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## Funding Status – FY 2018 and FY 2019

### *FY 2018:*

USAC issued Wave 39 on Thursday, January 3<sup>rd</sup>, for \$12.8 million. Cumulative funding as of Wave 39 is \$2.03 billion, including \$70.0 million for North Carolina.

### *FY 2019:*

The FY 2019 administrative window, which is currently open, will close at 11:59 p.m. EST on Tuesday, January 15<sup>th</sup>. At that point EPC entity profiles will be locked for the duration of the Form 471 application window.

The Form 471 application window will open at noon EST on Wednesday, January 16<sup>th</sup>, and will close at 11:59 p.m. EDT on Wednesday, March 27<sup>th</sup>.

## FCC Considering Continued Suspension of Category 1 Amortization Requirement

As last discussed in our newsletter of December 10<sup>th</sup>, one of the significant unknowns for FY 2019 is the continuation of a requirement to amortize WAN network installation charges of \$500,000 or more over at least three years. This requirement, long in place prior to FY 2015, had been designed to minimize the impact of large network construction projects on E-rate funding in any given year.

In FY 2015, as per the Second E-rate Modernization Order ([FCC 14-189](#), Para. 17), the FCC suspended the amortization requirement for four years. Without FCC action to the contrary, amortization would again be required in FY 2019. Fortunately, were it not for the shutdown, the FCC seems poised to further suspend, if not eliminate, the amortization requirement. Just before the FCC shutdown, the FCC issued a brief announcement ([DA 19-7](#)) to open a docket captioned “E-Rate Program Amortization Requirement.” Word on the street — seemingly a reliable rumor at this time — is that the FCC Commissioners are considering a Notice of Proposed Rulemaking (“NPRM”) to eliminate the amortization requirement altogether and, in the interim, to suspend the requirement for FY 2019.

Given our calculation that USAC has approved slightly less than \$500 million in funding for non-recurring Category 1 charges of \$500,000 or more over the past three funding years, further relief from the amortization requirement appears justifiable. Now all that's required is an end to the government shutdown so that we can get some clarity on the requirement, most immediately for FY 2019.

## **E-Rate Updates and Reminders**

### *Upcoming E-Rate Dates:*

January 7 Form 486 deadline for FY 2018 funding committed in Wave 22. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1<sup>st</sup>), whichever is later. Other upcoming Form 486 deadlines are:

Wave 23	01/14/2019
Wave 24	01/22/2019
Wave 25	01/28/2019

Note: Applicants missing any Form 486 deadline should watch carefully for “Form 486 Urgent Reminder Letters” in their EPC News Feed. These Reminder Letters afford applicants 15-day extensions to submit their Form 486s without penalty.

January 15 Close of the administrative window which permits applicants to update their EPC entity profiles.

January 16 Opening of the FY 2019 Form 471 application window.

January 28 Invoice deadline — or deadline for requesting a 120-day extension — for FY 2017 non-recurring services.

February 26 Extended invoice deadline for FY 2017 recurring services.

March 27 Close of the FY 2019 Form 471 application window.

### *FCC Suspends Most Operations During Government Shutdown:*

Working off available funds, the FCC was able to maintain all of its operations for the first week of the government shutdown, but finally had to suspend most of its operations on Thursday, January 3<sup>rd</sup>. As reported previously, Universal Service (including E-rate) funding, which is not subject to government appropriations should not be affected. The FCC's [shutdown plan](#) calls for the retention of two employees to certify USF payments and we have been advised that the U.S. Treasury, which must make the payments, will also remain staffed.

What will be affected, depending upon the length of the shutdown, is FCC action on outstanding E-rate appeals and pending policy decisions, e.g., Category 1 amortization of non-recurring expenses (see article above) and a Category 2 funding plan for FY 2020 and beyond. The longer the shutdown continues, the greater the problem will become.

One additional concern was that the shutdown might affect the opening of the FY 2019 application window. Specifically, the Second E-rate Modernization Order ([FCC 14-189](#), Para. 93) indicated that the Commission “expected” the Wireline Competition Bureau to monitor Category 2 budgets and to provide a “report on their sufficiency” before the opening of the filing window for FY 2019. Although that report has not been issued, USAC has been advised by the FCC that the window opening will not be delayed.

#### *Senate Confirms Two FCC Commissioners:*

On Wednesday, January 2<sup>nd</sup>, the U.S. Senate unanimously approved a full second term for FCC Commissioner Brendan Carr and filled the vacant second-Democratic Commissioner seat with Geoffrey Starks. The FCC is now back to full strength with three Republican Commissioners and two Democratic Commissioners, a 3:2 split historically favoring the Administration’s party. Mr. Starks, the new Commissioner, assumes the seat previously vacated by Mignon Clyburn. He most recently served as Assistant Chief of the FCC’s Enforcement Bureau.

#### *FCC Decision Watch:*

Just prior to the end of 2018, the FCC issued another set of “streamlined,” precedent-based decisions ([DA 18-1270](#)). Applicants facing similar problems as addressed in these decisions may garner useful information by carefully reading the additional FCC explanations found in the footnotes. The original appeal and waiver requests can be found online in the FCC’s [Search for Filings](#).

In its decisions, the FCC:

1. Dismissed:
  - a. One Request for Waiver deemed moot for which invoicing records indicated that the applicant had already been fully compensated and all submitted invoices were funded.
  - b. One Request for Waiver failing to comply with the FCC’s basic filing requirements.
  - c. Two Petitions for Reconsideration for failure to “provide any reason why consideration of the new information they now provide is warranted and/or was not provided previously.”
2. Granted:
  - a. Six Requests for Review and/or Waiver of the 60-day appeal- or waiver-filing deadline, filed “only a few days late.”
  - b. Two Requests for Waiver of the non-recurring September 30<sup>th</sup> service delivery deadline.
  - c. One Request for Waiver granting a limited waiver of an invoice deadline to reinstate a USAC extension granted, but not received, over a holiday period.
  - d. Three Requests for Review and/or Waiver for late-filed Form 486s “filed no later than 120 days after the last day to receive service...and where the applicant demonstrated good cause for filing late.”
  - e. Nine Requests for Review and/or Waiver for ministerial and/or clerical errors.

- f. One Request for Waiver involving USAC’s allegation of an improper bid evaluation wherein the vendor selection matrix was dated the same date the applicant filed the Form 471. The FCC noted that “there is no Commission requirement that vendor selection documentation be dated before the contract award date.”
  - g. One Request for Waiver to extend an invoice deadline for an applicant unable to file a timely BEAR pending USAC action.
  - h. One Request for Review and/or Waiver for failing to comply with state or local procurement rules deemed “technical violations” by the FCC with no indications of waste, fraud, or abuse.
  - i. Two Requests for Review and/or Waiver of service delivery deadlines as a result of “time limitations imposed by late-issued funding commitments.”
3. Denied:
- a. Fifteen Requests for Waiver of invoice deadline extensions.
  - b. Eight Requests for Waiver for applications filed more than two weeks late and failing to provide “special circumstances” justifying a waiver.
  - c. One Request for Review and/or Waiver of an application relying on a Form 470 which did not seek bids on the E-rate service later requested.<sup>1</sup>
  - d. Nine Requests for Review and/or Waiver for untimely-filed waivers or appeals.

In a separate action ([DA 19-15](#)) based largely on a request by the California Department of Education, the FCC temporarily waived certain rules and deadlines for applicants affected by the October 2017 wildfires in Northern California. Somewhat surprisingly, although similar waiver requests have not yet been filed, the FCC’s Order makes no mention of California’s devastating fires in 2018.

### **USAC News Brief Dated January 4 – Upcoming Dates and Deadlines**

[USAC’s Schools and Libraries News Brief of January 4, 2019](#), reviewed key E-rate dates and deadlines falling within the first calendar quarter of 2019. The only date not shown in our weekly listing of Upcoming E-Rate Dates is February 27<sup>th</sup> — the last possible date to file a Form 470 for FY 2019 and still meet the 28-day posting requirement before the Form 471 filing deadline on March 27<sup>th</sup>. The reason we don’t show it is because it’s a date of interest only to suckers — not our normal readers. Anyone filing a Form 470 on February 27<sup>th</sup> will have only March 27<sup>th</sup> to

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<sup>1</sup> This is a cautionary tale involving not only an error by the applicant, but even more errors by USAC. The applicant’s RFP and Form 470 Narrative clearly identified the funding request as an Internal Connections cabling project, but the drop-down menu in both the Form 470 and Form 471 identified the project as Basic Maintenance of Internal Connections (“BMIC”). USAC did not pick up on this discrepancy during PIA review and approved the application as submitted. The error was not caught until invoice review, at which point the project was well under way. At this point USAC made a second mistake, rejecting the applicant’s appeal as being filed more than 60 days after the FCDL date, an appeal window that should have been calculated from the invoice denial date, not the FCDL date. We remain concerned that USAC has made and will continue to make mistakes in PIA review while striving to meet its September 1<sup>st</sup> processing target date and subjecting applicants to post-expenditure commitment adjustments during invoice reviews.

review and evaluate all bids, sign all associated contracts, perhaps get the contracts approved by their boards, upload the contracts to EPC, and complete and file the Form 471(s). Please do not wait until the last day to do all this!

The News Brief also advises service providers that the FY 2019 version of Form 473, the Service Provider Annual Certification (“SPAC”) form is now available by logging into the E-File System. SPAC forms must be filed for every funding year in which a service provider participates in the E-rate program and is a precondition for the approval of any invoices (SPIs or BEARs) submitted for that funding year.

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*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 the SLD, 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.*

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



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