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Funding Status

E-Rate for FY 2024:

Wave 9 for FY 2024 was released on Thursday, June 20th, for \$46.7 million including \$269 thousand for eleven North Carolina applicants. Total funding is now \$1.51 billion including \$53.8 million for North Carolina. At this point, USAC has funded 78.6% of the originally submitted applications representing 49.4% of the dollars requested.

E-Rate for FY 2023:

Wave 56 for FY 2023 was released on Wednesday, June 19th, for \$4.05 million, none for North Carolina. Total funding is \$2.63 billion including \$84.6 million for North Carolina. At this point, USAC has funded 98.4% of the originally submitted applications representing 96.5% of the dollars requested. With FY 2023 virtually complete, we will no longer report last year's funding on a regular basis.

E-Rate and the Courts

The following is a brief summary of three E-rate issues currently or recently being addressed in federal courts and/or the U.S. Supreme Court.

- **United States ex rel. Heath v. Wisconsin Bell:** Last week, the Supreme Court agreed to hear this case in its next term beginning in October. The case has a decade-long history stemming back to allegations initiated by Todd Heath, a telecom auditor, that Wisconsin Bell (an AT&T subsidiary) had overcharged certain school districts in violation of E-rate's Lowest Corresponding Price ("LCP") rule. This rule, for which AT&T has twice unsuccessfully sought additional FCC guidance, is simple in concept. It requires service providers to charge E-rate applicants the lowest prices that they charge to any other non-residential, "similarly situated," customers.

Todd Heath, who found significant differences in the prices being charged to various school districts by Wisconsin Bell, is seeking damages under the federal False Claims Act. The issue now before the Supreme Court is whether the E-rate program is subject to the False Claims Act, a finding that apparently hinges on a determination as to whether or not E-rate payments are considered "federal funds" or the equivalent.

One reason this case is important is that should E-rate payments be formally defined as “federal funds,” applicants nationwide will be subjected to the federal Single Audit Act for entities receiving \$750,000 or more of federal financial assistance in any fiscal year.

- **Consumer’s Research, et al. v. FCC et al.:** The Supreme Court has just denied a hearing on two appeals, both by the same party, seeking to overturn decisions in two circuit courts that had upheld the constitutionality of the Universal Service Fund (“USF”). The USF is, of course, the critical funding mechanism for E-rate.

But USF is not yet out of the woods. Two additional cases are pending on USF constitutionality. A case in the D.C. Circuit Court of Appeals is projected to uphold USF; the decision on a case in the Fifth Circuit is less predictable. Should there be a split decision, the Supreme Court would most likely agree to adjudicate.

- **Essential Network Technologies LLC and Metcomm.Net LLC v. FCC:** A June decision by the D.C. Circuit Court of Appeals dismissed a petition by two suppliers to require approval and payment by the FCC on E-rate applications that had long been held pending under investigation. This was the first instance of which we are aware in which E-rate applicants or suppliers had resorted to court action to resolve what are commonly referred to as “black hole” situations in which USAC decisions appear to be withheld for indeterminate periods of time with no discernable action.

Although the Court dismissed the petitioners’ request for a “writ of mandamus,” which would have forced USAC and/or the FCC to act, the dismissal noted that “Respondents represent that [USAC] has completed its investigation of petitioners’ contracts and expects to notify petitioners and the schools they serve of a funding decision stemming from those investigations within a month.”

In a broader sense, although this Court petition was dismissed, we hope that the action will encourage the adoption of more transparent procedures for handling extended reviews.

Updates and Reminders

Upcoming Dates:

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| June 27 | USAC webinar on the Cybersecurity Pilot — Register . | | | | | | | | |
| June 28 | Form 486 deadline for FY 2023 Wave 45. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1 st), whichever is later. Upcoming Form 486 deadlines are:
<table><tbody><tr><td>Wave 46</td><td>07/05/2024</td></tr><tr><td>Wave 47</td><td>07/12/2024</td></tr><tr><td>Wave 48</td><td>07/19/2024</td></tr><tr><td>Wave 49</td><td>07/26/2024</td></tr></tbody></table> | Wave 46 | 07/05/2024 | Wave 47 | 07/12/2024 | Wave 48 | 07/19/2024 | Wave 49 | 07/26/2024 |
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| Wave 48 | 07/19/2024 | | | | | | | | |
| Wave 49 | 07/26/2024 | | | | | | | | |
| | The first Form 486 deadline for FY 2024, for applicants funded on or before July 1 st , will be October 29 th . Applicants filing before July 1 st should check the early filing certification box (see our newsletter of April 29th). | | | | | | | | |
| June 30 | Last day to receive (or file service substitutions for) FY 2023 recurring services. | | | | | | | | |

- June 30 Last day to light fiber (or request an extension for) FY 2023 special construction projects.
- June 30 Last day to receive ECF Window 3 services; all equipment must be received by this date.
- June 30 Last day for applicants to complete Funds For Learning’s important annual E-rate survey (see our [newsletter of May 6th](#)).
- August 29 Invoice deadline for ECF Window 3 applications.¹ Please note that invoice deadline extension requests are unlikely to be approved.

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.

In compliance with federal law, the NC Department of Public Instruction administers all state-operated educational programs, employment activities and admissions without discrimination because of race, religion, national or ethnic origin, color, age, military service, disability, or gender, except where exemption is appropriate and allowed by law.

¹ The government funding bill passed in March 2024 rescinds \$1.768 billion from the ECF program. As a result, the FCC and USAC are now prevented from: processing post-commitment requests to change service providers or invoicing methods; approving a commitment if an appeal or waiver is granted; or making upward commitment adjustments to resolve errors (see [USAC’s ECF Newsletter for June](#)).