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Funding Status for E-Rate and ECF

E-Rate for FY 2022:

Wave 18 for FY 2022 was issued on Thursday, August 18th, for $61.6 million including $1.00 million for two North Carolina applicants. Cumulative commitments to date are $2.34 billion including $62.2 million for North Carolina. Nationwide, USAC has funded 94.5% of the FY 2022 applications representing 75.8% of the requested funding.

ECF for 2021-2023:

Total commitments as of Wave 20 for ECF-1/2 and Wave 5 for ECF-3 are $5.56 billion including $157 million for North Carolina. Nationwide, USAC has funded 96.4% of the applications from ECF windows one and two and 21.3% of applications from ECF window three. Total disbursements as of last Friday totaled $1.65 billion.

FCC Report on the Future of USF

The Infrastructure Investment and Jobs Act ("Infrastructure Act") from 2021, which includes roughly $65 billion in several broadband deployment programs, required the FCC to report on its options for achieving its goals[1] of universal deployment, affordability, adoption, availability, and equitable access to broadband through the Universal Service Fund ("USF") and other FCC programs. That report, entitled "Report on the Future of the Universal Service Fund" (FCC 22-67) was released last week.

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[1] Interestingly, as the FCC reiterated its goals as "universal deployment, affordability, adoption, availability, and equitable access to broadband throughout the United States," it declined suggestions to adopt reliability or cybersecurity as universal service goals because it believed that those "**important concepts are already captured by our existing availability goals**" [*emphasis added*]. In other words — our words, not the FCC's — **cybersecurity is already a goal**! If so, why isn't cybersecurity already E-rate eligible?

Non-USF, non-FCC broadband programs referenced in the FCC's Report include:

- The Broadband Equity, Access, and Deployment ("BEAD") Program — $42.45 billion administered by the National Telecommunications and Information Administration ("NTIA").

- ReConnect — $4.8 billion for rural broadband administered by the Rural Utilities Service.

- The Tribal Broadband Connectivity Program — $3 billion administered by NTIA.

- The Enabling Middle Mile Infrastructure Program — $1 billion administered by NTIA.

- The Broadband Infrastructure Program — $288 million, also administered by NTIA.

The FCC's Report starts with the premise that the Infrastructure Act will not, by itself, meet all the FCC's universal service broadband goals in part because "that funding is still in the early stages, and disbursements will likely go into 2026 or later." Specifically, the FCC concluded that an analysis of whether "the E-Rate program will see a change in demand for subsidies given new, robust broadband networks serving schools can only be completed once BEAD Program funding has been used to fund network buildout and such buildout occurs."

More broadly, the Report's recommendations focus on the future role of the USF for "maintaining new and existing networks, promoting equitable access in underserved communities and populations, and ensuring sufficient support for the ever-expanding broadband needs of schools, libraries, and health care providers." Most of these recommendations deal with the FCC's High Cost Program; its Lifeline and Affordable Connectivity Program ("ACP"); and options for restructuring the USF contributions mechanism.

With respect to E-rate and ECF,[2] the Report concludes:

> It is expected that funding for community anchor institutions through the Infrastructure Act may complement funding available under the E-Rate and ECF programs for special construction funding requests. Special construction costs are the upfront, non-recurring costs of deploying new or upgraded network facilities to eligible schools and libraries, and special construction is eligible for funding in the E-Rate program and in limited circumstances, through the ECF program. In the ECF program, applicants have one year from the date of the funding commitment decision letter (FCDL) to complete any approved network construction projects. Because deployment of broadband networks to community anchor institutions through the Infrastructure Act is still years away, it is too early for the Commission to assess the effect this funding will have on existing efforts to use E-Rate, and in some cases ECF funding, to deploy gigabit-level broadband service to eligible schools and libraries, as well as the impact this additional funding will have on demand for E-Rate category one services. It is possible, however, that an influx of network construction funding may **increase** [*emphasis added*] demand for E-Rate support for the recurring services provided over these newly constructed high-speed networks. As such, the Commission will continue to work with its federal partners to monitor the progress of deployment of gigabit-level networks for use by eligible schools and libraries through the Infrastructure Act.

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[2] Specifically, with respect to ECF, the Report noted: "As demand in the third application filing window exceeded the remaining $1.5 billion in appropriated funding, there will not be any additional application filing windows for the ECF program. USAC and the Commission are in the process of committing and disbursing ECF funds for the requests that are approved for funding. The Commission should continue to evaluate the results of ECF and consider how to continue to support the connectivity for students and library patrons that has been provided by the program."

A more detailed review of the FCC's USF report, entitled "The Future of Universal Service is Still in the Future," is available from the Benton Institute.

Updates and Reminders

Upcoming Dates:

August 25	USAC webinar "Filing the FCC Form 470 and the Competitive Bidding Process" (register).
August 26	ECF deadline for "Affected Applicants" to file requests with USAC asking to restore any voluntarily reduced months of service for their first or second window recurring service funding requests (see DA 22-799 and our newsletter of August 1st).
September 6	Form 486 deadline for FY 2021 covering funding committed in Wave 54. More generally, the Form 486 deadline is 120 days from the FCDL date or from the service start date (typically July 1st), whichever is later. Upcoming Form 486 deadlines are:

        Wave 55   09/15/2022
        Wave 56   09/26/2022

        Note: The first Form 486 deadline for FY 2022 Waves 1-11, committed before July 1st, will be Monday, October 31st.

September 9	Last day of the "Summer Deferral" window giving applicants additional time to respond to PIA E-rate inquiries. No such deferral period is in effect for ECF inquiries.
September 30	Service delivery deadline for FY 2021 non-recurring services.

        Note: Given current global supply chain problems, the Schools, Health & Libraries Broadband ("SHLB") Coalition filed a blanket request for waiver with the FCC asking for an extension of the non-recurring service delivery deadline for both FY 2020 (that had already been extended one year) and FY 2021 for an additional year. Unless and until this waiver is approved, we recommend that applicants knowingly facing service delivery delays this fall file a Form 500 requesting their own extensions of the September 30th service delivery deadline.

DOJ Supports E-Rate Competitive Bidding Portal:

Last spring, in comments and reply comments on the FCC's proposal for the development of a competitive bidding portal, respondents overwhelmingly rejected the idea that all E-rate bids be submitted and evaluated online for USAC review (see our newsletter of May 2nd). Last week, somewhat belatedly but likely to carry substantial weight, the U.S. Department of Justice filed a letter with the FCC in support of a bidding portal. Without fully recognizing the complexities that an online portal would add to E-rate procurements, the DOJ letter suggests the following:

1. The Commission should require prospective service providers and applicants to submit documents through a central bidding portal managed by USAC.

2. The Commission should require service providers to submit a summary form — further described as a template or "draft Form 471" — with bids to allow for robust data analytics and applicant comparison of competing bids.

3. The Commission "should extend limits on communication" to consultants and require applicants to submit a broad selection of documents. No communications between service providers and applicants or "any representative thereof" — presumably covering "consultants" — should be permitted outside of the bidding portal during the competitive bidding process.

4. If the Commission elects to use the portal as a bid repository, service providers should submit documents in parallel with any state-run bid process.

SHLB's "To and Through" Analysis

The Schools, Health & Libraries Broadband ("SHLB") Coalition and the Open Technology Institute ("OTI") published a study last week entitled "The 'To and Through' Opportunity: An Economic Analysis of Options to Extend Affordable Broadband to Students and Households via Anchor Institutions." The study, together with case studies, analyzes the costs of building out wireless community internet networks for the distribution of broadband internet services delivered to "anchor institutions" such as schools and libraries. The underlying public policy thrust of this study is to show that it is more efficient to bring high-capacity internet services into an anchor institution for distribution to the broader community than to it is to provide individualized internet connections to all community households. The study looks at different wireless technologies for community distribution including Citizens Broadband Radio Systems ("CBRS"), Educational Broadband Service ("EBS"), unlicensed Wi-Fi spectrum, or a combination thereof. The analysis shows that such approaches, evaluated over a five-year period (considering both capital expenditures and annual operating expenses), would be 5-10 times less expensive than purchasing public LTE services from commercial providers.

For schools or libraries contemplating such networks to provide household internet services to their students or patrons, it is important to note that the study does not assume any E-rate or ECF discounts, either upfront or on a continuing basis. We note that ECF does provide some funding for self-constructed networks, but applications utilizing that option were limited. By our analysis, USAC has only approved $28 million for network construction. Applications for $364 million are still pending. No ECF invoices for self-construction have yet been paid.

USAC E-Rate News Brief Dated August 18 – Timely Topics

USAC's Schools and Libraries News Brief of August 18, 2022, covers four topics of particular interest to both applicants and service providers this fall.

- As noted above, the summer deferral period ends Friday, September 9th. Applications on hold during the summer will be moved back into active PIA review.

- The normal service delivery deadline for FY 2021 non-recurring services (other than special construction) is September 30th. Applicants can request a one-year extension of this deadline by filing — no later than September 30th —a Form 500.

- On both BEAR and SPI forms, the "Customer Billed Date" field is for <u>recurring</u> services and the "Shipping Date to Customer" field is for <u>non-recurring</u> services. A single FRN line item should have a date in <u>one</u> field or the other, but not both fields.

- Applicants filing BEAR forms must have a current Form 498 on file to support direct payments to the applicants' bank accounts.