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Funding Status for E-Rate and ECF

E-Rate for FY 2023:

USAC issued Wave 15 for FY 2023 on Thursday, August 3rd, for \$53.6 million including \$213 thousand for six North Carolina applicants. Total funding is now \$1.80 billion including \$65.3 million for North Carolina. At this point, USAC has already funded 89.6% of the originally submitted applications representing 61.2% of the dollars requested.

ECF for 2021-2023:

Total commitments for all three ECF windows are \$6.82 billion including \$193 million for North Carolina. USAC has funded 90.3% of the ECF applications representing 67.7% of the requested funding.

USAC Cost Reasonableness Reviews — and Denials — on ECF Devices

About two months ago, we began to see reports of applicants receiving inquiries from USAC concerning the cost of the devices on which they had applied for ECF funding. The inquiries question the reasonableness of the costs of those devices — often after the applications had been approved and often after the devices had been purchased, paid for, and invoiced. A typical inquiry begins:

We are unable to make a positive determination that the cost(s) associated with the [devices] requested on FRN(s) [#] is reasonable. ECF program rules require that the cost of eligible equipment and services be reasonable and set a cap of \$400 per eligible connected device as the maximum the FCC will reimburse (47 CFR § 54.1707(a)). Based on our review, the cost(s) associated with requested devices appear to be more expensive than we would expect given your description of the equipment and/or services requested. Specifically, our review has found the same devices requested on the FRN(s) or devices with higher capability can be purchased at a substantially lesser cost from a variety of vendors.

The inquiries continue with a request to explain “how you selected the equipment, why their costs are reasonable, and include an explanation of the factors and special circumstances which led to your selection.”

We have seen a variety of responses to these USAC inquiries. And now we are starting to see intents to deny. Such actions, as illustrated in the example below, make no sense — for several reasons:

1. The ECF program was put in place as an emergency response to the pandemic. The goal was to get connected devices in the hands of students and patrons as quickly and as easily as possible in an environment already subject to supply chain problems.
2. Recognizing these factors, the ECF rules did not require competitive bidding. Schools and libraries were effectively encouraged to get these devices from whatever vendors could provide them quickly and in sufficient quantities. Pricing, albeit capped at \$400 per device, was secondary.
3. The ECF rules did include generic language indicating that prices should be reasonable and cost-effective. Aside from the \$400 device cap, USAC properly paid little attention to actual device prices in early application, or even invoice, reviews.

Today, in a more competitive marketplace and with fewer supply chain constraints, to argue that ECF applicants could have and should have negotiated better prices two years ago is unrealistic. Reducing approved funding to a lower level reflecting today’s pricing would be wrong. But to suggest that previously approved applications be denied, after applicants have already purchased devices, would be a travesty.¹

Denial Example:

One denial that we analyzed clearly shows the problem we are having with USAC’s current reasonableness reviews and denial decisions. The application was filed, approved, and successfully invoiced for 100 Apple iPads (10.2-inch iPad, 9th gen, Wi-Fi, 64GB, Space Gray) purchased directly from Apple at a unit price of \$377.95. An ECF review in Open Data shows that this was one of the standard price points for Apple devices.

As a part of our analysis, we looked at 3,699 approved applications for such devices. 85% of these applications had Apple devices, ordered directly from Apple, at the five exact price points shown below.

<u>Unit Price</u>	<u>Applications</u>
\$294.00	802
\$299.00	451
\$373.00	83
\$377.95	173
\$400.00	<u>1,627</u>
	3,136

¹ We do agree, however, that applicants that have not yet purchased devices, and can do so now at lower unit lower prices than was originally requested, be encouraged to seek revised pricing and to modify their applications accordingly.

Given the apparent standardization of Apple pricing during the pandemic, we question whether USAC and the FCC really expected — indeed required, under penalty of denial — applicants to shop the internet for the best possible pricing. That was certainly not in the ECF rules. Could it be that USAC is doing that only now and finding “deals” such as shown below?



Walmart Departments Services

2021 Apple 10.2-inch iPad Wi-Fi 64GB - Space Gray (9th Generation)

★★★★☆ (4.7) [3444 reviews](#)

Now \$279.00 ~~\$329.00~~ ⓘ

And could it be that, if USAC determines this applicant paid too much for its Apple iPads, the other 172 applications for devices priced at \$377.95 should also be denied? And how about the other Apple applicants? Or other applicants who appear to be falling short of USAC’s pricing decisions? We strongly urge USAC to reconsider this course of action.

Updates and Reminders

Upcoming Dates:

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| August 11 | The Form 486 deadline for FY 2022 Wave 52. 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. FCDL’s issued in Wave 53 have a Form 486 deadline of August 18, 2023.

The first Form 486 deadline for FY 2023, for FCDLs issued on or before July 1 st — normally October 29 th (which is a Sunday this year) — will be Monday, October 30, 2023. |
| August 25 | Due date for requested comments to the Senate’s Universal Service Fund (“USF”) Working Group (see our newsletter of July 31st). |
| August 29 | Invoice deadline for most Window 1 and Window 2 committed FRNs with service delivery deadlines of June 30, 2023. For details on other upcoming invoice deadlines, see USAC’s Emergency Connectivity Fund Invoice Deadline Tool . |

FCC Streamlined Decisions:

The FCC issued another set of “streamlined” precedent-based decisions ([DA 23-632](#)) 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 July’s streamlined decisions, the FCC:

1. E-Rate Dismissed:
 - a. One Request for Review to allow an appeal to be filed with USAC.
 - b. Three filings for failure to comply with the FCC’s general filing requirements.
 - c. Eight Petitions for Reconsideration for failure to identify any material error, omission, or reason warranting reconsideration.
2. E-Rate Granted:
 - a. One Request for Review and/or Waiver regarding eligible entities.
 - b. One Petition for Reconsideration for a late-filed Form 471.
 - c. Three Requests for Waiver granting additional time to respond to USAC with information during invoicing.
 - d. One Request for Waiver regarding an incorrect service start date on a Form 486.
 - e. One Request for Review remanding an eligibility decision where USAC failed to provide an explanation for its determination of ineligibility.
 - f. One Request for Waiver for a late-filed FY 2023 Form 471 application filed within 14 days of the window close.
 - g. Four Requests for Waiver for ministerial and/or clerical errors involving invoicing.
 - h. One Request for Waiver involving a permissible service implementation delay.
 - i. One Request for Waiver involving the technology plan requirement for a FY 2006 application.
 - j. Two Requests for Waiver involving USAC decisions reached after the associated invoice deadlines.
 - k. One Request for Waiver of the special construction service delivery deadline.
3. E-Rate Denied:
 - a. Thirty Requests for Waiver on FY 2023 Form 471 applications filed more than 14 days late and failing to present special circumstances justifying waivers.
 - b. Five Requests for Waiver for late-filed invoices or invoice deadline extension requests.
 - c. One Request for Waiver and/or Review for ministerial and/or clerical errors.
 - d. Four Requests for Waiver for untimely filed appeals or waiver requests.
4. ECF Granted:
 - a. One Request for Waiver involving the early delivery of equipment.
 - b. One Request for Review and/or Waiver for ministerial and/or clerical errors on invoice purchase documentation.

- c. One Request for Review and/or Waiver involving payment verification.
- d. One Request for Waiver of the appeal filing deadline, due to a USAC error.
- e. Two Requests for Waiver of special construction or other service delivery deadlines.

USAC Emergency Connectivity Fund Program Newsletter of July 31 — Program Compliance

[USAC's ECF Program Newsletter Dated July 31, 2023](#), discusses the following topics on ECF program compliance:

- Audits and other investigations:
 - ECF participants are subject to audits, inspections, and investigations by USAC, a state education department, the FCC and its Office of Inspector General, or any local, state, or federal agency with jurisdiction over the ECF participant. One major difference between E-rate and ECF is that ECF funds are considered “federal funds.” As a result, ECF compliance may be included in Federal “Single Audits.”²
 - As of mid-July, by our count, 524 Single Audits had included ECF reviews of which 8% had questioned ECF funding. For North Carolina, one of twenty-two audits including ECF had questioned funding.
- Device usage and the prohibition on storage/warehousing:
 - Applicants cannot warehouse or request reimbursement for devices and/or equipment that is not or has not been used by a student, school staff member, or library patron with unmet needs.
 - Applicants and service providers cannot willfully or knowingly seek reimbursement for the monthly recurring services associated with any devices or equipment that are not or have not been used.
 - Applicants should take reasonable actions to monitor and track the usage of equipment and services that are purchased and used through the ECF program.
- Payment verification requirements: If an applicant did not pay its service provider prior to submitting its ECF reimbursement request, the applicant must pay the service provider within 30 days after receiving the disbursement — and provide proof of payment to USAC.
- Returning funds to USAC: See USAC's [May 2023 ECF Newsletter](#).

For more details, we suggest reading last week's ECF Newsletter in its entirety and USAC's recently created [Compliance Webpage](#) highlighted at the beginning of the Newsletter.

² [The Single Audit Act](#) requires an annual audit of non-Federal entities that expend \$750,000 or more of Federal Financial Assistance from Federal programs (including ECF) in a fiscal year. The Single Audit must be performed by an independent auditor and the reporting package must then be submitted to the Federal Audit Clearinghouse.

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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