

E-Rate Central News for the Week of July 8, 2019

- Funding Status – FY 2019
- Comments on the Texas Carriers' Overbuild Petition
- E-Rate Updates and Reminders
 - Upcoming E-Rate Dates
 - FCC Decision Watch

Funding Status – FY 2019

USAC released Wave 11 for FY 2019 on Friday, July 5th. Funding totaled \$38.9 million including \$27.9 thousand for Nevada. Cumulative commitments through Wave 11 are \$1.02 billion including \$4.84 million for Nevada.

Comments on the Texas Carriers' Overbuild Petition

July 1st was the deadline for submitting initial comments to the FCC ([DA 19-493](#)) on a [petition](#) filed by three Texas carriers to restrict the use of E-rate funds to build fiber networks in areas where fiber networks already exist. The petition, which calls on the FCC to establish a new rulemaking to change the competitive bidding process for fiber networks, generated two distinctly different sets of responses.

The three Texas carriers, and other rural incumbents or their associations, argued for new rules to prevent the “overbuilding” of existing fiber networks that had been built using other Universal Service funding. Comments supporting this position were filed by:

- [Central Texas Telephone Cooperative](#) et al (the original petitioners)
- [“Concerned Rural Carriers”](#)
- [NTCA – The Rural Broadband Association](#)
- [“Rural Carriers”](#)
- [USTelecom – The Broadband Association](#)
- [Valley Telephone Cooperative](#)
- [WTA – Advocates for Rural Broadband](#)

To those of us schooled on the two-decade old principle of competitive bidding for E-rate services, the rural carriers' position appears truly bizarre. Essentially the carriers are arguing that, having built their networks with federal subsidies, they need not bid on new E-rate network contracts but should be given post-bid opportunities to challenge awards to others. Specifically, the Texas Carriers proposed that:

1. USAC wait at least 60 days after the posting of a Form 471 requesting special construction funding to give incumbent carrier(s) an opportunity to challenge the need for new fiber facilities; and
2. If it is shown that existing fiber exists, the newly selected service provider and the incumbent carrier(s) will have 120 days to negotiate, in good faith, a lease of the existing fiber.

Putting aside any other delays that might result from the adjudication of either of the proposed steps — not to mention conflicts with established state and local bidding rules — this process would add at least six months to the application approval process.

The remainder of the E-rate community, represented by the following organizations, adamantly cast the proposals as anti-competitive and urged the Commission to “reject the Petitioners’ request for a rulemaking, and dismiss the petition as meritless.”

- [American Library Association](#) (“ALA”)
- [The Benton Foundation](#)
- [CVIN d.b.a. Vast Networks](#)
- [EducationSuperHighway](#)
- [INCOMPAS — The Internet and competitive networks association](#)
- [Infinity Communications & Consulting](#)
- [New America’s Open Technology Institute](#) et al
- [The School Superintendents Association](#) (“AASA”) and the Association of Educational Service Agencies (“AESA”)
- [Schools, Health & Libraries Broadband Coalition](#) (“SHLB”) et al¹
- [State E-Rate Coordinators’ Alliance](#) (“SECA”)
- [Uniti Fiber](#)

This will be an important proceeding to track. It should be noted that two of the existing Commissioners, Chairman Ajit Pai and Michael O’Rielly, now in the majority, had voted against the E-rate Modernization Orders in 2014. Commissioner O’Rielly, in particular, has been a vocal critic of “overbuilding” and is likely the one Commissioner most responsible for the Texas Carriers’ petition having been released for comment. Should the FCC proceed with a formal rulemaking on fiber deployment, the E-rate eligibility of dark and/or self-provisioned fiber will be called into question. Interested parties, not already on the record in this proceeding, should avail themselves of the reply comment period ending July 16th.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

¹ E-Rate Central, a SHLB comment signatory, firmly believes that the current competitive bidding E-rate rules must remain in force to assure that schools and libraries retain the ability to access broadband capacity in a timely and cost-effective manner.

- July 8 Form 486 deadline for FY 2018 funding committed in Wave 48. 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 49 | 07/15/2019 |
| Wave 50 | 07/22/2019 |
| Wave 51 | 07/26/2019 |
- Note 1: 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.
- Note 2: The first Form 486 deadline for FY 2019, covering funding committed in Waves 1-10, will be October 29, 2019.
- July 16 Deadline for submitting reply comments to the FCC ([DA 19-493](#)) on a [petition](#) filed by three Texas carriers to restrict the use of E-rate funds to build fiber networks in areas where fiber networks already exist (see a summary of the initial comments above).
- July 29 Extended deadline ([DA 19-628](#)) for submitting comments to the FCC’s NPRM ([FCC 19-46](#)) seeking comment on establishing a cap on total funding of the Universal Service Fund (“USF”) (see our newsletter of [June 3rd](#)). Reply comments are due August 26th.
- 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.
- September 16
– November 21 See USAC’s [2019 Training](#) webpage for a schedule of all USAC’s 2019 fall applicant and tribal training sessions.

FCC Decision Watch:

The FCC issued another set of “streamlined” precedent-based decisions ([DA 19-589](#)) on June 28th. Applicants facing similar problems as 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 last week’s decisions, the FCC:

1. Dismissed:
 - a. Three Requests for Review and/or Waiver deemed moot on which (a) invoices had been paid on all requested funding, or (b) the Application for Review had been withdrawn by the applicant.
2. Granted:
 - a. One Request for Review affirming that an applicant’s “requested service was within the scope of the contract and the approved funding request.”

- b. One Request for Waiver of a late-filed invoice deadline extension request related to FY 2013 funding affected by hurricanes Irma and Maria.
 - c. One Request for Review finding that a service provider's invoice had been filed in a timely manner albeit having been submitted before USAC had officially extended the invoice due date.
 - d. Thirty-three Requests for Waiver of the FY 2019 application window for Form 471s filed within 14 days of the deadline.
 - e. Four Requests for Review and/or Waiver involving Form 471 changes involving ministerial and/or clerical errors.
 - f. One Request for Review for services deemed received within the funding year despite being invoiced based on a billing statement dated prior to the start of the year.
3. Denied:
- a. One Request for Review finding that an applicant did not meet the statutory eligibility standard to be eligible for E-rate support.
 - b. One Request for Review for failure to satisfy the debt/Red Light Rule in a timely fashion. The FCC declined to reinstate applications initially denied before the outstanding debt was satisfied.
 - c. Six Requests for Waiver seeking invoice deadline extensions.
 - d. Twenty-three Requests for Waiver for late-filed Form 471s.
 - e. Two Requests for Waiver of late-filed appeals or waivers.

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