North Carolina E-Rate Forum	Weekly E-Rate Newsletter Vol. 14, No. 18 May 4, 2020

Funding Status – FY 2019 and FY 2020

FY 2019:

USAC released Wave 57 for FY 2019 on Thursday, April 30th. Only two applicants were funded for a total of $676 thousand, neither for North Carolina. Cumulative commitments through April 30th are $2.26 billion including $76.0 million for North Carolina.

FY 2020:

The Form 471 application window for FY 2020 closed last Wednesday, April 29th. Based on our preliminary numbers, USAC received 35,930 in-window applications, up 6.5% from 2019. As of last Friday, half of those applications have already been reviewed and are "Wave Ready."

USAC's preliminary estimate of demand for FY 2020 is shown in the table below. The $2.91 billion in total demand is barely above last year's level. Release of USAC's demand estimate, combined with the FCC's approval of USAC's PIA Review Procedures, which also occurred last week, should allow USAC to begin issuing early funding waves later this month.

Initial Demand Estimate ($B)

	FY 2019	FY 2020	% Chg.
Category 1	$ 1.911	$ 1.741	-8.9%
Category 2	$ 0.985	$ 1.169	18.7%
Total	$ 2.896	$ 2.909	0.4%

E-Rate Funding for Remote Learning, cont.

There is growing agreement that additional funding and/or policy changes — E-rate or otherwise — are required to support remote learning at the primary and secondary school level. The most recent developments are discussed below.

Pending Legislation:

As discussed in last week's newsletter, the Emergency Educational Connections Act of 2020, introduced in the House by Congresswoman Grace Meng (D-NY) would provide $2 billion in funding and authorize the FCC to utilize those funds to support broadband connections, Internet access, and connected equipment (mobile hotspots, modems, routers, end-user devices, etc.). This funding would be prioritized for students (or library patrons) who do not currently have residential access. Importantly, it would circumvent current FCC restrictions on the use of E-rate funds only for on-premise school and library use.

In a press release issued last week, Senator Edward Markey (D-MA) and other senators announced a plan to support similar legislation increasing the proposed funding to $4 billion. Letters from the educational community, broadly supporting such Congressional legislation, have suggested funding requirements in the $5-7 billion range.

FCC/DOE CARES Act Collaboration:

A joint announcement by the FCC and the U.S. Department of Education last week discussed plans to promote the use of up to $16 billion in funding from the recently enacted Coronavirus Aid, Relief, and Economic Security ("CARES") Act's Education Stabilization Fund for remote learning. The announcement indicated that the "agencies will work with governors, states, and local school districts as they leverage funding to best help students learning from home during the ongoing COVID-19 pandemic." We view this as a positive indication but somewhat misleading as to the amount and timing of funds likely to be made available for remote learning. The $16 billion is comprised of $13 billion for elementary and secondary schools to cover a variety of coronavirus-related services and $3 billion in governor-directed emergency block grants to aid low-income students. Although both funding pools include remote learning as one possible use, the demand for these funds is far wider.

Extended "Keep America Connected Pledge:"

Last March, as a short-term measure to maintain access to Internet service during this crisis, FCC Chairman Pai launched a Keep America Connected Pledge in which he personally asked broadband and telephone service providers for a 60-day voluntarily agreement "(1) not to terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic; (2) to waive any late fees that any residential or small business customers may incur because of their economic circumstances related to the coronavirus pandemic; and (3) to open a company's Wi-Fi hotspots to any American who needs them" (see our newsletter of March 23rd). Over 700 broadband and telephone service providers signed on to the pledge. Last week, Chairman Pai asked those providers to extend their pledges through June 30th. That action should provide some relief for at-home students through the remainder of the current school year.

A parallel effort, specifically directed to student learning, was launched last week by CTIA, the wireless industry association. CTIA's new Connecting Kids Initiative, supported by the three national and many regional cellular carriers, is designed to help schools and districts identify wireless solutions within their areas by offering free or reduced-priced cellular plans during the crisis.

Increased E-Rate Funding Is Key:

The best hope for funding to support remote learning in the near-term, as is likely to be required assuming many schools will not be reopening at full enrollment levels in the fall, is legislative action to fund the FCC — specifically the E-rate program that is already equipped to manage and monitor the distribution of funds — and to affirmatively authorize the use of funds for off-campus remote learning. At this point, any additional legislative funding, combined with the existing E-rate funding cap (plus roll-over funds), should provide the basis for an aggressive approach to remote learning for the 2020-2021 school year.

E-Rate Updates and Reminders

FCC Decision Watch

The FCC issued an important appeal decision (DA 20-455) overturning two years of USAC funding denials for Park Hill School District. The FCC found that, contrary to USAC's decision, Park Hill did not violate rules by sharing its fiber network with the city of Kansas City, Missouri. In doing so, the FCC clarified "that E-Rate eligible entities may share self-provisioned networks supported by the E-Rate program with ineligible entities so long as the ineligible entities pay their fair share of the undiscounted costs associated with constructing and/or operating the network." In approving the Park Hill/Kansas City arrangement, the FCC stressed "that E-Rate eligible entities that elect to share their self-provisioned network with an ineligible entity bear the burden of demonstrating that the cost allocation method used to determine the ineligible entity's fair share is reasonable." In this case, the factors considered by the FCC in determining the fairness of the sharing arrangement included:

- An RFP requiring bidders to provide a separate bid for fiber strands to be used by the city.
- A cooperative agreement between the District and the City to share a portion of each other's network facilities (including access to 12 strands of City-owned fiber).
- The City's agreement to grant the District access to the City's conduit, to assume "locate responsibilities" to mark system lines, and to provide all permits and right-of-way access.

In total, Park Hill estimated that its partnership with Kansas City would result in savings totaling $430 thousand and result in savings to the E-rate program of $215 thousand. More broadly, other applicants interested in shared network services should focus on the following concluding paragraph of the decision:

> We expect other applicants that wish to share networks or network elements with ineligible entities to comply with the requirements outlined in the 2014 Second E-Rate Order and clarified here. First,

> self-provisioned networks—whether or not they are shared—are eligible only in limited circumstances when they are determined to be the most-cost effective option after competitive bidding. Next, the ineligible entities must pay their fair share of the undiscounted costs associated with the funding request, including the cost of the services and equipment needed to provide Internet access and/or data transmission services, as well as the ongoing costs of network maintenance and operations. Applicants must also comply with all other fair share requirements, including the obligation to provide a clear explanation of how the pro-rata share was calculated and demonstration of the reasonableness of the cost allocation methodology used to ensure that E-Rate funding is not used to provide services to ineligible third-party entities.

The FCC also issued another set of "streamlined" precedent-based decisions (DA 20-464) last week. Applicants facing similar problems as those 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 under Docket 02-6.

In April's streamlined decisions, the FCC:

1. Dismissed:
    a. One Request for Waiver not complying with the FCC's basic filing requirements.[1]
    b. Six Petitions for Reconsideration relying on information already considered and rejected by the FCC.
    c. Six Petitions for Reconsideration filed in an untimely manner.
2. Granted:
    a. Three Requests for Waiver and/or Review allowing additional time to respond to USAC's requests for information.
    b. One Request for Review from a finding of improper involvement in the competitive bidding process by a service provider mailing (in 2007) a Form 470 on behalf of an applicant.
    c. Two Requests for Review and/or Waiver involving ministerial and/or clerical errors.
    d. Two Requests for late-filed Waivers.
3. Denied:
    a. Two Requests for Review of late-filed Form 486s
    b. One Request for Waiver for a late-filed Form 471.
    c. One Request for Review of "Ineligible Entities" but that appears to involve a late-filed Form 471.
    d. One Request for Waiver for invoice deadline extension requests.
    e. Two Requests for Review and/or Waiver of alleged ministerial and/or clerical errors.

[1] The waiver request, in its entirety read: "This waiver is being filed before [sic] the Office person that usually files invoices is no longer with this company."

f. One Request for Review involving a Form 470 that did not seek bids on the types of services later requested in the associated Form 471.
g. Two Requests for Review and/or Waiver involving Form 470s that did not seek bids for the types of service on which E-rate services were later requested.
h. Two Requests for Waiver of late-filed appeals or waivers.
i. One Request for Review of a violation of the 28-day competitive bidding rule.

USAC News Brief Dated May 1 – FY 2020 Applications: Next Steps

USAC's Schools and Libraries News Brief of May 1, 2020, suggests steps applicants should take now that the FY 2020 Form 471 application window has closed. With respect to submitted applications, USAC recommends:

- Review your Form 471 applications and submit RAL modifications to correct and update information, specifically:
  - Entity information
  - Cited Form 470s
  - FCC Registration Number
  - Costs and cost allocations
- Review and archive the documentation used during the competitive bidding process.
- Prepare for PIA review.
- Monitor your contact email address and EPC account.