North Carolina E-Rate Forum

Weekly E-Rate Newsletter
Vol. 11, No. 6 February 6, 2017

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Funding Status – FY 2016 and FY 2017

Wave 32 for FY 2016 was released last Thursday, February 2nd, for a total of $49.6 million. Roughly 280 FCDLs were issued in Wave 32. There was no funding for North Carolina in this wave. Cumulative national funding through Wave 32 is $2.09 billion, including $80.9 million for North Carolina. Overall, a little over 7% of all applications, representing about a third of the year's potential funding, remain pending. Wave 33 is scheduled to be released on Wednesday, February 8th.

As discussed below, USAC announced that **the FY 2017 application window will open on Monday, February 27th, at 12:00 noon EST and close on Thursday, May 11th, at 11:59 p.m. EDT.**

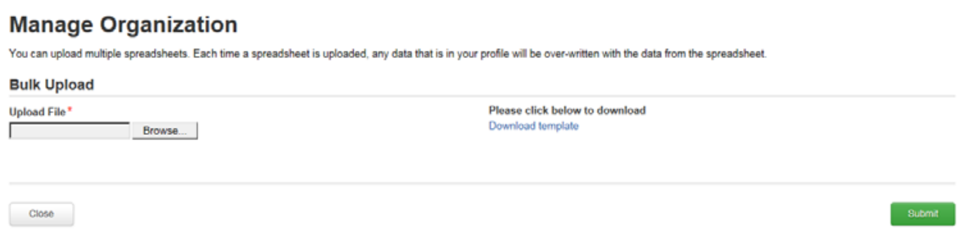
FY 2017 Application Window and New Entity Profile Deadline

USAC issued a Special Edition News Brief on February 3rd announcing the February 27th to May 11th Form 471 application window for FY 2017. Unlike last year, they "anticipate" a single filing window this year.

What's new this year — as we have been warning — is that USAC has established a new intermediate deadline in the application process. There is now a short three week window in which school and district applicants can review and update their entity profiles in EPC. This update window will close at 11:59 p.m. EDT on **Sunday,** February 26th, just before the application window opens the following day. As of the February 27th window opening, USAC will lockdown the EPC entity profiles for the duration of the window. The purpose of locking the entity data is to stabilize school data so that consortia and libraries, who depend upon that data, can work on their applications without facing ongoing changes due to school or school district entity changes (including NSLP discount and student count updates). If this works as expected, the new process will permit all applications to be filed within a single window. The downside of the new procedure is that it creates this new entity update deadline for schools and districts.

Applicants subject to the February 26th deadline should note the following:

1. Although this period can and should be used to update student counts and NSLP data, the most important task is to make sure that district entity lists are correct. This is to ensure that applications can reflect the proper recipients of service. This may mean adding new schools and NIFs, and/or deleting closed facilities.
    a. As of this week, the Client Service Bureau ("CSB") should be able to add new entity numbers and link them to an EPC district account. We recommend submitting a customer service case in EPC and then following up with a phone call to CSB referencing the newly created EPC case number.
    b. When adding a new school, which is not yet open, it is necessary to estimate the student counts. EPC cannot handle a school with zero students.
2. Existing school data can be updated one-at-a-time by navigating to each entity (a district can see a list of its entities using the "Additional Information" links to "Related Organizations" and "Related Entities"), hitting the "Manage Organization" button, updating the data fields, and clicking "Submit."
3. One of the required fields is "modification nickname." We suggest you use a detailed descriptor that will help identify the nature of the change for future reference.
4. If a school has an annex, that relationship can be added at the same time as a "Related Action." Student populations of any annex should be included in the parent school student count.
5. Updating (or even simply reviewing) schools one-by-one for a large district may be tedious. The alternative is to download entity data as a spreadsheet, make corrections, and upload the corrected entity data into EPC. To use this approach:
    a. USAC's Entity Download Tool contains current EPC entity profile data on a statewide basis. The resulting spreadsheet, therefore, must be filtered to obtain the entity data for a single school or district.
    b. The entity download tool also includes a separate Excel tab for annexes, organized by school entity number. Districts with numerous annexes will need to do a little data manipulation to isolate their own annexes.
    c. To upload the revised entity data into EPC, the entity data file must be reformatted to match the entity upload template. If a template had been used to upload data for FY 2016, the easiest approach might be to update last year's template. Otherwise, the entity upload template can be downloaded from EPC. The actual upload, as well as a link to the template, can be done via EPC's "Related Actions" feature, selecting "Upload Entity Profile Data."



6. If new entities are not added to an applicant's profile during this month's entity update window, and the entities are to be recipients of service, there are two less than ideal options available, namely:
    a. During the application window (when entity profiles are locked down), but prior to actually submitting a Form 471, the applicant can at least acknowledge the presence of one or more new entities by including them in the "Narrative" section of any associated funding request.
    b. Once an application is submitted, the RAL correction process can be used to add new entity "Narrative" information.
7. Although not subject to the February 26th entity update deadline, a related activity should be the review and update (if applicable) of the EPC connectivity data for each entity. Currently connectivity updates can be done only on a one-by-one basis. In a News Brief last March, however, USAC indicated that it planned to provide a connectivity upload template for FY 2017. This template has not yet been announced, but larger applicants may want to temporarily defer connectivity updates.

Reading the FCC Tea Leaves

It is too early to know precisely how E-rate will be affected by the new Administration and the reconstituted FCC, but there are some early indications of the direction the FCC may take.

To date, the only action taken directly involving E-rate was a short Order issued on Friday to "retract" the recently issued "E-rate Modernization Progress Report." As discussed in our newsletter of January 23rd, this Report was a largely self-congratulatory piece issued just before Ajit Pai assumed the FCC's chairmanship from Tom Wheeler. Since Commissioners Pai and O'Rielly, both republicans and now in control of the FCC, had initially cast dissenting votes on both E-rate Modernization Orders, it is not surprising that they may have disagreed with the Report.

The Report, however, was not an FCC order. Retraction of the Report changes no E-rate rules, but does indicate a less expansive view of where E-rate may be heading. The forward looking part of the Report had discussed the following:

1. Continued reductions in bandwidth costs indicate that the existing goal of achieving 1 Gbps per 1,000 users is a realistic goal for school broadband connectivity. Additional reforms in special construction funding may be needed, however, for lower discount schools currently lacking fiber connections.

2. Category 2 budgets will begin to expire for some applicants after FY 2019. Unless addressed by the FCC, internal connections funding will gradually revert to the pre-FY 2015 process.

The idea of increasing funding for lower discount applicants is completely at odds with Chairman Pai's earlier dissents that disagreed with the higher cap on E-rate funding and stressed the need to reduce discounts at the upper levels. On the other hand, maintaining some level of Category 2 budgets — as opposed to letting Category 2 revert to the previous 2-in-5 process available only to high-discount applicants — does appear to be aligned with Chairman Pai's earlier concerns.

Several other actions last week, not directly related to E-rate, may reflect guiding principles that may be more broadly applied. In particular:

1. Simplification: The FCC issued an Order (FCC 17-3) eliminating the public inspection file requirements for commercial broadcasters and cable operators in order to "reduce regulatory burdens." Chairman Pai has long been in favor of a simpler E-rate application and review process.
2. Universal Service funding caps: The Chairman Pai revoked a number of "midnight regulations" instituted in the waning days of Chairman Wheeler's reign. This action eliminated new Lifeline designations for nine entities. This is likely the first step to revisiting last year's Lifeline Modernization Order, which Commissioners Pai and O'Rielly had opposed, in large part because it did not cap funding for that USF program. That position was consistent with the same Commissioners' opposition to the $1.5 billion increased funding in the Second E-rate Modernization Order.
3. Transparency: Chairman Pai announced a pilot program to publicly release draft orders prior to Commission votes. As a first step, draft orders were published for two actions the Commission will consider in its next meeting later this month. Each draft carried the following footnote on the first page:

   > *This document has been circulated for tentative consideration by the Commission at its February open meeting. The issues referenced in this document and the Commission's ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Chairman has determined that, in the interest of promoting the public's ability to understand the nature and scope of issues under consideration by the Commission, the public interest would be served by making this document publicly available.

   This will be an interesting experiment. When the FCC released a further Notice of Proposed Rulemaking ("NPRM") in connection with the First E-rate Modernization Order, interested parties were given until September to reply. The resulting Second E-rate Modernization Order was adopted December 11th. Had this policy been in effect at the time, the draft of the Second Order would have become available in late November. The key question would have been: What changes would the Commissioners/staff have been willing to make at the point, and how might it have affected the final Order?

Updates on USAC's E-Rate Productivity Center and Legacy System

Eliminating "Weekend" Invoice Deadline Dates:

As noted in last week's newsletter, there had been a problem in USAC's online BEAR system over the previous weekend because the system was showing the invoice deadline for FY 2015 non-recurring services as 01/28/2017. This date had apparently been calculated — mathematically correctly — as 120 days after the September 30, 2016, service delivery deadline. But the system did not take into account that January 28th was a Saturday; the actual invoice deadline should have been advanced to the following business day, Monday, January 30th. The impact of the error had one potential problem and one real problem, both of which have or are being corrected by USAC.

1. The potential problem was that invoices submitted on January 29-30 by the real deadline might be treated as late invoices and be denied. Fortunately, the BEAR system accepts "late" filings, so these BEAR filings can be treated as timely.
2. The real problem was that the system was denying Invoice Deadline Extension Requests ("IDERs") submitted on January 29-30. Fortunately, the BEAR system does capture IDER attempts, so USAC plans to reach out to those applicants who were incorrectly denied and, if appropriate, retroactively approve their IDERs. The appeal process may have to be used to address applicants who tried to file multiple IDERs, but who were discouraged after first getting some denials.

Upon further analysis, USAC found that the 120-day weekend problem found on January 28th was not an isolated case. It applied to other 120-day situations as well. As an example, those who requested a 120-day invoice extension of what should have been the January 30th deadline were assigned a new deadline of May 28th. This was problematic in two ways. First, May 28th is a Sunday. Second, the 120 days was calculated from the incorrect January 28th date, not from January 30th. The correct date should be May 30th.

The good news is that USAC is at work actively correcting all these invoice deadlines. As of Friday, we found that many invoice dates had been changed from the weekend to the following business day, albeit not yet consistently, across all reporting platforms available to the public including the online BEAR system itself, the DRT and FRN Status Tool, and the FRN Extension Table.

For the do-it-yourselfers, the best way to calculate a 120-day deadline period is to use a 3-step process.

1. Make sure that the starting date is correct. This is actually a little tricky. June 30th, for example, is the last day of the funding year, regardless of the day of the week. Invoice deadlines, however, from which new invoice extension deadlines are determined, must fall on a business day.
2. To calculate 120 days exactly, open an Excel sheet. Enter the start date in cell A1. Enter the formula "=A1+120" in cell A2.

3. Reference a calendar to make sure the date in cell A2 is not a weekend or federal holiday. If it is, use the next business day.

Update on the New Version of the Form 479:

As also noted in last week's newsletter, a new version of the Form 479 (dated December 2016) was introduced in January, replacing the old version (dated December 2013) whose OMB approval had expired December 31, 2016. Because consortia may already have been in the process of collecting Form 479s from their members, using the now-expired version, there was a question of the validity of any old Form 479s signed in 2017. Absent guidance, we had recommended recirculating the new version to any members who had not signed by the end of 2016.

More good news: USAC announced an agreement with the FCC last week that the old version of the Form 479 would be accepted for FY 2017. Written documentation of this guidance, which could be useful in an audit, is expected to follow.

E-Rate Updates and Reminders

Upcoming 2017 E-Rate Deadlines:

February 7 — Form 486 deadline for FY 2016 funding committed in Wave 16. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (often July 1st), 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 February deadlines:

Wave 17	02/16/2017
Wave 18	02/23/2017
Wave 19	02/28/2017

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 4th).

February 27 — Extended — and effectively final — invoice deadline assigned to FY 2015 recurring service FRNs for approved IDERs granted last year.

USAC News Brief Dated February 4 – Form 470 Reminders and Fiber Build Extensions

USAC's Schools and Libraries News Brief of February 4, 2017, discusses the two topics summarized below:

Form 470 Reminders:

The News Brief discusses the following Form 470 reminders for applicants and service providers:

- The Form 470 must be filed online within EPC.
- Billed entity information must be completed in EPC before filing any program form.
- If you issue a Request for Proposal ("RFP") and/or any RFP, they must be uploaded into the Form 470. Note:
  - USAC defines "RFP" broadly to include any information, outside the Form 470 itself, describing the services needed or the procurement process.
  - If some form of RFP is not uploaded when the Form 470 is initially filed, there is no mechanism for adding additional information later.
- An applicant must certify the Form 470 online before it is posted to the USAC website (beginning the 28-day minimum bidding period).
- Receipt notifications — previously referred to as Receipt Notification Letters ("RNLs") — appear in the applicants' EPC "News" feeds shortly after they are certified.
- Service providers may view posed Form 470s either through EPC or the USAC website (in the Tools section).
- Form 470s filed for past funding years are still available on the USAC website.

Special Construction Deadline Extensions:

The E-rate rules make a critical distinction in the Service Delivery Deadline ("SDD") for non-recurring charges ("NRCs") depending upon whether or not a given NRC is classified as "special construction." Specifically:

- The SDD for special construction is June 30th, the end of the funding year. Special construction, applied to fiber installations, includes the "one-time costs of physically deploying new or upgraded network facilities and the services required to complete that deployment, i.e., construction of network facilities, design and engineering, and project management." Service "delivery" in the case of fiber systems means that the fiber on each link is actually operational, i.e. "lit," by that date.
- The SDD for other NRC products and services is September 30th of the following funding year. For the most part these other NRCs involve Category 2 equipment, but may also include other upfront costs (e.g., installation charges) for Category 1 services.

One other important distinction between the SDDs for these two types of services is that the SDD for traditional NRC services is automatically extended one year if initial funding, SPIN changes, or service substitutions are approved on or after March 1st of the funding year. No such automatic extensions are provided for special construction.

In both cases, however, one year extensions can be requested by the applicants, traditionally due to circumstances beyond the service providers' control. The wording for special construction extensions is a little broader, referencing unavoidable delays "due to weather or other reasons." At least verbally, both USAC and the FCC have indicated that "other reasons" might reasonably include late funding commitments.

The key new guidance included in last week's News Brief is that requests to extend SDDs for special construction should, as with other SDD extension requests, be made by filing a Form 500 in EPC.

The consistent use of the Form 500 to request SDDs is good news. What must always be remembered, however, is that the service delivery deadline for any special construction service delivery is always a June 30th date, whereas the end date for all other NRC services is always a September 30th date.
