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## Funding Status – FY 2016

Wave 28 for FY 2016 was released last Wednesday, January 4<sup>th</sup>, for a total of \$103 million. Funding for North Carolina was \$4.66 million for 19 applicants. Cumulative national funding through Wave 28 is \$1.75 billion, including \$69.6 million for North Carolina. Wave 29 is expected to be released this Monday, January 9<sup>th</sup>.

## E-Rate Updates and Reminders

### *Upcoming 2016 E-Rate Deadlines:*

January 9      Form 486 deadline for FY 2016 funding committed in Wave 12. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (often July 1<sup>st</sup>), whichever is later. This means that Form 486 deadlines for funding commitments received in later waves will follow at roughly one week intervals, including the following January deadlines:

|         |            |
|---------|------------|
| Wave 13 | 01/17/2017 |
| Wave 14 | 01/24/2017 |
| Wave 15 | 01/31/2017 |

Applicants missing these (or earlier) deadlines should watch carefully for “Form 486 Urgent Reminder Letters” (actually emails directing the applicants to EPC News Feed items). The Reminders will afford applicants with 15-day extensions from the date of the emails to submit their Form 486s without penalty (see [USAC News Brief of November 4<sup>th</sup>](#)). The first batch of Reminders is expected to be released soon.

January 30      Invoice deadline for FY 2015 non-recurring services. Unless already extended via a Form 500 service delivery extension, this is also the deadline for submitting Invoice Deadline Extension Requests (“IDERs”) for these services.

### *FCC Decision Watch:*

This article is a continuation of a discussion begun in last week's newsletter regarding three FCC decisions issued just before the end of 2016. Last week we discussed the interesting denial of a request by Harrisburg CSD ([DA 16-1464](#)). This week we discuss the FCC's other district-specific appeal decision, as well as its regular month-end set of streamlined decisions.

The most interesting FCC decision ([DA 16-1465](#)), granting a Request for Review and/or Waiver, concerned the bid evaluation process undertaken on behalf of the Sweetwater Consortium (TN) and resulting in the selection of its vendor, Education Networks of America ("ENA"). The evaluation involved a number of factors. As required by FCC rules, price was the primary factor. What presumably raised a red flag for USAC — and was perhaps pointed out by a losing competitor — was that price represented only 25 of 100 points (a lower proportion than we generally recommend). Purely on price, the winning vendor received only 16.2 of the 25 price points. ENA's bidding scores on the other factors, however, gave it the winning total. Although the request was initially denied by USAC, the FCC agreed that the Sweetwater bid evaluation process was correctly done and that the contract award to ENA was proper.

By way of contrast, it is important to note in the summary of the FCC's streamlined decision below that the FCC denied two bid evaluation appeals by the Atlanta Public Schools (see Item 3.a.). In these cases, Atlanta had laid out its bid evaluation factors and weights in its RFP, but had ultimately selected the vendor with the second, rather than the highest, evaluation total. Atlanta argued that it had, in fact, selected the most cost-effective supplier, in large part because the second bidder (a) had proposed equipment compatible with the district's existing wireless network, and (b) had the lowest price. Unfortunately, apparently, the selected vendor's scores on the other evaluation factors were not as high. From a purely business standpoint, one can understand Atlanta's desire to select the lowest cost, most compatible, supplier. From the FCC's E-rate viewpoint, however, it appears that Atlanta's preferred vendor was selected without regard to its pre-established bidding criteria. The moral here is simple; it is important for an applicant to determine what is really important and to set the bid evaluation factors accordingly.

On December 30<sup>th</sup>, the FCC also issued its latest monthly set of "streamlined," precedent-based decisions in Public Notice [DA 16-1448](#). In summary, the FCC:

1. Dismissed
  - a. Two Requests for Review that, as appeals, should have been filed first with USAC.
  - b. Two Requests for Review and/or Waiver deemed as moot.
  - c. One Petition for Reconsideration not identifying additional reasons for review.
  - d. Eight Requests for Waiver for failing to comply with the FCC's basic filing requirements.
2. Granted
  - a. Four Requests for Review or Waiver granting the applicants 15 days to file additional information supporting their requested discount rates.

- b. One Request for Review and/or Waiver listed as involving a Form 470 certification. In actuality, the FCC appeal involved an FRN missing from a successful USAC appeal involving multiple FRNs initially denied for similar Form 470 issues.
  - c. Three Requests for Waiver involving a late-filed Form 486. Note that applicants with similar issues should consider filing their appeals before January 30, 2017, at which point the FCC's rules on late-filed Form 486s become stricter (see our [newsletter of October 24<sup>th</sup>](#)).
  - d. Four Requests for Waiver granting applicants additional time to respond to USAC review questions.
  - e. One Petition for Reconsideration accepting a late appeal filed "within a reasonable time after receiving actual notice of USAC's adverse decision."
  - f. Three Requests for Review involving allegedly improper involvement of the service providers in the applicants' competitive bidding process. In two cases, the alleged involvement concerned positions held by a school official on the service provider's board or vice versa (even though the conflicted individuals reportedly did not participate in the procurement decisions). The successful appeals were supported by sworn applicant statements.
  - g. Two Requests for Review for a late-filed Form 471 certification or for a late-filed application submitted within 14 days of the deadline.
  - h. Three Requests for Review and/or Waiver for ministerial and/or clerical Form 471 errors.
  - i. One Request for Waiver involving payment of the applicant's share of the pre-discount price.
  - j. One Request for Waiver involving a service implementation delay.
  - k. One Request for Waiver concerning the filing of a Form 471 prior to the signing of a formal contract.
  - l. One Request for Review and/or Waiver in which the FCC found that the referenced state master contract was in effect for the full funding year (in contrast to USAC's initial view to the contrary).
  - m. One Request for Review and/or Waiver of the "price as the primary factor" requirement in which the FCC determined that the applicant had selected the lowest cost vendor and that there had been no evidence of waste, fraud, or abuse.
  - n. Three Requests for Review and/or Waiver were partially granted involving pricing or the categorization of Priority 2 services.
3. Denied
- a. Two Requests for Review and/or Waiver involving the applicant's failure to adhere to evaluation criteria during the vendor selection process. Note that these two decisions are discussed in more detail above by way of contrast with the Sweetwater decision. In another pricing case (see Item 2.m. above), the FCC approved the same applicant's Request.
  - b. One Request for Review and/or Waiver based on the applicant's inability to produce documentation regarding its vendor selection process.

- c. One Request for Review supporting USAC's decision to reclassify a funding request from Priority 1 to Priority 2, then deny it.
- d. Sixteen more Requests for Waivers for invoice deadline extensions.
- e. Six Requests for Waivers for Form 471 applications filed more than 14 days late, absent "special circumstances."
- f. One Request for Review to correct an alleged ministerial and/or clerical error.
- g. Three Requests for Review regarding an "unjustified" service implementation delay.
- h. Twenty late-filed Requests for Review or Waiver.

### **USAC News Brief Dated January 6 – Form 500 Available in EPC**

USAC's [Schools and Libraries News Brief of January 6, 2017](#), notes that Form 500 is now available for filing in EPC. The Form 500, the "Funding Commitment/Adjustment Request Form," may be used to:

- Adjust the funding year Service Start Date reported on a previously filed Form 486.
- Adjust the contract expiration date listed on the Form 471.
- Cancel a Funding Request Number (FRN).
- Reduce the committed amount of an FRN.
- Request a service delivery extension for non-recurring services.
- Notify USAC of an equipment transfer resulting from the closure of the location where the equipment was originally installed.

USAC indicated that it will be posting a user guide to the online Form 500 in the "near future," and has scheduled a WebEx demonstration of the Form 500 for various constituent groups later this week. Additional guidance is going to be critical for at least two reasons, namely:

1. Use of the online Form 500, particularly for FRNs for FY 2015 or earlier funding years, is required, but is not intuitive. For earlier funding years, applicants must first complete, and electronically save, a paper version of the Form 500, then upload within the EPC Form 500 application (see our [newsletter of January 2<sup>nd</sup>](#)).
2. For many applicants, the most complicated use of the Form 500 may be to cancel, reduce, or otherwise adjust FRNs so as to modify their five-year Category 2 budgets on a year-by-year, entity-by-entity, and/or line-by-line basis.

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*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.*

*For further information, follow E-Rate Central on Twitter, Facebook, and LinkedIn.*   

*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](mailto:join-ncerate@lists.dpi.state.nc.us). Please include your name, organization, telephone, and e-mail address.*

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