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Funding Status for E-Rate and ECF

E-Rate for FY 2022:

Wave 23 for FY 2022 was issued on Thursday, September 22nd, for \$21.4 million, none for North Carolina. Cumulative commitments to date are \$2.52 billion including \$62.9 million for North Carolina. Nationwide, USAC has funded 95.6% of the FY 2022 applications representing 82.2% of the requested funding.

ECF for 2021-2023:

Wave 22 for Windows 1 and 2 and Wave 8 for Window 3 were [released](#) on Wednesday, September 21st, for a total of \$54.8 million of which \$54.0 million was for Window 3 applicants. Funding included \$1.65 million for six North Carolina applicants. Total commitments for all three ECF windows are \$5.76 billion including \$164 million for North Carolina. Nationwide, USAC has funded 96.4% of the applications from ECF windows one and two and 32.4% of applications from ECF window three. Total disbursements as of last Friday remained at \$1.83 billion.

FCC Extends FY 2021 Non-Recurring Service Delivery Deadline

Responding in part to the [waiver](#) request by the Schools, Health & Libraries Broadband (“SHLB”) Coalition, but on its own motion, the FCC released an Order ([DA 22-976](#)) extending the service delivery deadline for FY 2021 non-recurring service FRNs by one year from September 30th of this year to September 30, 2023. The extension also applies — and only applies — to those FY 2020 non-recurring service FRNs that had previously been extended upon request to September 30, 2022.

This is the second set of service delivery deadline extensions related directly or indirectly to COVID-19. In an April 2020 Order ([DA 20-364](#)), the FCC had extended the service delivery

deadline for FY 2019 non-recurring services from September 30, 2020, to September 30, 2021, “to alleviate administrative burdens and minimize the disruption caused by COVID-19” (see our [newsletter of April 6, 2020](#)). Last week’s Order attributed the extension “to labor and equipment shortages from the global supply chain disruptions that have been exacerbated during the COVID-19 pandemic.”

Procedurally, the following two points should be noted:

- As of Friday, USAC’s [E-Rate FRN Status Tool](#) and [E-Rate FRN Invoice Deadline Tool](#) had not been updated with the extended service delivery and invoice deadline dates. To make affected applicants and service providers more comfortable that the extensions are in place, we hope these tool updates will occur this week before the former September 30, 2022, deadline.
- Applicants whose contracts expire, or had expired, on or before the previous September 30, 2022, deadline should arrange for — and document — contract extensions with their service providers AND should file Form 500s to advise USAC that their contracts have been extended. Both steps should be taken before services are provided and, most importantly, before invoices are filed.

Initial Comments to the Proposed ESL for FY 2023

Initial comments were received last week on the FCC’s proposed Eligible Services List (“ESL”) ([DA 22-878](#)) for FY 2023. With the exception of one set of comments from [Verizon](#), dealing with a suggested parenthetical change on the listing for “Wireless,” the only other comments received proposed two significant additions to product and service eligibility. Neither of these proposed additions — cybersecurity and Wi-Fi on buses — are likely to be considered as part of the FY 2023 ESL proceeding. Traditionally, the FCC’s ESL proceeding has not been used as a vehicle for making major changes in eligibility. The other comments, however, are significant because they make strong cases for separate FCC actions. Most importantly, see the comments on:

- Cybersecurity by the [American Library Association](#), the [Council of Great City Schools](#), [Fortinet](#), and [Val Verde Unified School District](#). Additionally, although not submitted as ESL comments, see the letter sent to all four Commissioners by the [Los Angeles Unified School District](#), the target of a recent ransomware attack (see our [newsletter of September 19th](#)), co-signed by over 1,100 local and state education agencies, national organizations (including E-Rate Central).
- Wi-Fi on buses by [E-Rate Provider Services](#) and [Space Exploration Technologies Corp.](#) (“SpaceX”).

Updates and Reminders

Upcoming Dates:

September 26 Form 486 deadline for FY 2021 covering funding committed in Wave 56. 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.

- September 27 Second of two USAC webinars (rescheduled) on the ECF Invoice Review Process ([register](#)). This second webinar is supposed to cover the same invoicing material as the first webinar, which was held on September 20th.
- October 6 Reply comments due on the FCC’s proposed Eligible Services List ([DA 22-878](#)) for FY 2023.
- October 18 Beginning of USAC’s fall virtual E-rate training program (see [registration information on USAC’s Webinars](#) page).
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| Program Overview | October 18 |
| Pre-Commitment Process | October 20 |
| Category 2 Budgets | October 25 |
| EPC Administrative Window | October 27 |
| Post-Commitment Process | November 3 |
| Eligible Services | TBA |
- October 24 Nominations due for six USAC Board of Directors positions (see [DA 22-877](#)).
- October 25 EPC administrative window opens to permit E-rate entity updates.
- October 28 Invoice deadline for FY 2021 recurring service FRNs and/or the deadline for requesting a one-time 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.

Limited Waivers on Late-Filed ECF Applications:

Given the limited funding available for ECF, we have long warned that the FCC would not be issuing many waivers on late-filed ECF applications as has been their practice for E-rate (see our article entitled *Late-Filed ECF Applications – A Cautionary Tale* in our [newsletter of May 23rd](#)). Indeed, we had seen the denial of four such waiver requests in May on the basis that the “petitioners failed to present special circumstance justifying a waiver of the rule.” Last week, however, we saw the first example of what the FCC would consider special circumstances when they approved late-filed ECF applications for three applicants who had been unable to file timely applications due to USAC’s “delays in resolving technical issues’ preventing access to the ECF Portal” ([DA 22-993](#)).

In its decision, the FCC explicitly noted that this relief was limited and that it did “not expect to grant additional waivers of the ECF third window application filing deadline on this basis absent a showing of special circumstances.” In addition, and as a footnote to this statement, the FCC noted “that the 30 day deadline to request a waiver of the third ECF application filing window deadline has passed” — further raising the bar to requesting late-filed waivers.

Updated List of Companies Deemed National Security Risks:

The FCC [announced](#) that it has added two more companies to its “Covered List” of companies deemed to pose national security risks to the nation’s communication networks. Under the FCC’s National Security Rules Order ([FCC 19-121](#)), Universal Service Fund (“USF”) subsidies,

including E-rate discounts, cannot be used to purchase equipment, components, or services from these “covered companies” (see our [newsletter of December 2, 2019](#)). The current [Covered List](#), which began with Huawei Technologies and ZTE Corporation, now numbers ten, all with ties to China.

FCC Rule Waivers for Hurricane Fiona:

The FCC released an Order ([DA 22-998](#)) waiving a series of program rules and deadlines to assist participants and service providers, including Universal Service Fund (“USF”) contributors, located in the areas affected by Hurricane Fiona that struck Puerto Rico on September 18th. The waivers cover the following program areas:

E-Rate:

- An additional 150 days (to Monday, February 20th) to submit:
 - USAC and FCC appeals and waiver requests
 - Form 486s
 - BEARs and SPIs
- Extension of the special construction deadline from June 30, 2023, to June 30, 2024
- Elimination of the record retention requirement for records destroyed by Fiona
- Increased flexibility for service and equipment substitutions

Emergency Connectivity Fund (“ECF”):

- An additional 150 days to submit USAC and FCC appeals and waiver requests
- A 150 day extension to respond to USAC administrative deadlines such as PIA requests
- Elimination of the record retention requirement for records destroyed by Fiona
- Increased flexibility for service and equipment substitutions

The Order also provides relief for the Rural Health Care program, the Lifeline program, the Affordable Connectivity Program (“ACP”), the COVID-19 Telehealth program, and various rules affecting USF contributors.

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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