

E-Rate Central News for the Week of January 20, 2020

Please see the attached newsletter for articles on:

- Funding Status – FY 2019 and FY 2020
- Dangerous Form 470 “Deadline”
- E-Rate Updates and Reminders
 - Upcoming E-Rate Dates
 - FCC Decision Watch – Price Escalation Contracts
- USAC News Brief Dated January 17 – Entity Profile Updates and More Form 470 Reminders

Funding Status – FY 2019 and FY 2020

FY 2019:

USAC released Wave 42 for FY 2019 on Thursday, January 16th. Funding totaled \$15.4 million – none for Nevada. Cumulative commitments through January 16th are \$2.11 billion including \$7.3 million for Nevada.

FY 2020:

The Form 471 application window for FY 2020 opened on Wednesday, January 15th, and will close at 11:59 p.m. EDT on Wednesday, March 25th.

Dangerous Form 470 “Deadline”

E-rate is a deadline-driven program. Most every E-rate form or program request has a submission deadline. Unfortunately, but perhaps not unexpectedly, too many people wait until a deadline is imminent before acting. Fortunately, in the case of most E-rate deadlines, there is little downside to just meeting a deadline.

The Form 470 filing “deadline” is an exception. We express “deadline” in quotes because technically a Form 470 may be filed at any time to begin a competitive bidding process. There is, however, a firm deadline for submitting a Form 471 application — March 25th for FY 2020. If discounts are to be requested on an associated Form 471 application, the competitive bidding process must be fully completed before that application is filed. As a result, February 26th — 28 days prior to the Form 471 deadline — may be considered the Form 470 “deadline” for FY 2020.

A recent [E-rate blog](#), for example, from Cisco makes the following points:

3 key things you need to know about E-rate funding in 2020

1. E-rate program rules require that competitive bids be open for a minimum of 28 calendar days.
2. The last date that a competitive bid may be started in any given Funding Year is 28 days before the Form 471 window closes ([more info here](#)).
3. For Funding Year 2020, this means that applicants will have until **February 26, 2020** to file Form 470 ([more info here](#)) and still have the required 28 days for competitive bidding.

USAC also references “the February 26 deadline for posting the FCC Form 470.” We reluctantly list February 26th as the “Last day to file a Form 470 to meet the minimum 28-day posting requirement prior to the close of the FY 2020 Form 471 application window” in our “Upcoming E-Rate Dates” section below.

February 26th, however, is a dangerous Form 470 “deadline” for FY 2020. Here’s why:

1. At a minimum, a Form 470 must be posted for 28 days. The 28-day period for a Form 470 posted on February 26th ends on March 25th.
2. The Form 471 filing deadline for FY 2020 is 11:59 p.m. EDT on March 25th.
3. To utilize a Form 470 filed on February 26th in a Form 471 to be filed by March 25th, an applicant must have:
 - a. Received, reviewed, and evaluated all bids on March 25th.
 - b. Selected the winning bidder(s) on March 25th.
 - c. Awarded and signed the contract(s) on March 25th and uploaded the contract(s) into EPC.
 - d. Completed and certified the Form 471 before midnight EST March 25th.

Completing a competitive bidding process and filing a Form 471 in one day is a challenge for any applicant — even if everything goes right.

Putting aside potential IT pressures on USAC’s EPC system, the most common problem with meeting the Form 471 filing process on the last day of the filing window is that many competitive bidding arrangements require more than the 28-day minimum. In particular:

- Some projects are more complex and require longer bidding cycles to give vendors sufficient time to develop responsive bids. This is particularly true for new fiber projects involving extensive outside plant construction or for larger internal networking projects (perhaps involving vendor walk-throughs).
- Questions and/or issues arising during the bidding period, either as a part of a formal Q&A process or as raised by potential bidders, may require additions or addendums to RFP documents. To the extent that additional information provided is, or even may be considered, a “cardinal” change, the minimum bidding period should be extended anew.
- Additional time may be required in the bid evaluation process to clarify details of received bids and/or to review and validate vendor documentation re. bid bonds, insurance coverage, etc.
- Bid evaluations by multiple parties may need to be coordinated and scored.
- Contracts may need to be written, reviewed, approved, and signed by multiple parties.

- Finalized contracts may require board approval.

The safest course of action is to avoid having to rely on a 28-day minimum bidding period ending on the final day of the Form 471 application window. We encourage applicants to establish their own Form 470 “deadline” no later than the end of January.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

January 24	Form 486 deadline for FY 2019 funding committed in Wave 26. 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. Other upcoming Form 486 deadlines are:
	Wave 27 01/31/2020
	Wave 28 02/07/2020
	Wave 29 02/14/2020
	Wave 30 02/21/2020
January 21	USAC webinar on Category 2 Budgets .
January 28	Invoice deadline — or deadline for requesting a 120-day extension — for FY 2018 non-recurring services.
February 3	Due date for submitting comments to the FCC’s Notice of Proposed Rulemaking (“NPRM”) regarding national security threats (FCC 19-121). Reply comments are due March 3 rd .
February 13	Due date for submitting comments to the FCC’s Notice of Proposed Rulemaking (“NPRM”) regarding new rules on suspensions and debarments (FCC 19-120). Reply comments are due March 16 th .
February 25	Extended invoice deadline for FY 2018 recurring services.
February 26	Last day to file a Form 470 to meet the minimum 28-day posting requirement prior to the close of the FY 2020 Form 471 application window.
March 25	Close of the Form 471 application window for FY 2020 at 11:59 p.m. EDT.

FCC Decision Watch – Price Escalation Contracts:

The FCC issued an interesting appeal denial decision last week involving price escalation contract clauses in the case of FY 2012 applications filed by Knox County School District ([DA 20-63](#)). For the preceding year, FY 2011, Knox had executed a series of multi-year contracts establishing a maximum price increase of 5% per year for the subsequent contract periods. When filing its FY 2012 applications, Knox requested funding based on a 10% increase to reflect two-years’ worth of price increases to prospectively “compensate for anticipated delays by USAC in the application processing timeline.” USAC recognized that the contracts were only in their second year and reduced funding to a one-year 5% increase level. Knox then appealed the reduction to the FCC.

Not surprisingly, the FCC denied Knox’s appeal to support a 10% increase in the second contract year. More to the point, the FCC also faulted USAC for accepting even the 5% increase. It noted that Knox had provided no explanation or documentation supporting actual price escalations in FY 2012. In other words, although the contracts permitted 5% annual price increases, there was no indication that such increases were substantiated. As a result, only the original pricing level could be substantiated.

Exercising a fair measure of tact and restraint, the FCC did not comment on the possible need for prospective price increases to compensate for anticipated delays in USAC processing.

USAC News Brief Dated January 17 – Entity Profile Updates and More Form 470 Reminders

[USAC’s Schools and Libraries News Brief of January 17, 2020](#), discusses an applicant’s ability to update its EPC entity profile now that the administrative window has closed. Despite the fact that entity profiles are generally “locked” for the duration of the Form 471 application window, certain changes can be made. In particular:

- Within EPC, account administrators can create or delete users and can update user permissions. New contract records can also be created to support Form 471 requests.
- Entity profile changes which do not affect discount rates can be made by the Client Service Bureau (“CSB”) either by phone (888-203-8100) or by creating a customer service case.
- Entity changes which would affect discount rates or urban/rural status cannot be updated directly but notes can be added in Form 471 narrative fields. After Form 471s are filed, Receipt Acknowledgment Letter (“RAL”) modifications can be filed to help PIA make the corrections.

Last Friday’s News Brief also contains additional Form 470 reminders by posing and answering the following four questions:

- How do I describe the services I need?
- How general or specific should my descriptions be?
- What numbers should I provide in the “Quantity” fields if I am not sure what I will need?
- How do I respond to questions from potential bidders?

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