

## E-Rate Central News for the Week of June 3, 2019

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### Funding Status – FY 2019

USAC released Wave 6 for FY 2019 on Thursday, May 30<sup>th</sup>. Funding totaled \$33.8 million including \$556 thousand for Nevada. Cumulative funding as of Wave 6 is \$788 million including \$3.2 million for Nevada.

### Pending FCC Decisions

The FCC has four proceedings underway that will or could affect future E-rate funding. Recent developments on these issues are discussed below.

#### *Category 2 Funding as of FY 2020:*

The most critical issue facing applicants planning for FY 2020 is the availability of funding for Category 2 equipment and services. In February, an FCC staff report recommended that the FCC continue the 5-year budget approach with Category 2 funding (see our [newsletter of February 18<sup>th</sup>](#)). In March, the FCC confirmed that 5-year Category 2 budgets started in FY 2016 or later would extend beyond FY 2019 (see our [newsletter of March 18<sup>th</sup>](#)). What has been missing is a definitive indication of exactly how new Category 2 budgets will be administered in FY 2020 for applicants who either (a) completed their 5-year budget cycles in FY 2019, or (b) never began Category 2 funding.

On May 20<sup>th</sup>, the FCC indicated that an item had been placed on circulation entitled “Modernizing the E-Rate Program for Schools and Libraries” for review by the Commissioners. Despite the broad title, we believe the focus will be on Category 2 funding and expect it to be ready for release when supported by at least three Commissioners — hopefully within the month. It is not yet clear

whether this will be a Notice of Proposed Rulemaking (“NPRM”) requiring public comment or an Order (based on public comments initially solicited in 2017).

#### *Potential Cap on Total USF Funding:*

Last Friday, the FCC released an NPRM ([FCC 19-46](#)) seeking comment on establishing a cap on total funding of the Universal Service Fund (“USF”). As it currently stands, each of the four USF programs, of which E-rate is one, has its own cap. The NPRM is meant to provide a “holistic” view of the “consequences and tradeoffs of spending decisions for the overall fund, and more carefully evaluate how to efficiently and responsibly use USF financial resources.”

One proposal under consideration is to set an annual cap of \$11.42 billion, equal to the current sum of the individual program caps. At this level, the cap would exceed the current level of disbursements — \$8.33 billion in calendar year 2018. As such, in the short term, a \$11.42 billion cap would likely have little negative impact on any one USF program. Longer term, however, the move might restrict E-rate funding on any USF program such as E-rate running below its cap.

One specific possibility on which comments are sought would be the combining of the E-rate and the Rural Health Care (“RHC”) program caps. One justification for the combination is that “both programs promote the use of advanced services to anchor institutions that have similar needs for high-quality broadband services.” The effective impact of this combination would be to divert funds from E-rate, which has not been fully using its cap, to RHC, for which demand has been outpacing its cap.

Comments on this NPRM will be due 30 days after its publication in the *Federal Register*. Reply comments will be due 60 days thereafter.

#### *New Proceeding on Fiber Overbuilds:*

As reported in our [newsletter of May 27<sup>th</sup>](#), three small carriers in Texas have picked up the cudgel of Commissioner O’Rielly’s concern regarding using E-rate funds to support new fiber networks that overbuild existing fiber networks funded in part by the USF High Cost program. The three carriers filed a [Petition for Rulemaking](#) to amend the E-rate rules “to include safeguards which would discourage overbuilding of existing federally supported fiber networks.”

Last Thursday, the FCC issued a Public Notice ([DA 19-493](#)) seeking comment on the carriers’ Petition. Comments are due July 1<sup>st</sup>; reply comments are due July 16<sup>th</sup>.

#### *Eliminating Amortization for Special Construction:*

Comments and reply comments have already been received on an FCC Notice of Proposed Rulemaking and Order ([FCC 19-5](#)) to permanently eliminate a requirement to amortize special construction charges of \$500,000 or more (see our [newsletter of April 8<sup>th</sup>](#)). Whereas we expect the FCC to proceed with its plan to permanently eliminate the amortization requirement, which had been suspended for the past four years, we do note that the proposal was opposed by rural carriers similarly concerned with fiber overbuilds. The FCC’s new proceeding on overbuilds may slow approval for, and perhaps modify, the non-amortization Order as initially proposed.

## Updates on USAC's E-Rate Productivity Center and Legacy System

### *Update on BEAR Notification Letters:*

Additional reports were received last week that BEAR Notification Letters are not being mailed as planned. Although the Client Service Bureau ("CSB") is currently acknowledging that USAC is experiencing "a system issue with BEAR NLs so no one is receiving them," this may be a long-standing problem tracing back as far as January.

The absence of BEAR Notification Letters is particularly problematic as Maximus, USAC's new contractor, works to reduce its inherited backlog of outstanding invoices. Not being notified when an invoice has been approved is inconvenient. Not being notified when an invoice has been denied is potentially disastrous if the denial is not recognized until after the deadline for submitting a revised invoice or for appealing the denial.

We noted incorrectly in our previous newsletter that BEAR Notification Letters are supposed to be mailed by USAC to the applicants' Form 471 contact. Based on more complete CSB information (shown below) these letters are supposed to be sent to the Form 486 contact — often the same, but not necessarily the same, as the Form 471 contact. This is the only process where USAC does not send an acknowledgement to the contact person listed on the associated form. While we understand why USAC issues the BEAR Notification Letter to the Form 486 contact, it would seem appropriate to also copy the contact person on the BEAR.

After USAC receives and processes a Form 472 BEAR, USAC sends out a confirmation letter ("Notification Letter") via U.S. postal mail stating approval of the form and/or any problems. If there are no issues with the request, USAC will issue the reimbursement to the entity's bank account. If there's an issue, there will be an invoice error code to explain what needs to be addressed. Once the issue has been resolved, the applicant can resubmit the Form 472 to USAC. USAC will issue the reimbursement when the form is fully correct and approved.

The BEAR Notification Letter is sent to the Form 486 Contact Person Name and address related to the first FRN featured on the BEAR Form, as well as the SPIN's General Contact as outlined on their Form 498 (SP).

Applicants awaiting BEAR Notification Letters to close out their invoicing documentation can obtain duplicates via email by contacting the Client Service Bureau ("CSB") at 888-203-8100 or by creating an EPC customer service case.

## E-Rate Updates and Reminders

### *Upcoming E-Rate Dates:*

June 7                      Form 486 deadline for FY 2018 funding committed in Wave 44. More generally, the Form 486 deadline is 120 days from the FCDL date or the service start date (typically July 1<sup>st</sup>), whichever is later. Other upcoming Form 486 deadlines are:

Wave 45	06/17/2019
Wave 46	06/21/2019
Wave 47	07/01/2019

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.

- June 30 Last day to request a one-year extension of the special construction deadline for FY 2018 requests.
- July 1 Deadline for submitting comments to the FCC ([DA 19-493](#)) on a [petition](#) filed by three Texas carriers to prohibit the use of E-rate funds to build fiber networks in areas where fiber networks already exist (see our newsletter of [May 27<sup>th</sup>](#)). Reply comments are due July 16<sup>th</sup>.
- 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.

## **USAC News Brief Dated May 31 – Returning Funds to USAC**

[USAC’s Schools and Libraries News Brief of May 31, 2019](#), reviews the process by which an applicant or service provider can return funds to USAC. With the increased number of Commitment Adjustments (“COMADs”) and Recovery of Improperly Disbursed Funds (“RIDFs”) actions initiated by USAC over the past two years — see our recent newsletter article on [Ancient COMADs](#) — the necessity of returning funds to USAC has become unfortunately more common.

Note that USAC no longer accepts paper checks for the return of funds. The News Brief summarizes the current process for completing a Payment Identification (“PID”) Worksheet and electronically uploading the Worksheet and the appropriate payment information online.

Last week’s News Brief also reminds service providers of the August training sessions in Washington DC and summarizes PIA contact procedures during the summer deferral period (see our discussion above).

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*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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