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Funding Status for 2021-2022

E-Rate:

Wave 33 for FY 2021 was released on Wednesday, November 24th, for a total of \$20.5 million including \$255 thousand for one North Carolina applicant. Cumulative commitments are now \$2.44 billion including \$84.4 million for North Carolina. Nationwide, USAC has now funded 97% of the FY 2021 applications representing 86% of the requested funding.

ECF:

Wave 5 of ECF funding was issued on Tuesday, November 23rd, for a total of \$174 million including \$1.41 million for 17 North Carolina applicants. Cumulative commitments are now over \$3.22 billion including \$111 million for North Carolina.

FCC Proposal for Online Bidding Portal

The FCC's [tentative agenda](#) for its December 18th open meeting indicates that the Commission will consider a Notice of Proposed Rulemaking (“NPRM”) — see [draft](#) — that proposes to establish a bidding portal for E-rate competitive bidding documentation which requires service providers to submit bids through the bidding portal rather than directly to applicants. Additionally, the FCC is seeking comment on whether its E-rate rules should require applicants to provide other competitive bidding documentation that is not captured in the bidding portal (e.g., bid evaluation matrices, questions from bidders, etc.), as well as contract documents, when they submit their Form 471 applications.

In large part, the proposed NPRM is in response to a [2017 recommendation](#) by the FCC's Office of the Inspector General (“OIG”) and a [2020 audit report](#) by the General Accounting Office (“GAO”), both of which identified opportunities to misrepresent compliance with competitive bidding requirements as an underlying fraud risk for the E-rate program.

As discussed in the draft NPRM, the proposed bidding portal, targeted initially for completion in time for the FY 2025 competitive procurement cycle, could mean the following:

- Service providers responding to Form 470s (and RFPs), would submit their bids through the bidding portal rather than to the applicants. Indeed, the proposed rules would preclude the service providers from even sharing early copies of their bids directly to the applicants — a prohibition likely to cause major conflicts with state and local competitive bidding rules.
- Bid submission formats might be established to better enable applicants to compare competing bids.
- Bid hold periods might be established that would prevent applicants from reviewing bids for at least 28 days from the Form 470 certification date to ensure that service providers are competing on a “level playing field.” Such a waiting period would effectively create a “sealed bid” process.
- An additional period — e.g., two weeks — might be established for bid review. Doing so would extend the minimum filing period between a Form 470 and a Form 471.
- The bidding portal could support the anonymous submission of service provider questions and public responses by the applicants.
- Applicants would be required to submit bid selection documentation such as bid comparison matrices and related contract documents at the time funding is requested.
- The availability of extensive bidding information within USAC’s bidding might speed application review — particularly in instances now requiring special compliance reviews — and simplify applicant record retention requirements.

The draft NPRM recognizes the complexity of implementing a central bidding system and repository. Questions abound involving conflicts with state and local bidding rules, use of state master contracts, zero bid situations, multi-stage bidding, bid clarifications, and others. Assuming adoption at the FCC’s December 18th meeting, this NPRM is likely to mark only the first stage in an extended process. Initial NPRM comments would be due 30 days after publication in the *Federal Register*, with reply comments due another 30 days thereafter. We are obviously embarking on an interesting journey.

Updates and Reminders

Upcoming Dates:

November 29	Effective date of FCC Report and Order (FCC 21-79) requiring holders of FCC Registration Numbers (“FRNs”) to update their CORES registration information (if necessary) to include email addresses (see our newsletter of November 8th).
December 3	Form 486 deadline for FY 2021 covering funding committed in Wave 17. More generally, the Form 486 deadline is 120 days from the FCDL date or from the service start date (typically July 1 st), whichever is later. Upcoming Form 486 deadlines for 2021 are:
	Wave 18 12/10/2021
	Wave 19 12/17/2021
	Wave 20 12/24/2021
	Wave 21 12/30/2021

- December 8 Comments due on the new Affordable Connectivity Program ([DA 21-1453](#)) (see our [newsletter of August 22nd](#)). Reply comments are due December 28th.
- December 13 First invoice deadline for ECF applicants funded in Wave 2 who had received equipment before they filed their first window applications. Similar upcoming ECF invoicing deadlines are:
- | | |
|--------|------------|
| Wave 3 | 12/24/2021 |
| Wave 4 | 01/07/2022 |
| Wave 5 | 01/24/2022 |

EBB-to-ACP Transition Rules:

As discussed in our [newsletter of August 8th](#), broadband funding in the Infrastructure Act includes \$14.2 billion for the Affordable Connectivity Program (“ACP”) effectively expanding the earlier COVID-related \$3.2 billion Emergency Broadband Benefit (“EBB”) Program. The EBB-to-ACP transition is scheduled to begin on December 31, 2021, under rules hastily being developed and currently subject to public comment under Public Notice [DA 21-1453](#) (see our [newsletter of August 22nd](#)).

To shortcut the most immediate aspect of the transition process, the FCC released an Order ([DA 21-1477](#)) last week waiving the enrollment freeze and consumer notice rules for the EBB Program. With few exceptions,¹ households eligible for the current EBB Program will automatically be eligible for, and be transitioned to, the ACP program without needing to reverify their income levels (but see the following article on EBB fraud). EBB participants as of December 31, 2021,² will continue to receive existing EBB discounts on their internet services for an additional 60 days (i.e., through February 2022). As of March 1, 2022, most households transitioning from EBB to ACP will experience a discount reduction from \$50 per month to \$30 per month (and must be so notified by their suppliers). Households on Tribal lands — and those in newly defined “high cost areas” — transitioning to ACP will continue to receive discounts of up to \$75 per month.

Fraudulent EBB Enrollments:

The FCC’s Office of Inspector General (“OIG”) issued an [advisory](#) last week reporting fraudulent enrollments in the Emergency Broadband Benefit (“EBB”) program. EBB discounts on internet services and devices are available only to low-income families whose eligibility is supposed to be confirmed through a variety of sources. One criterion for a family’s EBB participation is a child’s attendance in a high-poverty Community Eligibility Provision (“CEP”) school providing free breakfasts and lunches to all students.

The OIG report identified a number of families enrolled in the EBB program, reportedly based on their child’s attendance in a CEP school, that far exceeded the school’s enrollment. In one egregious case, within a “cluster” of four Florida schools, the OIG found 1,884 EBB household

¹ Households that enrolled in the EBB Program based on a substantial loss of income after February 29, 2020, or participation in a service provider’s approved COVID-19 relief program, will need to have their current income eligibility reverified to continue in ACP.

² Eligible, but currently non-participating, households will be able to enroll in the EBB program for a few more weeks (date to be determined).

participants reportedly based on children enrolled in a school with 200 students. Another problem found included the widespread use of provider retail addresses instead of home addresses. Overall, the majority of the fraudulent enrollment activity was traced to sales agents working for a handful of EBB providers.

Findings of fraud in the EBB program raise questions concerning the administration of the new Affordability Connectivity Program (“ACP”) authorized in the Infrastructure Act to extend EBB home internet benefits beyond the pandemic (see our [newsletter of November 22nd](#)). Most directly, the FCC’s Public Notice ([DA 21-1453](#)) requesting ACP comments asks:

31. We seek comment on the qualifying benefit programs for the Affordable Connectivity Program. In the EBB Program Order, the Commission determined that households with students enrolled in schools or school districts participating in the Community Eligibility Provision (CEP) are eligible for the EBB Program regardless of whether anyone in the household applied for school lunch or breakfast assistance individually. We seek comment on whether the Commission should take the same approach for the Affordable Connectivity Program. Should the Commission revisit in the Affordable Connectivity Program its decision to allow EBB Program eligibility based only on attendance at a CEP school if the household would not otherwise qualify for the school lunch and breakfast program? Given that the Affordable Connectivity Program is not an emergency, temporary program like the EBB Program, and will have a longer duration than the EBB Program, is there still a compelling reason to allow CEP student eligibility? In a long-term program, how does the Commission assess the risk of allowing households that are not otherwise eligible for the school lunch and breakfast program to receive the ACP benefit? Are there alternatives that the Commission should consider to ensure that households seeking to qualify based on participation in the CEP would otherwise qualify for the school lunch and breakfast program?

USAC ECF Newsletter Dated November 23 – Nothing New

[USAC’s Emergency Connectivity Fund Program Newsletter of November 23, 2021](#), does summarize last week’s Wave 5 funding but otherwise simply repeats the information from last week’s newsletter.

Newsletter information and disclaimer: This newsletter may contain unofficial information on prospective E-rate developments and/or may reflect E-Rate Central’s own interpretations of E-rate practices and regulations. Such information is provided for planning and guidance purposes only. It is not meant, in any way, to supplant official announcements and instructions provided by USAC, the FCC, or NCDPI.

Additional North Carolina specific E-rate information is available through our Web site — <http://www.e-ratecentral.com/us/stateInformation.asp?state=NC>. Note that this site provides easy access to formatted North Carolina applicant E-rate histories via the Billed Entity Number (“BEN”) search mechanism in the upper left-hand corner. Detailed information can be obtained by “drilling down” using the links for specific funding years and individual FRNs.

If you have received this newsletter from a colleague and you would like to receive your own copy of the North Carolina E-Rate Forum, send an email to join-ncerate@lists.dpi.state.nc.us. Please include your name, organization, telephone, and e-mail address.

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