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Funding Status

E-Rate for FY 2024:

Wave 29 for FY 2024 was released on Thursday, November 7th, for \$20.5 million including \$483 thousand for two North Carolina applicants. Total funding is now \$2.36 billion including \$67.3 million for North Carolina. Currently, USAC has funded 96.2% of the originally submitted applications, representing 79.6% of the dollars requested.

E-Rate and the Election

Without commenting on the election itself, it is important to note that a new Trump administration will affect the makeup of the FCC Commission. Traditionally, the five-person Commission is comprised of three Commissioners, including the Chairperson, representing the Administration and two Commissioners representing the other party. Currently the 3:2 split favors the Democrats. As of January, we would expect the new Administration to appoint a new Chairperson. Not necessarily then, but within 2025, we would expect the Commission balance to shift to 3:2 Republican as the result of resignations, term expirations, and new appointees.

As the balance of power shifts within the FCC, the most significant E-Rate change is likely to involve the eligibility of school bus Wi-Fi and hotspots, the two newest E-Rate eligible services that had been strongly opposed by the two Republican Commissioners, Brendan Carr and Nathan Simington.

As an example, here is a portion of Commissioner Simington's dissenting opinion on the school bus Wi-Fi Order:

I am disappointed that the Commission has decided to pursue this unlawful course of action. The Telecommunications Act could not state more clearly that E-Rate may only be used to subsidize internet connectivity for elementary schools, secondary schools, and libraries, and a school bus is neither a school nor a library. This item eviscerates Congress's restrictions on E-Rate and makes a mockery of the law. If

Congress had meant for E-Rate to apply to any educational purpose, broadly defined, it would have said so. Instead, it specifically limited the applicability of the program to schools and libraries. All attempts to expand it beyond those bounds are unlawful.

Here is Commissioner Carr’s dissenting opinion on the hotspot Order:

The FCC’s erroneous reading of Section 254 is further highlighted by the fact that it has no limiting principle—none. If the FCC can rely on Section 254 to fund students’ and patrons’ connectivity at locations other than schools and libraries, then I don’t see why the FCC’s reading would not allow it to use Section 254 as authority to fund Internet service for virtually every single person in the country, since everyone could be either a student or a library patron. That would be an absurd result and out of step with the plain text of the Communications Act. But that is what happens when an agency takes an action that is untethered to the statutory text.

Both Republican Commissioners strongly opposed the two Orders only to be outvoted by the three Democratic Commissioners. When, not if, the balance of Commission power shifts to the Republicans, we would expect the eligibility of both school bus Wi-Fi and hotspots to be reevaluated, possibly as early as FY 2025. We suggest that applicants applying for either service in FY 2025:

- Sign contracts contingent on E-Rate eligibility; and
- Apply for either service on a separate Form 471.

Todd Heath vs. Wisconsin Bell Supreme Court Hearing

Earlier this summer (see our [newsletter of June 24th](#)), we discussed several court cases and their potential effects on the E-Rate program. We mentioned specifically the *United State ex rel. Heath v Wisconsin Bell* case that the Supreme Court had just agreed to hear. That hearing took place last Monday with a decision expected next June or July.

At issue in this case is whether E-Rate involves “federal funds” and, if so, are violations of E-Rate rules by program participants subject to the federal False Claims Act and the resulting triple damages? As we noted in our June newsletter, 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.

As we also noted in June, whether or not E-Rate funds are considered “federal funds” has possibly broader implications than the applicability of the False Claims Act. It might, for example, affect whether or not E-Rate recipients are subject to the federal Single Audit Act for entities receiving \$750,000 or more of federal financial assistance in any fiscal year.

It is difficult to tell accurately from last week’s hearing ([audio and print transcript](#)) how the Justices are leaning in this case. One good review of the hearing, that comports with what we heard, is available online from [The National Law Journal](#).

In summary, it appeared to us that the Justices spent little time on the broader question of whether the Universal Service Fund (“USF”) in the whole, or the E-Rate portion in particular, represented

federal funds. Instead, the Justices seemed focused “on the \$100 million that the government says it contributes or provides...that is collected under a debt collection provision.” The Justices appeared to have no problem accepting this \$100 million as being federal funds. Neither did the Justices question the applicability of the False Claims Act if “any portion of the money” involved in a program was federal funds.

Our view, based on last week’s hearing, is that the Supreme Court is likely to issue a narrow finding that the USF, or at least the E-Rate program, is subject to the False Claims Act without also ruling that the USF, or more importantly the E-Rate fund, are “federal funds.” That would be a positive outcome for Todd Heath; a negative LCP outcome for AT&T and Wisconsin Bell; all without addressing the broader issue of whether E-Rate funds, as a whole, are “federal funds.”

Updates and Reminders

Upcoming Dates:

November 14 FY 2023 Form 486 deadline for Wave 59. More generally, the Form 486 deadline is 120 days from the FCDL date, or the service start date (typically July 1st), whichever is later. The next Form 486 deadlines for FY 2023 are:

Wave 60	11/21/2024
Wave 61	12/09/2024
Wave 62	12/19/2024

November 15 FY 2024 Form 486 deadline for Wave 13. Upcoming Form 486 deadlines for FY 2024 are:

Wave 14	11/22/2024
Wave 15	11/29/2024
Wave 16	12/06/2024

FCC Report on Cybersecurity Pilot Applications:

The FCC released a [short notice](#) last Friday indicating that it had received 2,374 Form 484 Part 1 applications from schools, libraries, and consortiums seeking to participate in the FCC’s three-year Cybersecurity Pilot Program. The estimated funding requirements represented by these applications totaled \$3.7 billion, far in excess of the Program’s \$200 million cap. The multi-billion demand number was not unexpected but provides a clear indication that only a small percentage of the initial applicants will be selected to participate in the final Pilot.

As indicated in the announcement, the FCC will now “begin reviewing applications to target funding to as many qualified applicants as possible with a special focus on the neediest eligible schools, libraries, and consortia who will benefit most from cybersecurity funding (i.e., those at the highest discount rate percentages).” We expect this review process will take at least two months.

Hotspot FNPRM Reply Comments:

Last week was the reply comment deadline on the FCC’s Further Notice of Proposed Rulemaking (“FNPRM”) on hotspots. The original hotspot Order ([FCC 24-76](#)) already includes a number of restrictions and requirements on the use of hotspots (see, for example, our [newsletter of October 21st](#) and the referenced Small Entity Compliance Guide ([DA 24-1083](#))). The FNPRM would, if adopted, further tighten those administrative requirements.

Three sets of reply comments from [CTIA](#), the [SHLB Coalition](#), and the [North American Catholic Educational Programing Foundation and Mobile Beacon](#) pushed back against the many hotspot restrictions, both in the original Order and in the FNPRM, all making the same basic points that the FCC should not:

- Mandate specific hotspot lending terms;
- Impose data use thresholds; and
- Reduce the current 90-day termination period for non-usage.

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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