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Funding Status – FY 2021

Wave 16 for FY 2021 was released on Thursday, July 29th, for a total of $60.7 million including $2.88 million for 12 North Carolina applicants. Cumulative commitments are $1.73 billion including $64.1 million for North Carolina. Nationwide, USAC has now funded 87% of the FY 2021 applications representing 59% of the requested funding.

The 2021-2022 application window for the Emergency Connectivity Fund ("ECF") opened June 29th and will close August 13th.

ECF Issues and FAQs

Unmet Needs – Applications vs. Invoices:

Time and again, in webinars, published newsletters, and FAQs, USAC and the FCC have made it clear that applicants need only provide "best estimates" of unmet needs when requesting ECF funding. Specifically, schools have been advised that parental surveys are not mandatory. Schools may rely on other publicly available data such as: (a) NSLP data to determine financial ability to afford internet services or connected devices; or (b) maps or other data on area connectivity and home computer penetration.

As a result, we are beginning to see aggressive estimates of unmet needs. What is critical to understand, however, is that FCC/USAC guidance on unmet needs is for ECF application filing purposes <u>only</u>. For invoicing and prospective audit purposes, the guidance becomes more specific. A slide in USAC's "office hours" session last week stated that: "When it is time to invoice, schools may only request ECF reimbursement for service that fulfilled an <u>actual</u> unmet need of a student or staff member, consistent with the application certification. Schools may also be asked to

provide documentation to support actual costs of service to those students and staff after funds have been committed."

ECF applications for libraries do not even require specific information on unmet needs but, as with schools, reimbursement requests must be for actual needs.

The critical difference between application and invoice requirements was spelled out clearly last week in the following two FAQs from the FCC, one for schools and one for libraries:

*6.9 Q: What will school applicants need related to unmet need at the different stages of the ECF Program process (e.g., application, invoicing, or audits)?

A: At the application stage, schools just need best estimates of their unmet need. They may use whatever method they deem appropriate for estimating unmet need and are not required to provide any documentation to support these estimates when they submit their ECF FCC Form 471 application. Use this link to see the unmet need questions for schools on the application.

When schools file for reimbursement, they should only request reimbursement for eligible equipment and services provided to students or staff who would otherwise lack broadband services and/or devices sufficient to engage in remote learning. For example, if a school requested ECF funding to support the broadband services at the homes of 100 students based on an estimate of those that lack services, but it determines during the school year that only 90 students have unmet need, the school should only seek reimbursement for the services provided to those 90 students. Schools may also be asked to provide documentation to support actual costs of assigned equipment and/or services after funds have been committed.

*6.10 Q: What will library applicants need related to unmet need at the different stages of the ECF Program process (e.g., application, invoicing, or audits)?

A: At the application stage, libraries may request funding for eligible equipment and services. Like schools, libraries must certify that they are only seeking support to address unmet need but are not required to provide best estimates of unmet needs on their ECF FCC Form 471 applications.

To ensure libraries are providing eligible equipment and services to patrons with unmet needs, ECF rules require libraries to, on a going forward basis, provide patrons with a copy of an eligible use policy, which explains that the equipment or service is intended for library patrons who do not otherwise have access to equipment or services sufficient to meet the

patrons' educational needs, and patrons must sign and return a statement saying they would otherwise lack such access. Documentation supporting these certification statements may be requested to show compliance with ECF rules.

Equipment Bundles – ECF vs. E-Rate:

Increasingly, we are seeing vendor quotes for ECF-eligible equipment — particularly laptops and tablets — including other bundled equipment and services, some of which would be considered ineligible if provided on a standalone basis. Properly bundled, such packages appear to be fully eligible.

As two examples, notes to the eligible equipment listing in the [ECF Eligible Services List](#) state:

(1) Any components included by the manufacturer with eligible equipment, and necessary for the equipment to operate, for example cords and chargers, do not require cost allocation.

(2) A manufacturer's multi-year warranty for a period of up to three years that is provided as an integral part of an eligible component, without a separately identifiable cost, is also eligible.

Similarly, an early FCC FAQ confirmed the bundled eligibility of licenses for connected devices stating:

2.4 Q: Is a license to use a connected device eligible for ECF support?
A: Licenses included in the base price of the connected devices are eligible for support and do not require cost allocation, but separately priced licenses are ineligible for ECF funding.

To anyone familiar with the cost allocation requirements for ineligible products and services in the traditional E-rate environment, this seems like heresy. However, ECF and E-rate are two different programs. To the extent that a bundle includes otherwise ineligible items — even if the same vendor will sell those items individually — the entire bundle appears eligible for ECF support.

Our main concern — perhaps drilled into us from our many years of E-rate — is to beware of bundled quotes showing separate line item pricing for ineligible products and services. Bundled quotes with a single price for a connected device and all the extras appears to be limited only by the $400/device cap.

CIPA Certifications – ECF vs. Form 486:

Another issue reflecting a small difference between ECF and traditional E-rate arises when considering CIPA certifications in the ECF application. ECF applicants, whose FY 2021 E-rate application has been approved and who have already filed their Form 486s, can simply check a box on their ECF applications signaling their Form 486 filings. No other CIPA certifications are then required.

Consortium members, who have already submitted their Form 479s certifying CIPA compliance with their consortium leaders, but who are filing their own ECF applications, are likewise excused from ECF CIPA certifications.[1]

ECF applicants, without previously filed FY 2021 Form 486s or Form 479s, will be required to explicitly certify CIPA compliance for ECF purposes. Note that there is an apparent difference between off-campus ECF CIPA compliance, which may involve remote school- or library-provided internet services and devices, and traditional on-campus E-rate CIPA compliance. In our view, applicants certifying ECF CIPA compliance are being held to a higher standard. In these cases, our recommendation is that ECF CIPA-certifying applicants should consider amending existing internet safety policies ("ISPs") to cover remote internet services and school-owned devices.

In this regard, tied in with the need (discussed above) to demonstrate invoicing only to meet the unmet needs requirement, libraries have an edge. The ECF rules specifically require libraries to provide patrons, to whom they provide services or devices, with a copy of their ISPs and to obtain certifications from those patrons that they do not otherwise have access to sufficient equipment and/or services. The American Library Association ("ALA") has already released a paper covering a [Library's Acceptable Use Policy and Patron Certification of Need](#) that includes a sample ISP amendment and a sample patron certification.

We recommend that all ECF schools, regardless of FY 2021 Form 486 status, adopt a short ISP amendment indicating that school-owned devices will be filtered in compliance with CIPA guidelines when used off-campus in one or a combination of the following forms: (1) filtering on the device itself; (2) filtering as provided by the internet service provider or a 3rd party service; or (3) configuring the device to route all internet access back through the school's on-campus internet service.

Additionally, schools may wish to obtain certifications from each student's parent or guardian that: (1) their student(s) is receiving internet services and/or devices as the result of an otherwise unmet need; and (2) they assume supervisory responsibility for complying with the school's own internet safety policy.

Additional FAQ Updates:

To assist applicants in tracking additional ECF guidance, the FCC manages a [master ECF FAQ](#) list on its website. Updated FAQs are added periodically, marked with an asterisk, and are often subsequently repeated in USAC's weekly Emergency Connectivity Fund Program Newsletters.

Five of the more interesting new FAQs added by the FCC (as of July 26th) — not included in last week's ECF Newsletter referenced below nor discussed above — are:

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[1] Disclaimer: Neither the FCC nor USAC has yet clarified whether a consortium leader must have filed a Form 486 for FY 2021 before a member-filed Form 479 is deemed effective. Arguably, the filing of a Form 479, with or without the filing of the consortium Form 486, should be sufficient for CIPA certification of a consortium member.

*2.7 Q: Can applicants pay upfront and seek support for multiyear contracts (e.g., the 2021-22 and 2022-23 school years) in the first application window?

A: No. Applicants may only seek support for the monthly costs of services delivered between July 1, 2021 and June 30, 2022. Similarly, a school cannot seek funding for multiple years of an equipment lease in the first filing window. Approved applicants may not seek reimbursement until after the services have been delivered.

*2.19 Q: How should applicants request funding for equipment associated with a service request (e.g., a $5 monthly fee for a modem or Wi-Fi hotspot connected to a broadband service)?

A: Applicants should work with their service providers to separate the costs of the equipment from the services and submit them on separate funding requests.

*6.8 Q: Could a school district use the district's National School Lunch Program (NSLP) percentage, NTIA's "[Indicators of Broadband Need Map](#)" or other publicly available data to provide best estimates on its ECF FCC Form 471 application, and then collect a certification from students or staff before seeking reimbursement for the device or service?

A: Yes. Again, only best estimates of the unmet need are required for schools at the time they submit their application. It is up to the school to determine how to estimate need. Schools may also be asked to provide documentation to support actual costs of assigned equipment and/or services after funds have been committed. A student or staff certification collected after the application but before receiving service/equipment may be an appropriate way to ensure the school is only seeking reimbursement for those students and staff with unmet need.

*8.5 Q: What documents am I required to retain and for how long do I need to keep them?

As part of the record retention requirements established in the Order, we require applicants to retain for 10 years asset inventories for each connected device or other piece of equipment provided to an individual student, school staff member, or library patron. The asset inventory must identify: 1) the device or equipment type; 2) the device or equipment make/model; 3) the device or equipment serial number; 4) the full name of the person to whom the device or other piece of equipment was provided; and 5) the dates the device or

other piece of equipment was loaned out and returned, or the date the school or library was notified that the device or other piece of equipment was missing, lost, or damaged. Applicants must also retain a record of services purchased with ECF support. The record of services must include the following information: (a) type of service provided (i.e., DSL, cable, fiber, fixed wireless, satellite, mobile wireless); (b) broadband plan details, including upload and download speeds and monthly data cap; (c) the name(s) of the person(s) to whom the service was provided; and for fixed broadband service; (d) the service address, and (e) the installation date of service: and (f) the last date of service (as applicable).

*9.6 Q: For equipment purchases, what is the deadline for filing requests for reimbursement?

A: For equipment or other non-recurring services that have not been received when the applicant submits the application, applicants may use June 30, 2022 as the service end date and the invoicing deadline will be 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 August 29, 2022 (i.e., 60 days after June 30, 2022), whichever is later.

Please see DA 21-881 for more information about the deadline for invoicing for non-recurring purchases.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

August 3	FCC ECF webinar on frequently asked questions at 2:00 p.m. EDT. Registration is not required and will be hosted at http://www.fcc.gov/live.
August 4	USAC's "Office Hours" ECF webinar at 3:00 p.m. EDT (see ECF Live Sessions). These webinars are held weekly to provide program updates and answer participant questions. Recordings of earlier sessions are also available in the Live Sessions section.
August 6	Form 486 deadline for FY 2020 covering funding committed in Wave 50. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1st), whichever is later. Upcoming Form 486 deadlines are:

Wave 51	08/13/2021
Wave 52	08/19/2021
Wave 53	09/02/2021
Wave 54	09/09/2021

August 13   Closing date for the initial Emergency Connectivity Fund ("ECF") window. The window will close at 11:59 p.m. EDT.

EBB Update:

With all the recent focus on the Emergency Connectivity Fund ("ECF"), it's easy to forget that the FCC and USAC are also administering the Emergency Broadband Benefit ("EBB") program, another COVID-related program providing discounts on internet service and connective devices. Schools and libraries not providing home internet and devices to their students, staff, and patrons may, at a minimum, want to publicize EBB.

Last week, the FCC announced that over 4 million households had already enrolled in the EBB program, and that over 1,100 broadband providers were participating. The FCC also provided the following list of EBB resources:

- For questions about the status of an online or paper application or for questions about the application process including documents needed, contact the Universal Service Administrative Company (USAC) at:
  - Email: EBBHelp@usac.org
  - Phone: 1-833-511-0311
  - Online: GetEmergencyBroadband.org
- To file a complaint with the FCC about a participating provider:
  - Online: consumercomplaints.fcc.gov
  - Phone: 1-888-225-5322
- For Emergency Broadband Benefit general program information:
  - Email: BroadbandBenefit@fcc.gov
  - Online: fcc.gov/broadbandbenefit

USAC's Equipment Transfers Webinar:

USAC presented an excellent webinar last week on equipment transfers, reporting, and recordkeeping requirements. The most important point to note is the difference in transfer reporting requirements as of July 1, 2021. Transfers as of this July no longer have to be reported to USAC — a simplification made possible by the change in the Category 2 budget from individual schools to districts (or from individual library branches to library systems). The key slide in the webinar stressing this change is shown below.

Equipment Transfer Rules July 1, 2021 and Forward

	All Funding Years	
Equipment Transfer Before July 1, 2021	Transfer occurs within three years of purchase	Applicant maintains documentation and **files** a FCC Form 500
	Transfer occurs three years or more after purchase	Current Process – Applicant maintains documentation and **does not** file a FCC Form 500
Equipment Transfer On or After July 1, 2021	Transfer occurs within three years of purchase	Applicant maintains documentation and **does not** file a FCC Form 500
	Transfer occurs three years or more after purchase	Applicant maintains documentation and **does not** file a FCC Form 500

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The underlying basis for this change is the new Category 2 budget mechanism that took effect as of FY 2021. Budgets for school districts and library systems, which previously were calculated on an individual school or library branch basis, are now calculated on a district-wide or system-wide basis. As a result, transfers between district schools or between system branches no longer need to be tracked. Transfers to NIFs or to separate applicants remain potentially problematic.

Applicants who missed the equipment transfer webinar can register to view a recording and/or access the slides on the USAC website.

FCC Streamlined Decisions:

The FCC issued another set of "streamlined" precedent-based decisions (DA 21-897) last week. As with past streamlined decisions, applicants facing similar problems as those addressed in these decisions may garner useful information by carefully reading the additional FCC explanations found in the footnotes. The original appeal and waiver requests can be found online in the FCC's Search for Filings under Docket 02-6.

In July's streamlined decisions, the FCC:
1. Granted:
    a. One Request for Review granting additional time to respond to USAC's request for information.
    b. Two Requests for Review finding that USAC erred in determining the eligibility of requested services.
    c. Four Requests for Waiver of late-filed Form 471 applications due to circumstances beyond the applicants' control.
    d. One Request for Waiver of late-filed Form 471 applications filed within 14 days of the close of the FY 2021 window.

    e. Twenty three Requests for Waiver of late-filed Form 471 applications filed more than 30 days late. The decision extended a special COVID waiver principle, previously applied to late FY 2020 applications, to similarly delayed FY 2021 applications. The FCC warned that this additional relief applied only to this subset of applications and that applicants should not expect additional waiver grants "absent a showing of extraordinary circumstances."

    f. Nine Requests for Review and/or Waiver for ministerial and/or clerical errors with respect to corrections of pre-discount prices.

    g. One Request for Review and/or Waiver finding that the applicant had paid the full amount of its non-discount share.

    h. Two Requests for Waiver of the special construction service delivery deadline.

    i. One Request for Waiver finding that the request for service was properly bid.

2. Denied:

    a. One Request for Waiver of the Red Light Rule for failure to satisfy an FCC debt.

    b. Three Requests for Waiver for invoice deadline extensions.

    c. Two Requests for Review and/or Waiver for ministerial and/or clerical errors.

    d. One Request for Waiver seeking advanced payment for a multi-year contract.

    e. Two Requests for Waiver involving untimely appeals or waiver requests.

USAC ECF Newsletter Dated July 27 – Notices and Additional FAQs

USAC's Emergency Connectivity Fund Program Newsletter of July 27, 2021, covers the following topics:

- The FCC's July 22nd Public Notice (DA 21-881) revising ECF service delivery deadlines and modifying the certification language on requesting funding for service not yet ordered (see our newsletter of July 26th).

- Clarification that the "FCC has not prescribed a specific way for applicants to go about estimating what they will need to address unmet needs" (see discussion above).

- References to USAC's weekly "Office Hours" sessions (noted above), Customer Support Center (800-234-9781), and ECF Training modules.

The ECF Newsletter also provides answers to the following frequently asked questions:

- Are libraries limited to lending Emergency Connectivity Fund-funded equipment and services to K-12 students? Short answer: No.

- If a school reopens, and students and school staff are attending school in person, is off-campus equipment or service for that student or teacher still eligible for Emergency Connectivity Fund support? Short answer: Yes.

- Are applicants required to conduct competitive bidding, like they do for the E-Rate program? Short answer: No.

- Does an applicant using SPI invoicing need to register with SAM.gov? Short answer: No.

- Can a school who has received ESSER or CARES Act funds to buy connected devices/hotspot devices apply for Emergency Connectivity Fund Program funding? Short answer: "It depends" — please read the Newsletter.

- Does a school need to use a survey to demonstrate unmet need on their application? Short answer: No.

- If a district-owned connected device was assigned to a student, but the device is no longer sufficient to engage in remote learning (for example, a three-year old laptop), can the district request Emergency Connectivity Fund support for a new connected device? Short answer: Yes.

- Can an applicant request funding for connected devices or Wi-Fi hotspots for all of its students as part of a 1:1 device initiative? Short answer: No.

- If students have devices at home, but they are inadequate for the students to participate in remote learning (e.g., due to age or not meeting minimum technical requirements), can schools still buy a device for them? Short answer: "It depends" — please read the Newsletter.