

- Funding Status – FY 2020
- FCC Announces Second Application Window for FY 2020
 - USAC News Brief Dated September 18
 - Unofficial FAQs
- GAO Releases E-Rate Fraud Report
- E-Rate Updates and Reminders
 - Upcoming E-Rate Dates
 - USF Quarterly Contribution Factor Reaches a New High
 - President Trump Nominates New FCC Commissioner

Funding Status – FY 2020

Wave 21 for FY 2020 was released on Thursday, September 17th for a total of \$22.2 million including \$1.95 million for 5 North Carolina applicants. Cumulative commitments are \$1.64 billion including \$54.9 million for North Carolina. Nationwide, USAC has now funded 89% of the FY 2020 applications representing 59% of the requested funding.

FCC Announces Second Application Window for FY 2020

Recognizing that the “heightened reliance on remote learning has dramatically increased demand on school networks, creating an urgent need for additional bandwidth,” the FCC announced a second FY 2020 application window for affected schools dealing with increased needs due to COVID-19. Key aspects of the FCC Order ([DA 20-1091](#)) are summarized in last Friday’s USAC News Brief. Additional information, including official answers to many of the questions posed below, is expected this week as the second window opens.

USAC News Brief Dated September 18:

[USAC’s Schools and Libraries News Brief of September 18, 2020](#), discusses the major points contained in the FCC’s second window Order. As specifically noted in the News Brief:

- Schools — not libraries — with existing FY 2020 applications for Category 1 broadband services needing additional bandwidth as a result of the COVID-19 pandemic may file a second application to fund that requirement. The second window — expected to open this week — will close on October 16, 2020, at 11:59 p.m. EDT.
- Additional services requested in the second window are limited to on-campus Category 1 Internet access and data transmission.
- Competitive bidding rules are waived for E-rate purposes — i.e., no additional Form 470 is required — but state and local bidding rules must be followed.

- Funding for incremental bandwidth cannot be higher than the price per megabit of existing service covered by an applicant’s initial FY 2020 application.
- The second Form 471 must include the following narrative information:
 - The original Form 471 and FRN(s) numbers;
 - A statement certifying that the request for additional bandwidth is needed as a result of the pandemic; and
 - Comparative data on the per megabit pricing of the original and new funding requests.
- Documentation must be retained supporting compliance with the second window rules.
- EPC entity profiles, currently locked, will remain so until after the close of the second window when USAC will open an administrative window in advance of the FY 2021 application window.
- Applicants wishing to retain additional bandwidth in FY 2021, having increased that bandwidth in the second FY 2020 window without competitive bidding, will be required to file a Form 470 to rebid the service for FY 2021.

Unofficial FAQs:

The FCC’s second window Order is impressively detailed considering the short timeframe in which it was drafted. Additional questions, however, remain to be answered. Pending further guidance from either the FCC or USAC, expected as early as this week, we provide the following unofficial FAQs that we believe accurately reflect the intent of the second window Order:

Question: May an applicant that did not originally file for Internet access and/or data transmission services in FY 2020 now file for such services during the second window?

Answer: No. The second window covers only additional, COVID required, services to supplement services previously requested on a pending or approved FY 2020 application.

Question: Which Category 1 services and/or equipment are eligible for second window funding?

Answer: All Category 1 services — and no Category 2 services — are eligible for funding if needed to achieve the required additional bandwidth. This includes any necessary non-recurring charges as well as Category 1 network equipment.

Question: Must the Form 470 relied upon for the initial Form 471 application cover total the services and aggregate bandwidth of the first and second FY 2020 applications?

Answer: No. Please note the limited nature of relief is specifically for FY 2020. If the increased capacity necessitates a new contract extending beyond June 30, 2021, a valid Form 470 and competitive bidding process will be required for FY 2021.

Question: May an applicant that has already increased its bandwidth for FY 2020 in excess of its original FY 2020 application, as a result of the pandemic, cover the cost of the additional service in the second window?

Answer: Yes. Assuming all other second window rules are followed, such funding will be retroactive as far back as July 1, 2020.

Question: Should the second window Form 471 request funding be for the combined amount of bandwidth or for just the incremental requirement?

Answer: The second window Form 471 should request funding for only the incremental charges. This remains true even when an applicant's initial FY 2020 application is still pending — i.e., the applicant should not rely on a RAL change to increase the bandwidth.

Question: May an applicant rely on a month-to-month (“MTM”) service arrangement through the end of the funding year?

Answer: Yes. Assuming all other second window rules are followed, such funding will be retroactive as far back as July 1, 2020.

Question: If state or local procurement rules require a competitive bidding process that cannot be completed by the October 16th application deadline, what options are open to a second window applicant?

Answer: Although the FCC has waived the regular E-rate competitive bidding rules, normally requiring at least a 28-day open bidding period, it has not — and cannot — waive state or local rules. Our advice in such situations is to complete the bid process for all necessary services under applicable state or local rules, file a late out-of-second-window (“OOSW?”) application and an FCC waiver. Carefully document all efforts to complete the procurement and Form 471 application as early as possible.

GAO Releases E-Rate Fraud Report

The U.S. Government Accountability Office (“GAO”) has released a report to the Senate Committee on the Budget titled, with its primary conclusion “[FCC Should Take Action to Better Manage Persistent Fraud Risks in the Schools and Libraries Program](#).” In general, the GAO report recommends that the FCC and USAC must “comprehensively assess fraud risks to the E-rate program and follow leading practices when designing and implementing data analytics to prevent and detect fraud.”

Criticizing the E-rate program for undue reliance on self-certifications, the GAO report focuses on the need for several reforms. Specifically:

- A 2015 recommendation that USAC develop a central document repository, where applicants would be required to upload and store key documents, has only been partially implemented. The EPC system now stores service contracts, but not other compliance-related documents such as bids and invoices that GAO identifies as critical.
- Most importantly, GAO notes that the “FCC itself has identified one of the most common root causes of E-rate program improper payments to include E-rate program participants violating or circumventing the E-rate program’s competitive bidding rules due to a lack of sufficient documentation to demonstrate compliance with the competitive-bidding rules. As a result, the FCC has told GAO that “current FCC rules do not require that bids be put

into a portal, so this situation will need to be addressed through a rulemaking. FCC officials said they expect that competitive-bidding portal to be open and available by July 1, 2022, for funding year 2023.” Developing a USAC bid portal, which would have to operate in parallel with many existing online state bidding systems, may not be a trivial exercise.

- GAO also reported that the “FCC faces challenges in effectively and efficiently employing data analytics for fraud risk management activities in part because USAC does not have complete documentation related to the computer systems it uses to administer the E-rate program.”

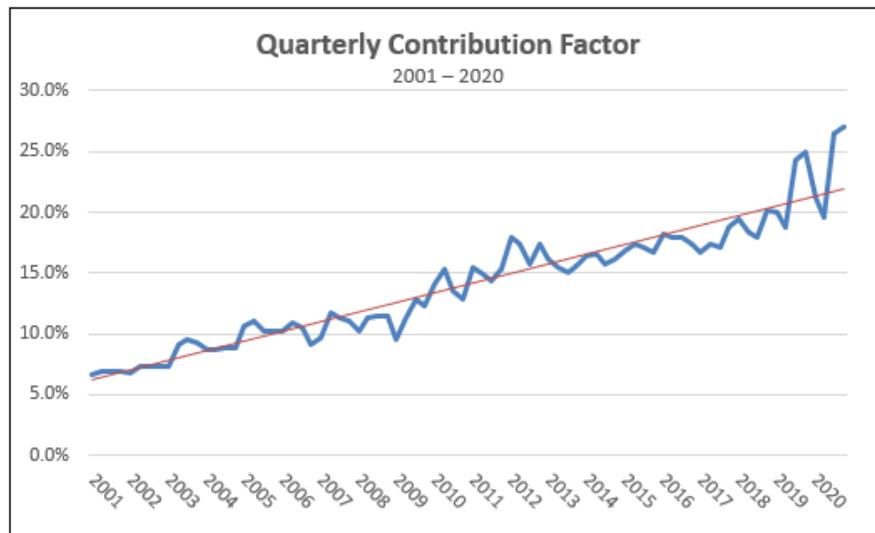
E-Rate Updates and Reminders

Upcoming E-Rate Dates:

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| September 30 | Normally the service delivery deadline for the delivery and installation of FY 2019 non-recurring services. Applicants taking advantage of one-year service delivery extensions are reminded that they may have to extend their contracts accordingly and to so notify USAC via Form 500s. |
| October 12 | Nomination deadline for six USAC Board members including one school representative (see our newsletter of August 17th). |
| October 16 | The second Form 471 application window for FY 2020 closes at 11:59 p.m. EDT. |

USF Quarterly Contribution Factor Reaches a New High:

The FCC announced the Proposed Fourth Quarter 2020 Universal Service Contribution Factor ([DA 20-1075](#)) will be 27.1% — again a record high and, as shown below, well above the 20-year trend line.



This is yet another strong indication that the FCC needs to address the basic funding mechanism for all the Universal Service Fund (“USF”) programs of which E-rate funding requirements currently represent about 25%.

President Trump Nominates New FCC Commissioner:

Last month, in an unusual move, President Trump withdrew his renomination of Michael O’Rielly to a second term as an FCC Commissioner (see our [newsletter of August 10th](#)). That move was widely interpreted as a response to a position taken by O’Rielly and other Commissioners upholding First Amendment protections for social media platforms taking down or altering content considered objectionable.

President Trump’s new FCC nomination is Nathan Simington, currently a senior advisor in the National Telecommunications and Information Administration (“NTIA”) and one of the authors of Trump’s executive order last May encouraging the FCC to rethink — i.e., weaken — how Section 230 of the Communication Decency Act provides liability protection for content posted on social media sites. The President’s FCC nomination requires Senate approval which is unlikely to be withheld.

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 USAC, the 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.

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. Please include your name, organization, telephone, and e-mail address.

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