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Funding Status – FY 2020

Wave 23 for FY 2020 was released on Thursday, October 1st for a total of \$33.1 million including \$8.13 thousand for 4 North Carolina applicants. Cumulative commitments are \$1.71 billion including \$59.0 million for North Carolina. Nationwide, USAC has now funded 90% of the FY 2020 applications representing 62% of the requested funding.

Updates on Second Window Applications for FY 2020

Additional USAC FAQs:

This week’s [USAC’s Schools and Libraries News Brief of October 2, 2020](#), includes an additional set of questions and answers concerning the second application window for FY 2020. These FAQs are summarized below.

Question: Should I put my entire request (original and additional bandwidth) in my second window FCC Form 471, or just the difference between the two?

Answer: The FCC’s second window order ([DA 20-1091](#)) indicates that new applications should include funding requests for only the additional bandwidth, but applicants may find it easier to submit requests for the aggregate bandwidth. USAC indicates that either approach will be acceptable as long as the approach used is described in the FRN narrative. PIA reviewers will work with applicants to assure that requests are not duplicated.

Question: My original Category 1 funding request for internet access was denied and I have filed an appeal with USAC. Can I still apply for additional bandwidth?

Answer: Yes, but. Funding of the second window application will be held pending resolution of the appeal. If the first request is denied due to a competitive bidding violation, the second window request will also be denied.

Question: I filed a service substitution for my original internet access funding request. Can I apply for additional bandwidth?

Answer: Yes, but. Details of the earlier filed service substitution should be included in the FRN narrative in the second window application.

Question: If I post a new FCC Form 470 now, can I sign a multi-year contract and receive discounts on those services for the life of the contract?

Answer: No. The waiver of the competitive bidding requirements only applies to additional bandwidth requested for FY 2020 (i.e., services received through June 30, 2021). You would have to rebid the services that will start on July 1, 2021 (following the Kalamazoo Order precedent discussed below).

Other important FAQs on the second application window are discussed in our newsletters of [September 21st](#) and [September 28th](#).

Understanding the FCC's Kalamazoo Order:

The last FAQ in the preceding section addresses what is likely to be a common problem for schools utilizing long-term contracts for additional bandwidth in FY 2020 and seeking to extend the E-rate eligibility of those contracts into FY 2021 or beyond. There are two scenarios to consider.

Scenario 1: A school (a) previously filed a Form 470 and signed a multi-year contract with bandwidth escalation clauses; (b) initially filed a Form 471 for FY 2020 for less than the contract's maximum bandwidth; (c) increased bandwidth under that contract in FY 2020 to deal with COVID-19 Internet demand; and (d), filed a new Form 471 for the increased cost in the second window.

If the increased bandwidth does not exceed what was included in the original procurement and contract, the school is already operating under a valid competitively bid contract. Although the school filed for additional funding in the second window to cover the increased bandwidth cost, it had no need to avail itself of the competitive bidding exception in the FCC's second window order. As such, the school can continue to rely upon the original Form 470 and competitive procurement in FY 2021.

Scenario 2: A school (a) obtained additional bandwidth under a new or amended contract not covered by its original procurement or FY 2020 application; and (b), filed a new Form 471 for the increased cost in the second window. As permitted for in the second window order, the school did not follow traditional E-rate competitive bidding protocols for the new contract.

This is the situation contemplated in the last FAQ above. To make this enhanced service E-rate eligible for next year, the school will need file a Form 470 and competitively bid the service for FY 2021.

Converting a contract that was not competitively bid under E-rate rules (as per Scenario 2) into an E-rate eligible contract for future funding years is often referred to as a “Kalamazoo” process. The terminology traces back to a 2002 FCC decision ([DA 02-2975](#)) in favor of Kalamazoo Public Schools whereby the district rebid the service for the next funding year, treated the preexisting contract as one of the competing bids, and selected that the contract’s vendor as the winning bidder. Importantly, note that although the incumbent vendor’s contract may be considered a bid, E-rate rules require an applicant to fairly consider all bids received and to select the highest-scoring, most cost-effective bid.

Under the Kalamazoo Order on Reconsideration, the FCC clarified that “...in order to facilitate the application review process, it is advisable for applicants that choose to renew a pre-existing service after a bidding process to memorialize that decision after the bidding process is complete and record the date of this memorialization as the relevant contract award date in their submitted application for discounts.” For EPC purposes, the memorialized Contract Award Date (“CAD”) is used when the newly eligible contract information is entered into the EPC Contract Module.

If the existing contract vendor is an active participant in the E-rate competitive bidding process, as is often the case, it may be possible to amend the contract to the benefit of both parties. One amendment worth considering, if not already reflected in the existing contract, would be to realign the contract termination date with the end of the funding year to avoid the need to subsequently rebid the contract midyear.

Remote Learning Sites as School Annexes

We’re seeing a number of schools and districts beginning to set up remote learning sites in community centers, civic or hotel conference centers, churches or other off-campus locations that can accommodate multiple online students. As an alternative to home-bound remote learning, these sites offer a number of advantages including:

- Access to Internet that may be unavailable or inadequate at home
- A safe and supervised environment for students with working parents
- A more efficient and practical means of providing technical support for remote learners
- Easier distribution of free meals

A recent [Government Technology article](#) discusses West Virginia’s statewide approach to remote learning sites. By early September, the State’s “Kids Connect Initiative” had established 850 (and growing) locations in libraries, national guard armories, motor vehicle offices, state parks, and other easily accessible sites spanning every county. New York City is also working on a childcare program called “Learning Bridges” with a near-term target of providing 30,000 remote learning sites. Other remote site learning programs are understandably more limited in scope, but are equally important to host schools and districts. What many of these sites share, making these programs easier to implement, is at least some level of existing Internet connectivity and Wi-Fi capability that can be expanded if necessary by adding additional Internet bandwidth and/or cloud-based wireless access points (“WAPs”).

From an E-rate perspective this year, little can be done to provide needed Category 2 enhancements to these sites, but support for increased Category 1 bandwidth via the second FY 2020 application window — closing October 16th — now appears feasible for those acting quickly. Based on informal guidance from USAC last week, new sites established to meet COVID-19 needs and considered as annexes to existing schools would qualify for additional bandwidth funding in the second window.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

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| 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. |

Joint FCC/NECA Agreement on Broadband Services for Low-Income Students:

The FCC reached an [agreement](#) last week with the National Exchange Carrier Association (“NECA”) to enable hundreds of rural broadband providers to offer discounts and service upgrades to families with children who are eligible for free or reduced-price school lunches through the National School Lunch Program. New tariff provisions — effective from last week through June 2021 — will provide eligible new customers of rural carriers a 25% discount on certain broadband services and offer existing eligible customers faster connections at no additional cost.

Although we continue to hope for direct E-rate support for home-bound students, either through FCC-initiated or legislative efforts, we acknowledge the many initiatives the FCC has undertaken to support remote learning during the pandemic. A brief review of the FCC’s COVID-19 initiatives is available in the [Coronavirus](#) section of the FCC website.

FCC Streamlined Decisions:

The FCC issued another set of “streamlined” precedent-based decisions ([DA 20-1129](#)) 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 September’s streamlined decisions, the FCC:

1. Dismissed:
 - a. One Petition for Reconsideration relying on arguments that had already been fully considered and rejected.
2. Granted:
 - a. One Petition for Reconsideration restoring a mistakenly cancelled funding request.

- b. One Request for Review and/or Waiver for an invoice that was timely filed and incorrectly rejected by USAC. On appeal, USAC agreed that the original invoice should not have been denied, but that the invoice deadline had since passed and a resubmitted invoice could not be filed.
 - c. Three Requests for Waiver for late-filed FY 2020 Form 471 applications filed less than 60 days (i.e., up to 59 days) late.
 - d. Seven Requests for Review and/or Waiver for ministerial and/or clerical errors involving missing items or FRNs, incorrect BENs, or wrong categories of service on a Form 471.
 - e. One Request for Waiver of a late-filed waiver request.
3. Denied:
- a. One Request for Waiver for an incorrect Form 470 service category.
 - b. Two Requests for Waiver for invoice deadline extension requests.
 - c. Three Requests for Waiver of the Form 471 window for applications filed 60 days or more late or, in one case, still unfiled.
 - d. Three Requests for Waiver of the appeal/waiver deadline that “did not show special circumstances.”

USAC News Brief Dated October 2 – Streamlined BEAR Processing

In addition to the second window FAQs discussed above, [USAC’s Schools and Libraries News Brief of October 2, 2020](#), describes a streamlined BEAR review process set to begin this week. Henceforth, BEARs with multiple FRN line items will be reviewed and processed on a line-by-line basis. This means that FRN line items that do not require manual review, or require a lower level of manual review, can be processed for payment while the other FRN line items are under review.

Going forward, as described more completely in the News Brief, each BEAR Notification Letter (“BNL”) will contain summary information about the entire invoice, a summary table with the current status of each FRN line item, and specific details about the FRN line item decisions featured in the letter. USAC will continue to produce BNLs for a specific invoice until all of the FRN line items on that invoice have been processed.

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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