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Funding Status for E-Rate and ECF

E-Rate for FY 2023:

USAC issued Wave 45 for FY 2023 on Thursday, February 29th, for $1.59 million, none for North Carolina. Total funding is now $2.59 billion including $84.7 million for North Carolina. At this point, USAC has funded 97.8% of the originally submitted applications representing 93.2% of the dollars requested.

ECF for 2021-2023:

Total commitments for all three ECF windows are $6.47 billion including $192 million for North Carolina.

E-Rate for FY 2024:

The Form 471 filing window for FY 2024 opened on January 17th and will close on Wednesday, March 27th, at 11:59 p.m. EDT. Many FY 2024 applications have already been submitted and reviewed. Those marked "Wave Ready" are expected to be included in the first funding wave for FY 2024 in late April.

Please note that February 28th was the last possible date to have filed a Form 470 for FY 2024 that would have allowed the filer to wait the required 28 days before filing a Form 471 in time to meet the March 27th application filing deadline.

Cybersecurity Pilot Reply Comments

Last Tuesday was the reply comment deadline on the cybersecurity pilot NPRM (FCC 23-92). Not surprisingly, the reply comments exhibited broad support for the pilot. The following are links to a representative set of reply comments.

American Library Association ("ALA")
CTIA
Fortinet, Inc.
Funds For Learning
Local Education Agencies Coalition
Wisconsin Department of Public Instruction

The most common reply comments included:

- Broad agreement as to the categories of services that should be supported in the pilot.

- Suggestions to shorten the duration of the pilot from three years to eighteen months.

- The importance of measures to protect applicants' confidential security information.

- Requests to expand E-rate eligibility in FY 2025, if not FY 2024, to include current generation firewalls and multi-factor authentication (ideally with additional Category 2 funding).

In our view, the most important set of reply comments were those submitted by the State E-Rate Coordinators' Alliance ("SECA") that focused on the proposed fields in the FCC Form 484 (see our newsletter of January 29th). This is the form that the FCC is proposing to be used by applicants seeking to participate in the cybersecurity pilot. As SECA notes: "The amount of information pilot applicants must submit on the Form 484 is arduous and may exclude applicants with less resources and less current knowledge of cybersecurity resources, yet desperately need access to cybersecurity funding." As currently proposed, the Form 484 appears designed to screen out all but the most sophisticated applicants that already have cybersecurity plans and that already know the cost of implementing those plans. Smaller, poorer, less technically capable applicants — those currently at the greatest cyber risk — will be left to fend for themselves with the hope of learning something from the pilot 4-5 years down the road.

Updates and Reminders

Upcoming Dates:

March 8   Form 486 deadline for FY 2023 Wave 29. 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 30	03/15/2024
Wave 31	03/22/2024
Wave 32	03/29/2024

March 13	Interim SPIN 14366666 becomes available for use on FY 2024 Form 471 applications (see USAC's E-Rate News Brief dated February 15, 2024).
March 14	FCC open meeting at which the Commission is expected to vote on creating a voluntary cybersecurity labeling program for wireless consumer products (see FCC release and our newsletter of September 25th).
March 27	Close of the Form 471 application window for FY 2024. To be considered as "In Window," Form 471s must be filed and certified by 11:59 p.m. EDT.
August 29	Invoice deadline for ECF Window 3 applications.

February 27th Invoice Denials:

Last Tuesday, February 27th, was the extended deadline for submitting BEAR and SPI invoices for FY 2022 recurring services. Within two days, however, reports were being received from many applicants that their timely filed invoices had been denied as being filed too late — obviously an error. We understand that the denials exceeded at least 600 or more invoices and that USAC is aware of and working to address the problem. Hopefully, the "fix" will not require effected applicants and service providers to file appeals.

Our advice, rather than filing an immediate appeal, is to give USAC a week or two to resolve the issue. In the interim, take care to retain the filing notice received on February 27th to be used in the event appeals are required.

FCC Streamlined Decisions:

The FCC issued another set of "streamlined," precedent-based, appeals and waivers 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/or 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 February's streamlined decisions (DA 24-176), the FCC:
1. E-Rate Dismissed:
    a. One request for not meeting the FCC's basic appeal filing requirements.
    b. One Petition for Reconsideration for failure to identify any material error, omission, or reason warranting reconsideration.
    c. One Request for Waiver remanded to USAC for their review of the applicant's appeal.
2. E-Rate Granted:
    a. Two Requests for Review or Waiver remanded to USAC for filings that were not untimely.
    b. One Request for Waiver for a contract the FCC deemed was properly in place.
    c. One Request for Review reversing a USCA negative finding on eligibility.
    d. One Request for Waiver involving an incorrect service start date on a Form 486.

e. Seven Requests for Waiver involving ministerial and/or clerical errors on competitive bidding, applications, or invoices.

f. One Request for Waiver for a permissible service implementation delay.

g. One Request for Review finding that a service chosen was within the scope of the Form 470.

3. E-Rate Granted in Part/Denied in Part:

a. One Request for Waiver on two applications in which vendors were selected on the basis of price including ineligible items, one in which the ineligible item's price did not affect the bid selection (granted) and one in which it did (denied).

4. E-Rate Denied:

a. One Request for Review and/or Waiver for a competitive bidding violation.

b. One Request for Review for failure to review all bids.

c. Three Requests for Waiver for late-filed invoices or invoice deadline extension requests failing to demonstrate extraordinary circumstances.

d. One Request for Waiver for a Red Light Rule violation.

e. Three Requests for Waiver for relying on Form 470s that did not seek bids on the types of service later requested.

f. Five Requests for Waiver for untimely filed appeals or waiver requests for failing to demonstrate special circumstances.

5. ECF Dismissed as Moot:

a. One Request for Waiver on which USAC had already taken the requested action.

6. ECF Granted:

a. Two Requests for Waiver for the early delivery of equipment.

b. One Request for Review and/or Waiver finding that the E-rate rule regarding which party is responsible for repaying improperly disbursed funding also applies to ECF.

c. One Request for Waiver of the appeal filing deadline made "only a few days late or within a reasonable period of time after receiving actual notice of USAC's adverse decision."

d. Three Requests for Waiver of the invoice filing deadline "due to administrative issues."

USAC Emergency Connectivity Fund Newsletter for February — Non-Usage Certifications

USAC's ECF Newsletter for February highlights several recent updates to the FCC's list of Emergency Connectivity Fund FAQs. Most importantly, it discusses two FAQs dealing with the complex "non-usage" rule certification stating that an applicant or service provider is "not willfully or knowingly requesting reimbursement for services and equipment that are not being used." Specifically:

Q: What must applicants – or service providers who agree to invoice on behalf of applicants – do to be compliant with the non-usage certification?

In the answer, the FCC notes that it had declined to adopt specific non-usage rules recognizing that there may be certain circumstances such as summer vacations where the service would

still be eligible. The FCC states that "ECF participants should be prepared to explain what actions were taken, if asked how they complied with the non-usage certification during an audit or other post-commitment review."

Q: If a service provider discovers that funded equipment and/or services are not being used, should they automatically allocate [i.e., eliminate] those costs from their requests for reimbursement and bill the applicant directly for this non-usage?

The FCC states: "If a service provider determines that there is non-usage, we strongly encourage them to notify the school or library and provide a reasonable period of time (e.g., 30 days) to allow the school or library to reach out to the student, school staff member, or library patron to determine if the service is no longer needed."

The ECF Newsletter also includes:

- A third FAQ with additional guidance for auditors and auditees.
- An invoice reminder on payment verification.
- Several "friendly" reminders on ECF program compliance.