

E-Rate Central News for the Week of May 27, 2019

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Funding Status – FY 2019

USAC released Wave 5 for FY 2019 on Thursday, May 23rd. Funding totaled \$38.9 million including \$261.2 thousand for Nevada. Cumulative funding as of Wave 5 is \$755 million including \$2.67 million for Nevada.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

May 27 Form 486 deadline for FY 2018 funding committed in Wave 42. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1st), whichever is later. Other upcoming Form 486 deadlines are:

Wave 43	05/31/2019
Wave 44	06/07/2019
Wave 45	06/17/2019

Note: Applicants missing any Form 486 deadline should watch carefully for “Form 486 Urgent Reminder Letters” in their EPC News Feed. These Reminder Letters afford applicants 15-day extensions to submit their Form 486s without penalty.

August 5-9 USAC is holding two [service provider training](#) sessions in Washington DC, one at the beginning of the week (August 5-6) and one at the end of the week (August 8-9). Each two-day session will begin with a half-day presentation for beginners and will include a second full day for everyone.

USAC’s training announcement also indicates:

- Service provider training on other USF programs will be held in Washington DC on August 7th, the day between the two E-rate sessions.
- Plans for general E-rate applicant training and for special E-rate tribal training will be announced later in 2019.

E-Rate Overbuilding Concerns, cont.:

As last reported in our [newsletter of April 22nd](#), there is an ongoing controversy stoked by FCC Commissioner O’Rielly’s concern that E-rate funding is being wastefully used to construct new fiber networks in areas already served by fiber funded via other Universal Service Fund (“USF”) programs. Commissioner O’Rielly’s position was restated on May 15th in [testimony](#) before the Congressional Subcommittee on Communications and Technology. Most specifically, Commissioner O’Rielly indicated that “new E-rate-subsidized fiber networks were overbuilding local USF-funded Texas broadband providers and stealing their anchor customers.”

Last week, three of those providers, small Texas independent telephone companies, filed a [Petition for Rulemaking](#) asking the FCC to initiate a proceeding to amend the E-rate rules “to include safeguards which would discourage overbuilding of existing federally supported fiber networks.” The small carriers were particularly concerned with the issuance of RFPs by “region-based consortia groups” for requirements that could only be met by larger carriers. The Petition proposed that new special construction projects be subjected to a 60-day public challenge process in which existing fiber providers can demonstrate available service at “reasonable market-based prices.”

Initial indications are that USAC, when challenged, has begun asking a series of overbuilding questions — sometimes a bit apologetically — on both pending and approved applications for new fiber systems. One example of a recent inquiry is as follows:

Statements made to USAC indicate that [applicant and BEN] is seeking funding to lay new fiber to schools already served with existing fiber which could result in potential overbuilding. We are sure you understand that USAC, as the Program Administrator, is obligated to address this concern.

How do you respond to these statements? Please provide documentation to support your response.

An applicant encountering such questions would do well to focus on the two critical aspects of the current E-rate rules highlighted in [USAC’s April 1st response](#) to Commissioner O’Rielly’s inquiry last March, namely requirements to demonstrate that:

1. The proposed new fiber construction is the most cost-effective solution; and
2. The bidder was selected based on a fair and open competitive bid process.

For the moment, Michael O’Rielly is the only Commissioner taking a public stand regarding overbuilding, but his position has at least sharpened the USAC review focus on applications for new fiber builds. We continue to believe that applicants considering long-term leases and self-provisioned fiber networks must spend the necessary time and resources to properly bid and evaluate their options.

FCC Decision Watch:

To deal more quickly with the flood of Requests for Waiver on late-filed applications for FY 2019, the FCC issued a mid-month set of “streamlined” decisions ([DA 19-420](#)) on May 20th. Adhering closely to precedent, the FCC granted waivers to 185 applicants who had filed one or more applications within 14 days of the close of the window and denied waiver requests for 36 applicants

who had filed their applications beyond this grace period. The original appeal and waiver requests can be found online in the FCC's [Search for Filings](#) under Docket 02-6.

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 the SLD, FCC, or OSIT.

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