

- Funding Status – FY 2020 and FY 2021
- AT&T and LCP: A Continuing Story
- E-Rate Updates and Reminders
 - Upcoming E-Rate Dates
- USAC News Brief Dated March 26 – Next Steps re. FY 2021 Applications

Funding Status – FY 2020 and FY 2021

FY 2020:

Wave 48 for FY 2020 was released on Friday, March 26th, for a total of \$3.55 million. none for North Carolina applicants. . Cumulative commitments are \$2.28 billion including \$73.3 million for North Carolina. Nationwide, USAC has now funded 98% of the FY 2020 applications representing 84% of the requested funding.

FY 2021:

The FY 2021 Form 471 application window closed last Thursday, March 25th. Also important last week were the FCC’s announcements of the [inflation-based E-rate funding cap](#) and [PIA procedures approval](#) for FY 2021. Both were necessary preconditions for the start of funding waves expected to begin in early May.

A second E-rate application window for the \$7 billion of funding authorized under the Emergency Connectivity Fund (“ECF”) of the American Rescue Plan Act of 2021 is expected to open later this Spring (see our newsletters of [March 15](#) and [March 22](#)).

AT&T and LCP: A Continuing Story

Earlier this month, *The Washington Post* headlined a story: “‘There has to be an accounting’: Former AT&T lawyer says company systemically overcharged neediest schools.” The [article](#) appears to be generating a lot of interest over a situation that has been evolving over many years. We have covered this story before, but perhaps it’s time for a review.

In the beginning, from an E-rate perspective, there has been a “[Lowest Corresponding Price](#)” (“LCP”) rule. LCP requires every E-rate vendor to provide services to any E-rate customer at the lowest price that the vendor charges to other “similarly situated” nonresidential customers. The rule is designed to ensure that E-rate charges are not artificially marked up just because applicants are getting discounts. In concept, LCP is simple. In practice, LCP has proved difficult to define — and, therefore, to enforce.

The regulatory controversy traces back primarily to 2010 when The United States Telecom Association ("USTA") and CTIA – The Wireless Association filed a joint petition with the FCC seeking a declaratory ruling clarifying certain aspects of LCP. The FCC sought public comment on the petition, but never publicly provided any clarification. In 2012, USTA and CTIA filed an ex parte notice with the FCC renewing their concern, again with no formal resolution.

Meanwhile, in the real world, others began to take notice. *The Washington Post* story has its roots in a 2011 suit filed against AT&T by a telephone auditor, Todd Heath. The Heath vs. AT&T suit, alleging that AT&T had ignored the LCP rule in multiple states, has a long and torturous [history](#). AT&T is now seeking to have the suit dismissed arguing that much of the evidence presented by Mr. Heath was obtained improperly from Theodore Marcus, a former AT&T attorney, prior to Mr. Marcus' resignation from AT&T.

In a separate action in 2016, the FCC proposed to fine AT&T and recover \$170 thousand for alleged LCP violations involving charges to two Florida school districts that had been charged more than state contract rates. AT&T argued that the higher rates were justified because the two districts had selected month-to-month service rather than the longer-term state contractual rates. The FCC subsequently dismissed the action based on a statutory limitation issue.

The key question for E-rate applicants is: what does LCP mean for us and what are our responsibilities?

The most important point for applicants to note is that LCP compliance is technically a service provider responsibility. This is not to say, however, that LCP problems don't affect applicants. Here are two potential problems:

1. LCP issues being investigated at the vendor level can delay application or invoice approval. In 2020, for example, apparent — not formally announced — LCP problems in CDW billing delayed applicant BEAR payments for months on end. The BEARs, when finally paid, reflected lower LCP-based charges, with CDW providing offsetting applicant credits for both discounted and non-discounted charges.
2. The Heath vs. AT&T suit discussed above highlights a potential auditing problem. Telephone auditors typically work on a contingency basis, reviewing customer telephone bills and applying for refunds when errors are found. For many customers, this is a no-lose situation. If no errors are found, the auditor doesn't get paid. If errors are found, the auditor garners a percentage of the refund; the customer gets the rest. The customer also benefits from lower ongoing rates. For E-rate applicants which have already received discounts on the higher charges, the situation is a bit more confusing.

To the extent that E-rate discounts were received on excess service charges, the extra discounts must be returned to USAC. This could mean money out-of-pocket for higher-discount applicants. Here's an example:

- Assume that a telephone auditor, operating on a 30% contingency fee, finds and recovers a \$1,000 billing error.
- The auditor receives a \$300 fee, netting the applicant \$700. So far, so good.

- But an applicant, with a 90% discount rate, had already received a \$900 E-rate discount on the excess charge. That discount must be returned to USAC. (Indeed, some telephone companies will not return amounts billed in error until they return the extra discount to USAC themselves.)
- In total, therefore, the applicant has paid the auditor \$300 and \$900 to USAC. Out-of-pocket, the audit has cost the applicant \$200. The only benefit in this case is that the applicant’s charges going forward will be lower.

Moral: Auditing historic service charges is a good business practice, but E-rate applicants need to understand the post-discount impact of errors found.

The best approach is to try to avoid LCP errors upfront by: (a) requiring upfront certifications from bidders that their pricing meets LCP requirements; and (b), doing your own research on market pricing. One particularly useful tool for researching comparative local internet charges is the [Connect K-12](#) tool, originally developed by EducationSuperHighway and now being supported [Connected Nation](#).

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

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| April 2 | Form 486 deadline for FY 2020 covering funding committed in Wave 32. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1 st), whichever is later. Upcoming Form 486 deadlines are: |
| | Wave 33 04/09/2021 |
| | Wave 34 04/16/2021 |
| April 5 | Deadline for filing initial comments on the FCC Emergency Connectivity Fund (“ECF”) (see our newsletter of March 22). Reply comments are due on April 23 rd . |
| May 10 | Legislative deadline for the FCC to promulgate regulations for E-rate funding under the Emergency Connectivity Fund. |

USAC News Brief Dated March 26 – Next Steps re. FY 2021 Applications

With the FY 2021 Form 471 application window now closed, [USAC’s Schools and Libraries News Brief of March 26, 2021](#) suggests the following:

- Review your Form 471(s) and submit RAL modification(s) to correct and/or update information. Check:
 - Entity information
 - Form 470(s) cited for each funding request
 - FCC Registration Number
 - FRN costs and cost allocations
- Review and archive the documentation prepared for the competitive bidding process.

- Prepare for Program Integrity Assurance (“PIA”) review.
- Monitor your contact email address and your EPC Account.

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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