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Funding Status for E-Rate and ECF

E-Rate for FY 2022:

Wave 20 for FY 2022 was issued on Thursday, September 1st, for \$31.6 million, none for North Carolina applicants. . Cumulative commitments to date are \$2.44 billion including \$62.4 million for North Carolina. Nationwide, USAC has funded 95.1% of the FY 2022 applications representing 79.1% of the requested funding.

ECF for 2021-2023:

Total commitments for all three ECF windows are \$5.74 billion including 157 million for North Carolina. Nationwide, USAC has funded 96.4% of the applications from ECF windows one and two and 24.9% of applications from ECF window three. Total disbursements as of last Friday remain unchanged at \$1.65 billion.

Documenting CIPA Compliance for E-Rate Audits

Children’s Internet Protection Act (“CIPA”) compliance is a critical aspect of the E-rate program and is most commonly questioned during USAC’s Beneficiary and Contributor Audit Program (“BCAP”) and Payment Quality Assurance (“PQA”) reviews. Documentation to demonstrate CIPA compliance has typically included the following four basic elements:

- An Internet Safety Policy (“ISP”)— typically broader than a student-only Acceptable Use Policy that addresses the five criteria required by FCC rules.
- A record of the public notice for the hearing/meeting held to establish the ISP.
- A description of the technology protection/filtering mechanism employed including purchase or subscription invoices and filtering logs.
- A plan, if not included in the ISP, for educating minors about appropriate online behavior, including interacting with other individuals on social networking

websites, in chat rooms, and cyberbullying awareness and response (required for schools).

Recent audits we've seen address these elements in some detail. Here are some of the questions that the auditors have been asking:

- Who was responsible for creating or updating the policy; when was it created and last revised; and how often it is updated? Was the applicant aware of the elements required to be included in the ISP; how did they ensure that the elements were incorporated in the plans; and what reviews were made to ensure their inclusion?
- What was the format of the meeting (e.g., board meeting, town hall, etc.) and how was the public meeting advertised? Was a copy of the public meeting notice maintained along with copies of meeting notes to demonstrate the meeting was held?
- When the filtering was installed, was documentation of the purchase/renewal maintained? How often is the filtering contract renewed? Were there any breaks in the service? How are the logs maintained? How does the applicant ensure that filtering is working correctly, and that inappropriate sites are being blocked?
- Note: Although we have not seen audit questions recently concerning the education of minors, schools should be able to document steps that have been taken to fulfill this requirement.

By understanding the questions being asked during audit compliance, applicants can better be “audit ready,” ensuring that funding is secure now and in the future. Note that CIPA compliance is not only required for the E-rate and Emergency Connectivity Fund (“ECF”) programs, but also for other federal programs such as the Library Services and Technology Act (“LSTA”) and Title III of the Elementary and Secondary Education Act (“ESSA”). For more information on compliance, click [here](#) for our CIPA Primer.

Updates and Reminders

Upcoming Dates:

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 1 st), whichever is later. Upcoming Form 486 deadlines are: Wave 55 09/15/2022 Wave 56 09/26/2022
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 15	First of two USAC webinars on the ECF Invoice Review Process (register).
September 20	Second USAC webinar on the ECF Invoice Review Process.

- September 21 Comments due on the FCC’s proposed Eligible Services List ([DA 22-878](#)) for FY 2023. Reply comments are due October 6th.
- September 30 Service delivery deadline for FY 2020 and 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 a one year extension of the non-recurring service delivery deadline for both FY 2020 (that had already been extended one year) and FY 2021. 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.
- October 24 Nominations due for six USAC Board of Directors positions (see [DA 22-877](#)).
- October 28 Invoice deadline for FY 2021 recurring service FRNs and/or the deadline for requesting a 120-day extension to February 27, 2023.
- October 31 The first Form 486 deadline for FY 2022 Waves 1-11, committed before July 1, 2022.

FCC Authorizes Full FY 2022 Funding

In what is little more than a formality, the FCC released a Public Notice ([DA 22-902](#)) directing USAC to fully fund all eligible Category 1 and Category 2 funding requests for FY 2022. The move is unsurprising given that the projected demand for the year is well under, by more than \$1 billion, the year’s funding cap. The Public Notice also authorized USAC to utilize \$500 million in unused E-rate funds from prior years.

FCC Streamlined Decisions:

The FCC issued another set of “streamlined” precedent-based decisions ([DA 22-897](#)) 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 (E-rate) or Docket 21-93 (ECF).

In August’s streamlined decisions, the FCC:

1. E-Rate Dismissed:
 - a. One request submitted with insufficient information.
 - b. Four Requests for Waiver dismissed as moot as the issues had been resolved.
 - c. Ten Petitions for Reconsideration. As a basis for reconsideration, all ten petitioners had advanced new arguments that COVID-19 was a contributing factor that led to invoices being submitted after the deadline. The FCC ruled that the pandemic was information that was well known at the time the waiver requests were initially filed and should have been raised earlier.

2. E-Rate Granted:

- a. One Request for Review and/or Waiver of the 28-day competitive bidding rule wherein the deadline was only missed “by one to three days.”
- b. One Request for Waiver finding that the applicant had filed a timely Form 471.
- c. One Request for Waiver for a BEAR that had been timely filed and then mistakenly withdrawn.
- d. Eight Requests for Waiver for late filed Form 471 applications filed within 14 days of the deadline.
- e. Fifty-one Requests for Waiver for late filed Form 471 applications filed within 30 days of the deadline.
- f. One Request for Waiver for a late-filed Form 471 application “due to circumstances beyond their control.”
- g. One Request for Waiver for a contract signed shortly after the submission of the Form 471.
- h. One Request for Review and/or Waiver for an unintentional cancellation of a funding request.
- i. Two Requests for Waiver of the appeal filing deadline filed “within a reasonable period of time after receiving notice of USAC’s adverse decision.”
- j. Two Requests for Waiver of the special construction service delivery deadline.

3. E-Rate Denied:

- a. One Request for Review involving improper service provider involvement. The case apparently involved a “consultant, acting on behalf of the applicant” but having a “financial relationship with a service provider.”
- b. One Request for Waiver and/or Review for an invoice of a product or service not approved on a Form 471.
- c. Three Requests for Waiver for invoice deadline extensions.
- d. Eighteen Requests for Waiver for late-filed Form 471s presenting no special circumstance justifying a waiver of FCC rules.
- e. Eleven Requests for Waiver for untimely appeals or waiver requests.

4. ECF Approved or Dismissed:

- a. Three Requests for Review and/or Waiver for the early delivery of equipment.
- b. One Request for Review deemed moot.

Note: As has been the case for the past several months, the Commission neither granted nor denied any waivers for late-filed ECF applications. Four such waivers had been denied in May on the basis that the “petitioners failed to present special circumstance justifying a waiver of the rule.” We interpret May’s denials and subsequent inaction as an indication that the FCC does not plan to apply its flexible E-rate late-filing waiver policies for third window ECF applications (see our article entitled *Late-Filed ECF Applications – A Cautionary Tale* in our [newsletter of May 23rd](#).)

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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