North Carolina E-Rate Forum	Weekly E-Rate Newsletter Vol. 11, No. 25 June 19, 2017

- Funding Status – FY 2017 and FY 2016
- Updates on USAC's E-Rate Productivity Center and Legacy System
  - Forms 470/486/500 EPC Availability – Update
  - Erroneous Form 499-A Emails to Applicants
- E-Rate Updates and Reminders
  - Reinstated Early Year COMADs – Update
  - Nominations for New FCC Commissioners
  - USF Contribution Factor for 3Q17
  - Upcoming 2017 E-Rate Deadlines
- USAC News Brief Dated June 16 – Mixed Category Eligibility and Selective Reviews

Funding Status – FY 2017 and FY 2016

FY 2017:

Wave 3 for FY 2017 was released Friday, June 16th, for a total of $57.8 million. Funding for North Carolina was $833 thousand for 21 applicants. Cumulative national funding through Wave 3 is $184 million, including $4.05 million for North Carolina.

Applicants funded in Waves 1–3 should note that EPC has not yet been configured for the filing of Form 486s for FY 2017. We are hopeful that FY 2017 Form 486 capability will be available later this month.

FY 2016:

Wave 51 for FY 2016 is scheduled to be released today, June 19th. Cumulative national funding through Wave 50 is $2.75 billion, including for North Carolina

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

Forms 470/486/500 EPC Availability – Update:

As discussed in our newsletter of June 12th, USAC has indicated that several forms — Form 470 for FY 2018 and Forms 486 and 500 for FY 2017 — not currently available in EPC, will be activated shortly. The target date for both the Form 470 and the Form 486 is July 1st.

Erroneous Form 499-A Emails to Applicants:

Applicants working to complete Form 498s (required to receive direct BEAR payments) have reported receiving emails from USAC regarding the need to also file Form 499-As. This is incorrect. The Form 499-A is an Annual Telecommunications Reporting Worksheet required only from telecommunications and VoIP service providers. USAC has indicated that it is reaching out to affected applicants to clarify that a Form 499-A is not required.

E-Rate Updates and Reminders

Reinstated Early Year COMADs – Update:

As reported in our newsletter of June 12th, USAC has begun sending Commitment Adjustment ("COMAD") letters to a number of applicants regarding 10-15 year old rule violations. The scope of this initiative is becoming clearer and has already become controversial.

USAC has indicated that "several hundred" COMAD letters involving decade-old violations have or are being issued. At stake are demands to return previously disbursed funds of at least $10 million — and probably higher.

The big question, of course, is why is USAC pursuing these old cases now? The answer to this question has two important aspects.

1. Earlier this year, the FCC released a Memorandum Opinion and Order (FCC 17-1) denying an application for review filed by Net56, Inc. At issue were COMAD letters from 2013 seeking recovery of funds for funding years 2006–2008. Net56 argued, in part, that USAC's recovery actions for FY 2006 are "time-barred by the Commission's policy directive that USAC finish its investigations and seek recovery within five years of the final delivery of service for a specific funding year" — as per the FCC's *Fifth Report and Order*. In rejecting this argument, the FCC noted that its 5-year guidance was merely a "policy preference," and that the FCC has the "…obligation to establish and collect its debts consistent with applicable statutes that do not impose similar time constraints on initiation of debt recovery actions." In other words, there is no statutory limitation on the recovery of improperly disbursed E-rate funds. With the clear guidance of this Order that recovery is not time-barred, USAC is proceeding to collect these funds.

2. Why USAC waited well over five years to seek repayment is a more complex issue. In some instances, unconfirmed by USAC, the problem may trace back eleven years. In March 2006, USAC sought FCC guidance regarding potential COMADs and funds recovery involving interpretations of possible E-rate rule violations. In its request for guidance, USAC recommended recovery in three classes of situations set forward in table format designated as Tables A, B, and C. Tables A and B included scenarios specifically addressed in the FCC's *Fifth Report and Order* and were thus relatively straight-forward. In early 2009 (in DA 09-86), the FCC addressed the Table C situations, mostly agreeing with USAC that recovery was warranted. By this time, however, many of the underlying cases were old, and USAC didn't pursue recovery. Now eight years later, following this year's Net56 decision, many of these COMADs are apparently being reinstated.

The next step for many applicants receiving these COMAD letters is to appeal, first to USAC, then, most likely to the FCC. There is a 60-day deadline for all appeal actions. Once payment is demanded, an applicant's situation becomes precarious. Failure to pay, absent an appeal, can result in a "Red Light" situation under which payment is halted on E-rate invoices and new

E-rate applications are dismissed. For details see the FCC's Report and Order (FCC 04-72) issued in 2004 regarding its implementation of the Debt Collection Improvement Act of 1996.

It should be noted that for outstanding debt up to $100,000, the FCC's collection procedures include provisions to settle for a lesser amount (and/or arrange a payment plan). Taken to its extreme, in non-fraud cases, we could argue — although USAC and the FCC may not agree — that a fair and statutorily proper outcome after all these years would be to settle many of these cases for a dollar.

Nominations for New FCC Commissioners:

The FCC, which has been running with only three Commissioners since the Inauguration, is poised to return to its full five-Commissioner strength. Last week, President Trump nominated Jessica Rosenworcel as a Commissioner, a position she had served with distinction until her term expired last year. Ms. Rosenworcel would be considered a Democratic Commissioner. To maintain the Republican majority, now 2:1, the President is expected to also nominate Brendan Carr who, for the past three years, has served as Chairman Pai's Wireless, Public Safety, and International Legal Advisor.

USF Contribution Factor for 3Q17:

The FCC proposed (DA 17-580) a universal service contribution factor for the third quarter of 2017 (beginning July 1st) of 17.1%. This is down slightly from the second quarter's factor of 17.4%. The dip, however, is due entirely to projected expense reductions in the other three USF programs. Quarterly E-rate expenses, on the other hand, are up close to $100 million. Over the course of this next fiscal year, E-rate expenses could rise further still reflecting the drop in available roll-over funding from $1.9 billion in FY 2016 to $1.2 billion in FY 2017. The difference on an annual basis would account for over a 1.5% difference in the quarterly contribution factor.

Upcoming 2017 E-Rate Deadlines:

June 23 — Form 486 deadline for FY 2016 funding committed in Wave 35. 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 deadlines:

Wave 36	06/30/2017
Wave 37	07/07/2017
Wave 38	07/14/2017
Wave 39	07/21/2017

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. The earliest Form 486 deadline for FY 2017 will be Monday, October 30th.
June 30	Last day to file for a Special Construction Deadline Extension Request. Note that the Form 500 erroneously specifies this deadline as September 30th.
July 25	USAC's only service provider training this year is in Dallas. See details and registration information in USAC's Schools and Libraries News Brief of June 9, 2017.

USAC News Brief Dated June 16 – Mixed Category Eligibility and Selective Reviews

USAC's Schools and Libraries News Brief of June 16, 2017, provides some guidance on determining whether certain on-premises equipment would be considered as eligible Category 1 or Category 2 services — or some cost-allocated combination of the two. Unfortunately, this guidance may have come too late to benefit those who have already applied for FY 2017 funding. Hopefully, applicants requesting funding for equipment which might be eligible under either category included both categories in their Form 470s. In such cases, should a problem arise during PIA, it may be possible to resolve the situation by splitting an FRN to allocate the equipment into separate categories.

The News Brief also provides a brief overview of PIA's selective review process which tends to focus on the applicant's competitive bidding process.
