

E-Rate Central News for the Week of September 2, 2019

- Funding Status – FY 2019
- E-Rate Updates and Reminders
 - Upcoming E-Rate Dates
 - FCC Seeks Nominations for USAC Board
 - FCC Decision Watch
 - FCC Commissioner Again Questions E-Rate Competitive Bidding Rules
- USAC News Brief Dated August 30 – Invoicing FAQs

Funding Status – FY 2019

USAC released Wave 19 for FY 2019 on Thursday, August 29th. Funding totaled \$83.6 million including \$328.5 thousand for Nevada. On Sunday, coinciding with the FCC’s target date of September 1st for completing the review of all “workable” applications, USAC also released Wave 20 and Wave 22.¹ Total funding for Wave 20 was \$87.6 million including \$458.8 thousand for Nevada. Total funding for Wave 22 was \$11.8 million, no funding was received for Nevada in this Wave. Cumulative commitments through September 1st are \$1.66 billion including \$6.9 million for Nevada.

By our estimate, USAC has now released decisions on over 90% of the applications amounting to about 60% of the requested funding. With the summer deferral period scheduled to end Friday, USAC has approximately 2,500 workable applications remaining to be processed.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

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| September 3 | Deadline for submitting reply comments to the FCC’s Notice of Proposed Rulemaking (“NPRM”) on the future of Category 2 funding for FY 2020 and beyond (FCC 19-58). (See our newsletter of August 19th for a summary of the initial comments.) |
| September 3 | Deadline for submitting initial comments on the FCC’s draft Eligible Services List (“ESL”) for FY 2020 (DA 19-738). Reply comments are due September 18 th . (See our newsletter of August 5th .) |
| September 6 | Last day of the summer deferral period for FY 2019 application review. |

¹ Information on Wave 21 may be available later this week.

- September 6 Deadline for submitting USAC invoice appeals related to reissued BEAR Notification Letters. (See our [newsletter of July 15th](#).)
- September 11 Form 486 deadline for FY 2018 funding committed in Wave 55. 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 56 | N/A (no commitments) |
| Wave 57 | 10/03/2019 |
| Wave 58 | 10/11/2019 |
- 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.
- September 16 – November 21 See USAC’s [2019 Training](#) webpage for a schedule of all USAC 2019 fall applicant and tribal training sessions.
- September 23 Deadline for submitting comments to the USDA’s proposal to revise the categorical eligibility of families in the Supplemental Nutrition Assistance Program (“SNAP”) ([FNS-2018-0037](#)). (See our [newsletter of August 5th](#) for E-rate implications.)
- October 28 Due date for nominations for six positions on the USAC Board of Directors (see [DA 19-835](#)) including the slot reserved for a library representative and one of the two slots reserved for school representatives.

FCC Seeks Nominations for USAC Board:

The FCC issued a Public Notice ([DA 19-835](#)) seeking nominations for six positions on the USAC Board of Directors. Terms of the current Board members in these slots expire December 31, 2019. From an E-rate perspective, the two most important nominations are for the positions currently being held by Robert Bocher (an experienced E-rate consultant for the Wisconsin Department of Public Instruction), representing libraries, and Dr. Daniel A. Domenech (Executive Director of the American Association of School Administrators), representing schools. Messrs. Bocher and Domenech have served as effective Board members and may seek re-nomination. The other four nominations are for positions representing cable operators, commercial mobile radio providers, state consumer advocates, and incumbent local exchange carriers.

Nominations are due October 28, 2019.

FCC Decision Watch:

The FCC issued two decisions last week that further defined “extraordinary circumstances” as a basis for waiving the FCC’s invoice deadline rules. In one instance ([DA 19-837](#)), the FCC granted relief to a service provider who had missed an invoice deadline by three days following a recent acquisition by another company and an immediate problem experienced in integrating billing

systems. The other instance ([DA 19-838](#)) involved the accidental death of the owner of a very small service provider, and “the absence of a successor in the daily operations,” leading to the failure to file timely invoices for several funding requests.

In a third decision involving document retention rules ([DA 19-840](#)), the FCC granted relief in four situations in which it found that a failure to provide requested documentation was “more clerical in nature...than a substantive violation” and in a situation whereby “compliance can be verified in other ways.”

The FCC also issued another set of “streamlined” precedent-based decisions ([DA 19-850](#)) on August 29th. 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 streamlined decisions, the FCC:

1. Dismissed:
 - a. One Request for Review deemed moot as a result of subsequent actions taken by USAC.
 - b. One Petition for Reconsideration already fully considered and rejected.
2. Granted:
 - a. One Petition for Reconsideration of a ministerial and/or clerical error involving an FRN omitted from a Form 471 (but included on its source list).
 - b. Three Requests for Waiver of the application window for Form 471s filed within 14 days of the deadline. The FCC also granted waivers for three Form 471s for FY 2016 covered by the FCC’s previous *Pribilof* decision ([FCC 18-118](#), see our [newsletter of August 13, 2018](#)).
 - c. Two Requests for Review and/or Waiver for late-filed Form 486s.
 - d. Twelve Requests for Waiver involving Form 471 changes involving ministerial and/or clerical errors.
 - e. One Request for Waiver of a late-filed waiver request.
3. Denied:
 - a. Eight Requests for Waiver seeking invoice deadline extensions.
 - b. Thirty-six Requests for Waiver for late-filed Form 471s. In one case the FCC rejected an applicant’s excuse that an employee’s surgery caused the late filing noting that the applicant failed to demonstrate that the medical condition was unexpected.
 - c. One Request for Review relying on a Form 470 that did not seek bids on the types of E-rate services later requested.
 - d. Six Requests for Waiver of late-filed appeals or waivers.

FCC Commissioner Again Questions E-Rate Competitive Bidding Rules:

FCC Commissioner Michael O'Reilly has struck again. Commissioner O'Reilly has long been an opponent of the use of E-rate funds to build new fiber networks in rural areas already served by smaller telephone companies with existing fiber networks that were funded in part by other Universal Service Fund ("USF") programs.

Commissioner O'Reilly is understood to be the driving force behind last May's FCC proceeding ([DA 19-493](#)) seeking comments on a [petition](#) filed by three Texas carriers seeking to restrict the use of E-rate funds to overbuild the carriers' own networks. The petition sought to give the local carriers special opportunities to challenge competitively bid contract awards. As discussed in our [newsletter of July 22nd](#), the comments received from applicants, competitive service providers, and educational public service organizations strongly opposed this non-competitive approach. Earlier in the year, as discussed in our [newsletter of April 22nd](#), Commissioner O'Reilly had formally questioned USAC regarding the use of USF funds to overbuild existing carrier networks.

Last week, Commissioner O'Reilly sent a letter to the superintendent of the largest Arizona district in a regional consortium applying for E-rate funding for a new countywide fiber WAN not utilizing any local carrier plant. [Commissioner O'Reilly's letter](#) sought detailed information on the proposed project — an aggressive and highly unusual inquiry regarding an application currently under USAC review.

Our understanding of this situation is that the local carrier had previously submitted a bid on a 2018 RFP, for which the carrier proposed unacceptably high rates, and elected not to bid on the 2019 RFP. Commissioner O'Reilly's letter was likely touched off by an [ex parte meeting](#) at the FCC with the local carrier a week earlier.

USAC News Brief Dated August 30 – Invoicing FAQs

[USAC's Schools and Libraries News Brief of August 30, 2019](#), poses — and answers — the following invoicing questions:

- When do I need to inform USAC of the invoicing method (SPI or BEAR) chosen?
- How can the service provider determine which method will be used?
- How do I add a new person to submit invoices?
- How can I check to see if a service provider has filed a Form 473 ("SPAC")?
- How do I check to see if an applicant has filed a Form 486?
- How do I request an extension of the deadline to file an invoice?
- What is the deadline for filing an invoice deadline extension request?
- What can I do if I miss the deadline? (Note: USAC's answer is to file an FCC waiver; in reality there is little chance the FCC will approve such a waiver.)

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