Puerto Rico Department of Education to Ajit Pai, Chairman, Federal Communications Commission, CC Docket No. 02-6, 2 (dated Oct. 4, 2017) (*PRDOE Letter*) ("[w]e are currently in the process of assessing the damage to each of our schools"); Letter from Mike Morath, Commissioner of Education, Texas Education Agency to Ajit Pai, Chairman, Federal Communications Commission, CC Docket No. 02-6, 2 (Sept. 18, 2017) (*TEA Letter*) ("it may be weeks or months before the full extent of damages are known"); see also Letter from Greg Abbott, Governor, State of Texas, to Ajit Pai, Chairman, Federal Communications Commission, CC Docket No. 02-6 (Sept. 18, 2017).

<sup>10</sup> *TEA Letter* at 1 (requesting expedited assistance from the Commission for the repair and restoration of impacted telecommunications networks procured through the E-rate program in Texas); *PRDOE Letter* at 1 (asking the Commission to authorize emergency relief under the E-rate program).

<sup>11</sup> *TEA Letter* at 1.

<sup>12</sup> *PRDOE Letter* at 3. As of October 17, 2017, 75.3% of cell sites are out of service, and large percentages of consumers are without either cable or wireline service (one Puerto Rico cable company reported that approximately 1% of its customers have had service restored). FCC, Communications Status Report for Areas Impacted by Hurricane Maria (Oct. 17, 2017), [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2017/db1017/DOC-347285A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1017/DOC-347285A1.pdf).

<sup>13</sup> *Id.* at 2.

<sup>14</sup> *TEA Letter* at 1; *PRDOE Letter* at 1.

<sup>15</sup> See *Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket Nos. 02-6 et al., Order, DA 17-984 (WCB Oct. 6, 2017) (*WCB Hurricane Relief Order*).

<sup>16</sup> *WCB Hurricane Relief Order* at 1-2, paras. 3-4. Several of the waivers granted by the Bureau provide relief requested by the Texas Education Agency and Puerto Rico Department of Education in letters submitted to the Commission. See *TEA Letter* (requesting an extension of form filing deadlines and extension of deadlines to complete construction in areas destroyed by the Hurricanes); *PRDOE Letter* (requesting extension of deadlines to file FCC Forms 472, 474, 486, as well as the service implementation deadline for non-recurring services other than special construction). The temporary rules adopted by this Order respond to other requests made by TEA and

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records that were destroyed by the Hurricanes.<sup>17</sup> Due to the devastating impacts of the Hurricanes, we adopt additional relief measures in this Order to assist schools and libraries as they recover and rebuild.

### III. DISCUSSION

5. The temporary rules adopted in this Order provide relief to two categories of applicants: (a) schools and libraries located in counties designated by FEMA as eligible for individual disaster assistance (Directly Impacted Areas),<sup>18</sup> and (b) schools that are incurring additional costs because their student counts have increased by 5 percent or more because they are serving displaced students.<sup>19</sup>

6. For schools and libraries that are located in the Directly Impacted Areas, and that comply with the certification requirements described below, we make additional E-rate discounts available for the purchase of services and equipment that were disrupted, damaged, or destroyed by the Hurricanes by:<sup>20</sup> (a) opening a second Funding Year (FY) 2017 Application Window;<sup>21</sup> and (b) resetting per-school, per-library five-year budgets for Category Two services.<sup>22</sup> We also provide additional flexibility for these

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PRDOE in their letters, as noted herein. To the extent this Order does not provide for the relief requested by TEA and PRDOE, in whole or in part, those requests are denied as discussed in the remainder of this Order.

<sup>17</sup> *WCB Hurricane Relief Order* at para. 5.

<sup>18</sup> See Federal Emergency Management Agency, Disaster Declarations By Year, [https://www.fema.gov/disasters/year/2017?field\\_dv2\\_declaration\\_type\\_value=DR](https://www.fema.gov/disasters/year/2017?field_dv2_declaration_type_value=DR) (last visited Oct. 13, 2017). We extend this relief to the following counties or municipios, as well as counties that FEMA may declare eligible to receive individual assistance due to damage caused by Hurricanes Harvey, Irma, and Maria in the future:

Florida – Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Union, and Volusia.

Georgia – Camden, Charlton, Chatham, Coffee, Glynn, Liberty, and McIntosh.

Puerto Rico – Adjuntas, Aguada, Aguadilla, Aguas Buenas, Aibonito, Anasco, Arecibo, Arroyo, Barceloneta, Barranquitas, Bayamon, Cabo Rojo, Caguas, Camuy, Canovanas, Carolina, Catano, Cayey, Ceiba, Ciales, Cidra, Coamo, Comerio, Corozal, Culebra, Dorado, Fajardo, Florida, Guanica, Guayama, Guayanilla, Guaynabo, Gurabo, Hatillo, Hormigueros, Humacao, Isabela, Jayuya, Juana Diaz, Juncos, Lajas, Lares, Las Marias, Las Piedras, Loiza, Luquillo, Manati, Maricao, Maunabo, Mayaguez, Moca, Morovis, Naguabo, Naranjito, Orocovis, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Rio Grande, Sabana Grande, Salinas, San German, San Juan, San Lorenzo, San Sebastian, Santa Isabel, Toa Alta, Toa Baja, Trujillo Alto, Utuado, Vega Alta, Vega Baja, Vieques, Villalba, Yabucoa, and Yauco.

Texas – Aransas, Austin, Bastrop, Bee, Brazoria, Caldwell, Calhoun, Chambers, Colorado, DeWitt, Fayette, Fort Bend, Galveston, Goliad, Gonzales, Hardin, Harris, Jackson, Jasper, Jefferson, Karnes, Kleberg, Lavaca, Lee, Liberty, Matagorda, Montgomery, Newton, Nueces, Orange, Polk, Refugio, Sabine, San Jacinto, San Patricio, Tyler, Victoria, Walker, Waller, and Wharton.

U.S. Virgin Islands – St. Thomas, St. John, and St. Croix.

<sup>19</sup> See, e.g., Caitlin R. McGlade, Hurricanes Force Hundreds of Kids to Flee to South Florida for School, Sun Sentinel (Oct. 6, 2017), <http://www.sun-sentinel.com/news/weather/hurricane/fl-hurricane-displaced-students-come-to-schools-20171003-story.html> (South Florida schools have enrolled almost 400 students from Puerto Rico, USVI, the Florida Keys, and Texas).

<sup>20</sup> The additional funding made available in this Order will be derived from the balance of the \$3.99 billion cap for FY 2017 after total dollars requested by already-filed FY 2017 FCC Form 471 filings are subtracted.

<sup>21</sup> See *infra* Section III.A.2.

<sup>22</sup> See *infra* Section III.A.3.

applicants to request service substitutions for a service or product that has been disrupted, destroyed or rendered unusable by the Hurricanes.<sup>23</sup>

7. For schools that are incurring additional costs to provide services for students displaced by the Hurricanes, and that comply with the certification requirements described below, we make additional funding available to defray some of those increased costs by permitting the schools to file a supplemental FCC Form 471 to request additional E-rate discounts.

8. All relief granted by this Order is subject to the parameters and limitations stated herein, and conditioned on compliance with all E-rate program rules that are not specifically modified herein. To that end, we adopt additional measures to protect the Universal Service Fund from waste, fraud, and abuse.<sup>24</sup> We also remind applicants that they remain subject to audits and investigations by USAC and the Commission,<sup>25</sup> and will be held responsible for retaining all records related to any relief provided under this Order.<sup>26</sup>

#### **A. Temporary Rules to Assist Directly Impacted Applicants**

9. In this Section, we adopt temporary rules to assist schools and libraries that need to rebuild facilities and replace equipment destroyed by the Hurricanes, and take other steps necessary to reinstate E-rate eligible services for the students they serve. To ensure that the adopted measures reach those contending with the most severe damage caused by the Hurricanes, we limit the relief provided by these measures to schools and libraries located in the Directly Impacted Areas that certify that: (a) they are located in counties designated by FEMA as eligible for individual disaster assistance; (b) the schools or libraries incurred substantial damage to E-rate eligible services as a result of one or more of the Hurricanes; (c) any additional E-rate funding received pursuant to this Order will be used solely to restore E-rate eligible services to the level of functionality that immediately preceded the Hurricanes;<sup>27</sup> (d) other resources (e.g., insurance, public assistance monies from FEMA, support from community organizations or donations) are not available to restore the E-rate eligible services to their prior functionality; and (e) additional E-rate funding requested pursuant to this Order will be returned to the Universal Service Fund if funding from other sources causes any E-rate funding disbursed to exceed the charges paid for restoring the E-rate eligible services.<sup>28</sup> Schools and libraries that are located in the Directly Impacted Areas and submit the required certification are referred to herein as Directly Impacted Applicants.<sup>29</sup>

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<sup>23</sup> See *infra* Section III.A.1.

<sup>24</sup> See *infra* Section III.C.

<sup>25</sup> See 47 CFR § 54.516 (c)-(d).

<sup>26</sup> 47 CFR § 54.516. We note that the waiver of recordkeeping requirements granted by the Bureau only applies to records, and all copies of records, that were destroyed by the Hurricanes and are unavailable from another source. *WCB Hurricane Relief Order* at para. 5.

<sup>27</sup> If a Directly Impacted Applicant needs to replace eligible services that have been discontinued since the date of the original purchase, and equivalent services that are currently available provide increased functionality, the Directly Impacted Applicant may request E-rate discounts to purchase the equivalent services if: (a) all charges for the equivalent services are equal to or less than the charges for the originally purchased services; and (b) the Directly Impacted Applicant complies with all other program rules that may affect the eligibility of the equivalent services for E-rate support (e.g., cost-allocation of the costs for any ineligible components).

<sup>28</sup> If a Directly Impacted Applicant receives funding from another source to restore damaged or destroyed E-rate eligible services in excess of the Directly Impacted Applicant's non-discount share, the Directly Impacted Applicant shall immediately: (a) if prior to the issuance of a funding commitment, notify the USAC representative reviewing its funding request for additional E-rate discounts that the funding request must be canceled or reduced; or (b) if after the issuance of a funding commitment, file an FCC Form 500 to cancel or reduce the funding commitment.

<sup>29</sup> We direct USAC to issue guidance regarding how applicants eligible to request relief under this Order may do so.



## 1. Increased Flexibility for Service Substitutions

10. Section 54.504(d) of the Commission's rules allows USAC to grant a request by an applicant to substitute a service or product for another where: (a) the service or product has the same functionality;<sup>30</sup> (b) the substitution does not violate any contract provision or state or local procurement laws; (c) the substitution does not result in an increase in the percentage of ineligible services or functions; and (d) the applicant certifies that the requested change is within the scope of the controlling FCC Form 470.<sup>31</sup> For Directly Impacted Applicants that need to replace a service or product that has been disrupted, destroyed, or rendered unusable by the Hurricanes, we modify this rule to exclude the requirement that the substituted service or product must have the same functionality as the service or product that it is replacing.<sup>32</sup> This modification will allow Directly Impacted Applicants the maximum flexibility to substitute services based on their local needs without being constrained by categories of service or service types (e.g., applicants may substitute Internet access service with internal connections and vice versa),<sup>33</sup> so that they may use already approved E-rate funding to replace damaged or destroyed equipment and restore services, subject to the limitations stated herein.<sup>34</sup> We believe this additional

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<sup>30</sup> The Commission previously determined that a service or equipment change request does not have the same functionality if it "changes the type of service requested pursuant to the original funding request from one category to another (e.g., a change from telecommunications service to internal connections, or a change from Internet access to telecommunications service)." *Schools and Libraries Universal Service Support Mechanism*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26925, n.82 (2003).

<sup>31</sup> 47 CFR § 54.504(d)(1)(iv).

<sup>32</sup> 47 CFR § 54.504(d)(1)(i). TEA requests this relief in its letter to the Commission. *TEA Letter* at 1. We remind applicants that they may only request service substitutions if the implementation deadline for the service or product to be replaced has not passed. *See, e.g.*, 47 CFR §§ 54.507(d)(1), (d)(4); *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 13-184 and 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15550, 15558, paras. 37, 49 (2014); *WCB Hurricane Relief Order* at 3, para. 4 (extending the service implementation deadlines for non-recurring services, other than special construction, and for special construction of new fiber for one year).

<sup>33</sup> In some cases, replacing one type of service with another may require applicants to switch service providers. The Commission's rules permit applicants to do so when: (a) it is allowed under an applicant's state and local procurement rules; (b) it is allowed under the terms of any contract between the applicant and its original service provider; (c) the applicant has notified its original service provider of its intent to change service providers; (d) there is a legitimate reason to change providers (e.g., the service provider is unable to perform the requested services); and (e) the newly selected service provider received the next highest point value in the original bid evaluation. *See Schools and Libraries Universal Service Support Mechanism et al.*, CC Docket Nos. 02-6 et al., Sixth Report and Order, CC Docket No. 02-6, GN Docket No. 09-51, 25 FCC Rcd 18762, 18803, para. 91, n.272 (2010) (*Schools and Libraries Sixth Report and Order*) (citing *Request for Review by Copan Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Order, CC Docket Nos. 96-45, 97-21, 15 FCC Rcd 5498 (2000) (*Copan Order*), and stating that the new requirements are in addition to those outlined in the *Copan Order*).

<sup>34</sup> We remind applicants that the Commission's rules contain an exception to the general prohibition on the transfer of E-rate-supported eligible services or equipment within three years of purchase. 47 CFR § 54.513(d). Eligible services and equipment purchased with E-rate discounts may be transferred from a school or library that has been permanently or temporarily closed to another location if: (a) the transferring school or library notifies USAC of the transfer; and (b) both the transferring and receiving school or library maintain detailed records documenting the transfer and reason for the transfer for a period of five years. *Id.* We anticipate that Directly Impacted Applicants that have had to permanently or temporarily close school or library locations due to damage caused by the Hurricanes will explore the possibility of transferring equipment under this exception. PRDOE requests that we specifically authorize the transfer of funding commitments issued for funding year 2012 from schools in Puerto Rico that have closed over the last five years to other schools, and treat those transfers as equivalents of equipment transfers. *PRDOE Letter* at 2. PRDOE contends that the Wireline Competition Bureau declared such transfers of funding commitments to be permissible under Section 54.513 of our rules in a 2010 decision. *Id.* (citing *Requests for Waiver by Abbeville County School District et al.*, CC Docket No. 02-6, Order, 25 FCC Rcd 14494 (WCB 2010)

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flexibility will allow schools and libraries, given their specific understanding of their circumstances, to use funding in ways that best meet their needs. The flexibility conferred by this measure effectively waives Section 54.504(d)(1)(i) of the Commission's rules for Directly Impacted Applicants while keeping the remaining aspects of our service substitution rule intact. Directly Impacted Applicants must continue to ensure that a service substitution: (a) does not violate any contract provisions;<sup>35</sup> (b) does not violate state or local procurement laws; (c) does not result in an increase in the percentage of ineligible services or functions; and (d) is within the scope of an FCC Form 470.<sup>36</sup> Directly Impacted Applicants must also request approval of service substitutions by submitting a service substitution request to USAC.

## 2. Second FY 2017 Application Window for Directly Impacted Applicants

11. The Hurricanes have caused widespread disruptions in service for schools and libraries in the Directly Impacted Areas,<sup>37</sup> and some Directly Impacted Applicants may need to rebuild facilities and replace equipment to restore E-rate eligible services to their pre-Hurricane levels of functionality. Consistent with the E-rate program's mission to ensure that schools and libraries have access to high-speed broadband sufficient to support digital learning, we direct USAC to open a second FY 2017 application window to allow Directly Impacted Applicants to request additional E-rate discounts for the purchase of replacement products and services (Second FY 2017 Application Window),<sup>38</sup> subject to the parameters and limitations in this Order.<sup>39</sup>

12. *Second FY 2017 Application Window Dates.* Given the urgent need that many Directly Impacted Applicants have for funding to rebuild and restore eligible services, the Second FY 2017

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(*Abbeville Order*). That decision, however, granted *waivers* of Section 54.513 of our rules, and those waivers were limited to the specific facts of that case. *Id.* at 14495, para. 4 (stating that the decision was applicable only “in this instance” and that “the transfer of equipment *in these circumstances* falls within the rule permitting the transfer of equipment from a location that has closed”) (emphasis added). PRDOE does not request a waiver of Section 54.513 of our rules in its letter, or articulate grounds for granting one. *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (stating that the Commission may grant a waiver if: (1) special circumstances warrant a deviation from the general rule; and (2) such deviation would better serve the public interest than strict adherence to the general rule); *Tucson Radio Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971) (stating that the burden of proving that a waiver is appropriate in a particular case rests with the petitioner); *see also Requests for Waiver of Decisions of the Universal Service Administrator by Batesville Community School Corporation, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 7731, 7733, para. 6 (WCB 2016) (*Batesville Decision*) (“To warrant consideration for waiver, a petitioner must ‘articulate a specific pleading, and adduce concrete support, preferably documentary’ and must ‘plead with particularity the facts and circumstances’ which warrant the granting of the requested waiver”) (citations omitted). We, therefore, decline to authorize the transfer of its FY 2012 funding requests in this Order.

<sup>35</sup> The additional flexibility provided for Directly Impacted Applicants seeking substitutions for services and products damaged by the Hurricanes is not intended to invalidate any contracts between applicants and service providers. Directly Impacted Applicants are solely responsible for ensuring that requested service substitutions are permitted under their agreements with service providers.

<sup>36</sup> 47 CFR § 54.504(d). In the event that a service substitution results in a change in the pre-discount price for the supported service, support is based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service. 47 CFR § 54.504(d)(2).

<sup>37</sup> *See, e.g., supra* notes 7, 13.

<sup>38</sup> Our rules require USAC to implement an initial filing period that treats all schools and libraries filing an application within that period as if their applications were simultaneously received. 47 CFR § 54.507(c). USAC may implement such additional filing periods as it deems necessary. 47 CFR § 54.507(c).

<sup>39</sup> Both TEA and PRDOE request that we open a second FY 2017 application window to provide additional E-rate discounts for applicants contending with damage caused by the Hurricanes. *TEA Letter* at 1; *PRDOE Letter* at 2. To the extent their requests do not conform to the parameters and limitations of the Second FY 2017 Application Window detailed herein, the requests are denied.

Application Window shall open 14 days after the release of this Order and will remain open for 30 days.<sup>40</sup> We find that this 30-day window, opening 14 days after the release date of this Order, will provide enough time for Directly Impacted Applicants participating in the Second FY 2017 Application Window to complete any necessary competitive bidding, per the requirements below, and apply for FY 2017 funding needed to restore essential E-rate eligible services.

13. We recognize that some Directly Impacted Applicants, particularly applicants in Puerto Rico and the USVI, may not be able to participate in the Second FY 2017 Application Window because they will still lack access to the electricity and communications networks required to do so. Directly Impacted Applicants contending with widespread destruction to property and surrounding facilities may also require additional time to assess the full extent of the damage they have incurred, and determine the resources they will need replace and restore E-rate eligible services. We recognize that the relief provided in this Order may not address the needs of all Directly Impacted Applicants, and assure them that the Second FY 2017 Application Window does not mark the end of our efforts. We direct the Bureau to work with USAC in the coming months to formulate a plan for providing additional relief to Directly Impacted Applicants who are unable to participate in the Second FY 2017 Application Window, and may not be able to replace and restore E-rate eligible services through the additional measures adopted in this Order and the ordinary application process for FY 2018. When considering the form and timing of these additional measures, we direct the Bureau to take into consideration factors such as when the Directly Impacted Applicants regained access to electricity and other resources necessary to make effective use of E-rate eligible services, and how the additional measures will function within the overall administration of the program.

14. *Competitive Bidding.* Competitive bidding is a cornerstone of the E-rate program.<sup>41</sup> Our competitive bidding rules ensure that applicants are informed of all the options available to them whenever they seek a new service contract,<sup>42</sup> ensure that service providers have sufficient information to submit a responsive proposal,<sup>43</sup> generate the most efficient pricing for eligible services,<sup>44</sup> and guard against waste, fraud, and abuse.<sup>45</sup> To ensure the most efficient use of the additional funds made available for the Second FY 2017 Application Window, and as a safeguard against waste, fraud, and abuse, we

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<sup>40</sup> If the opening or closing date of the Second FY 2017 Application Window falls on a weekend or holiday, USAC will move the relevant date to the next business day and subsequent due dates will be moved accordingly. 47 CFR § 1.4 *et seq.*

<sup>41</sup> E-rate program rules generally require that eligible entities seek competitive bids for services eligible for support. 47 CFR § 54.503(b). In accordance with the Commission's competitive bidding rules, applicants must submit for posting on USAC's website an FCC Form 470 to initiate the competitive bidding process. 47 CFR § 54.503(c)(1). After submitting an FCC Form 470, the applicant must wait at least 28 days before choosing a service offering and seeking E-rate support. 47 CFR § 54.503(c)(4).

<sup>42</sup> *Request for Review of a Decision of the Universal Service Administrator by Katy Independent School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 16433, 16436, para. 8 (WCB 2011).

<sup>43</sup> *Federal-State Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>44</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480 (“[F]iscal responsibility compels us to require that eligible schools and libraries seek competitive bids for all services eligible for section 254(h) discounts”).

<sup>45</sup> *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26939, para. 66 (2003) (stating that a fair and open competitive bidding process is critical to preventing the waste, fraud, and abuse of program resources); *see also Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18771-72, para. 17 (stating that our competitive bidding rules protect against waste, fraud, and abuse of the E-rate program).



retain our competitive bidding rules for the Second FY 2017 Application Window with two limited modifications.

15. First, a Directly Impacted Applicant may submit an FCC Form 471 during the Second FY 2017 Application Window requesting E-rate discounts without initiating a new competitive bidding process for the requested services or equipment if the Directly Impacted Applicant: (a) has already sought bids for the services or equipment by posting an FCC Form 470; (b) received a Funding Commitment Decision Letter (FCDL) from USAC approving an FY 2017 funding request that relied on that FCC Form 470, or has such an FY 2017 funding request pending;<sup>46</sup> and (c) requests additional E-rate discounts during the Second FY 2017 Application Window to purchase the same services or equipment on substantially similar terms and conditions as the contract originated by the existing FCC Form 470.<sup>47</sup> This modification is intended to expedite the restoration of services or the replacement of equipment that were already purchased by, and delivered to, Directly Impacted Applicants for FY 2017, but destroyed or otherwise affected by the Hurricanes. Directly Impacted Applicants that wish to avail themselves of this option must submit the following information in the Narrative Section of the relevant FCC Form 471 funding request: (a) the identification numbers for the FY 2017 FCC Form 471 and funding request that previously relied on the FCC Form 470; (b) a statement confirming that the services or equipment for which the applicant previously requested E-rate discounts in FY 2017 were delivered prior to the Hurricanes, and subsequently disrupted, destroyed, or damaged by the Hurricanes; and (c) a statement confirming that the requested additional E-rate discounts are to replace those services or equipment by the pertinent service implementation deadline.

16. Second, for all other funding requests submitted during the Second FY 2017 Application Window, we modify the requirement that applicants wait to enter a contract with a service provider until 28 days have passed after posting an FCC Form 470.<sup>48</sup> Specifically, we will require Directly Impacted Applicants that wish to seek additional E-rate discounts during the Second FY 2017 Application Window to wait only 14 days prior to selecting a service provider and filing an FCC Form 471 requesting E-rate support.<sup>49</sup> We find that reducing the mandatory waiting period balances the need for quick and decisive action to restore E-rate eligible services to schools and libraries with our obligations to ensure the most efficient use of universal service funds and protect the program against waste, fraud, and abuse.<sup>50</sup>

17. *Discount Rate.* Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible Category One (C1) services and between 20 percent and 85 percent of the pre-discount price of eligible Category Two (C2)

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<sup>46</sup> If a funding requested filed during the original FY 2017 application window is denied (or an FY 2017 funding commitment is rescinded) due to competitive bidding violations, any funding requested filed during the Second FY 2017 Application Window that relies on the same FCC Form 470 will also be denied on the same basis.

<sup>47</sup> For the purposes of the Second FY 2017 Application Window only, terms and conditions of a contract will be considered substantially similar if the modifications made are those required to reflect a new contract term or duration, and the per-unit price remains the same. Stated differently, Directly Impacted Applicants may enter a new contract to order more of the same services or equipment that were delivered for FY 2017 and destroyed by the Hurricanes based on the same terms and conditions without initiating a new competitive bidding process. The temporary rules we adopt do not relieve service providers of their obligation to offer Directly Impacted Applicants the lowest corresponding price for services, however. *See* 47 CFR § 54.500(b).

<sup>48</sup> 47 CFR § 54.503(c)(4).

<sup>49</sup> Directly Impacted Applicants may post FCC Forms 470 anytime between the day after the release of this Order and 14 days before the close of the Second FY 2017 Application Window. Directly Impacted Applicants are encouraged to submit FCC Forms 470 with sufficient time to allow them to receive and evaluate bids, choose a service provider, enter into a contract or other legally binding agreement, and file an FCC Form 471.

<sup>50</sup> PRDOE requests that we waive the requirement to wait 28 days before entering an agreement with a service provider altogether. *PRDOE Letter* at 2. For the reasons stated herein, we deny that request, but reduce the waiting period to help expedite requests for additional E-rate discounts to assist with Hurricane relief.

services, based on indicators of poverty, as well as rural or urban status.<sup>51</sup> For the Second FY 2017 Application Window only, we increase the discount rate for all Directly Impacted Applicants to the maximum discount rate for both C1 and C2 services, excluding voice services.<sup>52</sup> All Directly Impacted Applicants will, therefore, receive a 90 percent discount for C1 services, other than voices services, and an 85 percent discount for C2 services for these requests.<sup>53</sup> We conclude that increasing the discount rate for Directly Impacted Applicants will provide needed funding to immediately assist such applicants with restoring E-rate eligible services.<sup>54</sup>

### 3. Additional Category Two Funding for Directly Impacted Applicants

18. E-rate applicants may request support for C2 services pursuant to our rules that establish a pre-discount budget of \$150 per student over five years for schools,<sup>55</sup> and a pre-discount budget of \$2.30 or \$5.00 per square foot for libraries depending on their location.<sup>56</sup> It is up to each school and library to determine how to allocate funds from their C2 budgets over a five-year period. Five-year C2 budgets were first instituted in FY 2015. It is therefore possible that some schools and libraries had already expended all or most of their C2 budgets by the time the Hurricanes hit in August and September 2017. Accordingly, some Directly Impacted Applicants may have little to no funds remaining in their school and library budgets to replace internal connections destroyed by the Hurricanes.

19. The Commission has recognized the importance of ensuring that sufficient funding is available for school and library internal connections, such as wireless access points, to ensure that high-speed broadband connectivity is effectively distributed to classrooms.<sup>57</sup> Accordingly, we reset the five-year C2 budgets for all Directly Impacted Applicants. For those Directly Impacted Applicants that request additional E-rate discounts for C2 services during the Second FY 2017 Application Window, those requests will start the five-year clock on their budgets.<sup>58</sup> For all other Directly Impacted Applicants,

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<sup>51</sup> 47 CFR § 54.505(c).

<sup>52</sup> TEA requests that we increase discount rates to 90 or 100 percent for all applicants affected by the Hurricanes. *TEA Letter* at 1. We deny the request to increase the discount rate to 100 percent. Requiring schools and libraries to pay a share of the cost is an important safeguard against unnecessary expenditures of USF funds and excessive pricing. *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd. 8776, 9036, para. 493 (1997). We find that increasing the discount rate for Directly Impacted Applicants to the maximum discount rate for both C1 and C2 effectively balances the applicants' need for additional support with our obligation to protect the program from waste, fraud, and abuse.

<sup>53</sup> We keep intact our rules of distribution outlined in 47 CFR § 54.507(f). In the event that total demand exceeds the total support available during the Second FY 2017 Application Window, USAC shall prioritize commitments using the discount rate and NSLP data from the First FY 2017 Application Window.

<sup>54</sup> These discount increases apply to funding requests filed in the Second FY 2017 Application Window only. They do not apply to funding requests filed during the original FY 2017 application window or subsequent funding years.

<sup>55</sup> 47 CFR § 54.502(b)(2). C2 budgets are adjusted annually for inflation. 47 CFR § 54.502(b)(1). In determining an applicant's C2 budget, USAC should use the FY 2017 inflation-adjusted amount, as determined pursuant to 47 CFR § 54.507(a)(2).

<sup>56</sup> 47 CFR § 54.502(b)(3). C2 budgets are calculated on a school-by-school or library-by-library basis and funding requested must be used on C2 services for those schools or libraries. In addition, our rules establish a funding floor of \$9,200 per school or library over a five-year period. 47 CFR § 54.502(b)(4).

<sup>57</sup> *Id.* at 8898-99, para. 77.

<sup>58</sup> TEA and PRDOE both request that we eliminate all limits on C2 funding. *TEA Letter* at 2; *PRDOE Letter* at 2. We decline to eliminate five-year C2 budgets altogether.

the five-year clock will begin in the first year that they request E-rate discounts for C2 services after the effective date of this Order.<sup>59</sup>

### **B. Temporary Measures to Assist Indirectly Impacted Schools**

20. Some schools that are located in Directly Impacted Areas but did not incur substantial damage, or that are located outside of the Directly Impacted Areas, may be incurring additional costs due to an influx of displaced students (Indirectly Impacted Schools).<sup>60</sup> The influx of additional students may increase the resource needs of the school, may increase a school's National School Lunch Program (NSLP) rate, or may affect a school's C2 budget. To assist these Indirectly Impacted Schools, and support the educational needs of students displaced by the Hurricanes, we will allow schools that certify that their student count has increased by 5 percent or more due to an influx of displaced students to submit a supplementary FCC Form 471 during the Second FY 2017 Application Window to request additional funding. Indirectly Impacted Schools requesting this additional funding must certify: (a) that their student count for FY 2017 has increased by 5 percent or more because of students displaced by the Hurricanes; (b) the number of students they served during the original FY 2017 Application Window, the number of additional students they are serving as-of the Second FY 2017 Application Window, and their total student population as-of the Second FY 2017 Application Window; (c) that they experienced an associated increase in demand for services for which they have submitted an FY 2017 funding request; (d) that the additional funding requested is necessary to serve these additional, unanticipated needs; and (e) that funding is not available from another source (e.g., insurance, public assistance monies from FEMA, support from community organizations or donations) to cover the increased costs. We also require schools to maintain documentation in support of this increased number in accordance with our recordkeeping requirements.<sup>61</sup>

21. Indirectly Impacted Schools requesting additional funds pursuant to this Order may avail themselves of the competitive bidding modifications established for the Second FY 2017 Application Window, as described in Section III.A.2 *supra*. We will carefully monitor the use of funds disbursed to ensure that all support is utilized in accordance with Commission rules and to ensure that service providers do not charge unjust or unreasonable rates. We reserve the right to recover any monies that are not used for their intended purposes or, upon review, that we determine were used wastefully.

### **C. Protection Against Waste, Fraud and Abuse**

22. We are committed to guarding against waste, fraud, and abuse. Although we establish the limited, temporary rules described herein, we adopt steps to ensure program integrity, including enhanced audit procedures. Except where noted herein, we apply all existing processes and procedures for applying for and receiving E-rate discounts. We will require USAC to recover funds that we discover were not used properly through its normal processes. We also direct USAC to incorporate into its processes appropriate safeguards and audit measures to prevent and detect waste, fraud, and abuse related to the particular provisions we adopt here. We emphasize that we retain the discretion to evaluate the use of monies disbursed through the E-rate program and to determine on a case-by-case basis that waste, fraud, or abuse of program funds occurred and that recovery is warranted. We remain committed to ensuring the integrity of the program and will continue to aggressively pursue instances of waste, fraud, or abuse under our own procedures and in cooperation with law enforcement agencies.

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<sup>59</sup> Directly Impacted Applicants are not obligated to spend the entirety of reset C2 budgets on the replacement of internal connections destroyed by the Hurricanes. For instance, if a Directly Impacted Applicant files a funding request during the Second 2017 Application Window seeking E-rate discounts to replace wireless access points and inside wiring destroyed by the Hurricanes, any balance remaining in its budget may be used to purchase other C2 services during the following years of its five-year budget period.

<sup>60</sup> See *supra* note 13.

<sup>61</sup> 47 CFR § 54.516(a)(1)-(2).

23. *Sunset of Temporary Rules.* We will reevaluate the temporary rule changes adopted herein before the opening of the FY 2018 filing window. Absent further action by the Commission, the temporary rule changes adopted herein will not apply to future funding years, including FY 2018, except insofar as this order resets five-year C2 budgets for Directly Impacted Applicants.<sup>62</sup> We believe that reevaluating the sufficiency and efficacy of these temporary rules is a necessary safeguard against waste, fraud, and abuse going forward.

24. *Record Retention.* We require any school, library, or consortium using the temporary rules adopted herein to maintain documentation in support of its filing in accordance with our recordkeeping requirements.<sup>63</sup> Applicants and service providers relying on these temporary rules are responsible for maintaining records that demonstrate their need and eligibility to rely on the temporary rules, including records supporting their certification that they received substantial damage as a result of the Hurricanes.

25. *Audits.* All beneficiaries and service providers receiving E-rate money are subject to potential audit, and those that receive more than \$500,000 will automatically be audited by USAC to ensure the funds are used for their intended purposes. All eligible telecommunications carriers, service providers, or beneficiaries requesting support under these temporary rules shall be subject to audit or investigation by the Commission's Office of Inspector General or other authorized federal or state governmental agency and, upon request, must make available any documentation and records necessary to verify compliance with these rules.

26. *Necessary Resources.* We retain the requirement that applicants certify that they have secured access to all of the resources necessary to make effective use of the services purchased.<sup>64</sup> Applicants eligible to request relief pursuant to this Order are cautioned that they may not request E-rate support for eligible services that they cannot actually use by the pertinent service implementation deadline because they do not have the required facilities, power, or other resources necessary to make effective use of the services.

27. *Prohibition on Free Services.* We retain the requirement that all applicants pay their entire non-discounted portion of the cost of any services or products received through E-rate.<sup>65</sup> Our rules prohibit the provision of free services to an eligible entity by a service provider that is also providing discounted services to the entity.<sup>66</sup> Moreover, our rules state that the provision of free services or products unrelated to the supported service or product constitutes a rebate of the non-discount portion of the supported services.<sup>67</sup>

#### **D. Effective Date**

28. Section 553 of the Administrative Procedures Act permits an agency to implement rules without public notice and opportunity for comment "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>68</sup> The Commission's rules additionally permit us to render an order effective upon release where good cause

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<sup>62</sup> See *supra* Section III.A.3.

<sup>63</sup> 47 CFR § 54.516(a)(1)-(2).

<sup>64</sup> See 47 CFR § 54.504(a)(1)(iii).

<sup>65</sup> See 47 CFR § 54.523.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> 5 U.S.C. §§ 553(b)(3)(B) (allowing for implementation without notice and comment or publication in the Federal Register if good cause exists), 553(d)(3) (allowing for effective date to occur prior to 30 days after publication for good cause).



warrants.<sup>69</sup> As explained above, the Hurricanes have caused extensive damage in areas of Texas, Florida, and Georgia, and throughout Puerto Rico and the USVI, creating an urgent and immediate need for the relief provided by this Order. While we believe that public notice requirements are an essential part of our rulemaking process, the need for prompt attention to the victims and quick restoration of services presents good cause to forgo notice and comment on these limited, temporary rules and to make this Order effective immediately upon release.<sup>70</sup> The temporary rules that we adopt herein constitute an important step in the Nation's response to these natural disasters, as well as the ability of the E-rate program to fulfill its purpose of ensuring that schools and libraries have affordable access to the high-speed broadband necessary for students to succeed in their educational pursuits and beyond.<sup>71</sup> Further, this Order does not mandate new burdens or obligations. Accordingly, no entity will be adversely affected by making the Order effective upon its release. We find, therefore, that good cause exists to forgo notice and comment on these rules and make the temporary rules adopted by this Order effective immediately upon the release date of this Order. We delegate authority to the Bureau to work with USAC to make the necessary programmatic changes to implement this Order.

#### IV. CONGRESSIONAL REVIEW ACT

29. The Commission will send a copy of this Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A). For the reasons stated herein, we find good cause for the rule changes made by this Order to take effect upon the release of this Order, *see* 5 U.S.C. § 808(2).

#### V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i), 4(j), 10, 201-205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 214, 254, 303(r), and 403 this Order IS ADOPTED, and the temporary rules SHALL BECOME EFFECTIVE immediately upon release of this Order, pursuant to 5 U.S.C. §§ 408, 553(d)(3); 47 CFR §§ 1.103(a), 1.427(b).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>69</sup> *See* 47 CFR §§ 1.103(a), 1.427(b).

<sup>70</sup> *See Federal-State Joint Board on Universal Service et al.*, Order, 20 FCC Rcd 16883, 16915, paras. 62-63 (2005) (taking immediate steps to assist the victims of Hurricane Katrina by making available targeted support from the Universal Service Fund for reconstruction and remediation relating to the restoration of telecommunications services).

<sup>71</sup> We find these actions to be consistent with Section 254 of the Act, and the provision of universal service generally, for they will help ensure that the connectivity students need to resume their schooling will continue to be available to schools and libraries throughout our nation on an affordable basis.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6

The areas devastated by the recent hurricanes continue to face significant infrastructure and communications service challenges, notwithstanding the substantial rebuilding and restoration efforts of both the public and private sectors. Therefore, I also support this additional step to provide schools and libraries affected by the hurricanes with additional flexibility to make service substitutions, apply for funding, and serve displaced students. And I thank the Chairman for his ongoing commitment and actions to help impacted communities.

I write only to suggest that the Commission work with Congress to determine whether any additional support provided through this and other universal service programs could be reimbursed through funding appropriated for hurricane relief. Because of our budget limitations, providing additional funding from universal service generally comes at the expense of other recipients. Targeted funding from Congress would ensure that qualifying providers and beneficiaries receive the relief needed to rebuild and restore service without impeding the important work of other universal service program participants to connect unserved communities.

I vote to approve.