

E-Rate Central News for the Week of November 4, 2019

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Funding Status – FY 2019

USAC released Wave 31 for FY 2019 on Thursday, October 31st. Funding totaled \$18.3 million, none for Nevada. Cumulative commitments through October 31st are \$1.91 billion including \$7.3 million for Nevada.

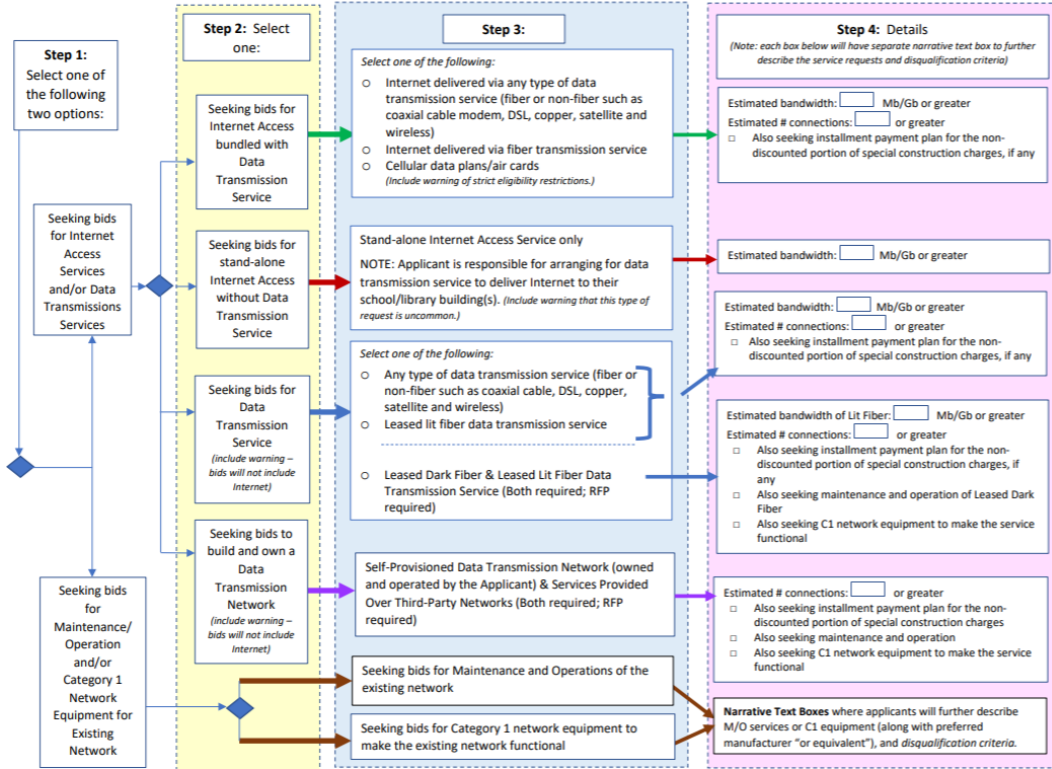
FCC Comments re. Form 470 Pull-down Menu Options

Initial comments due last week to the FCC’s Public Notice ([DA-986](#)) seeking suggestions for improving the Form 470 drop-down menus drew a limited response. Form 470 menus, particularly for Category 1 services, have been a source of confusion for many applicants since FY 2016. Inadvertent errors made selecting fiber vs. non-fiber services and/or bundled vs. unbundled Internet services have required FCC intervention to avoid Form 471 application denials — a situation likely to be repeated for FY 2020 since it uses the same Form 470 version. The objective of the FCC’s Public Notice is to redesign the Form 470 for FY 2021 to avoid these problems going forward. The Public Notice not only proposed changes to both Category 1 and Category 2 menu options but set forth multi-step “flow charts” of sequential selection choices that could be implemented within EPC for an applicant filing a Form 470.

Comments submitted by [EducationSuperHighway](#), [CenturyLink](#), and [USTelecom](#) addressed elements of the problem. The most complete and detailed response, pre-vetted through a number of parties, was submitted by the [State E-Rate Coordinators’ Alliance](#) (“SECA”). SECA’s comments built upon the FCC’s flow chart approach and suggested adding clarifying language and reorganizing the filing steps to eliminate confusion by applicants and to provide more precise bidding information for service providers. The two resulting flow charts, which we recommend be viewed along with the descriptive comments, are shown below.

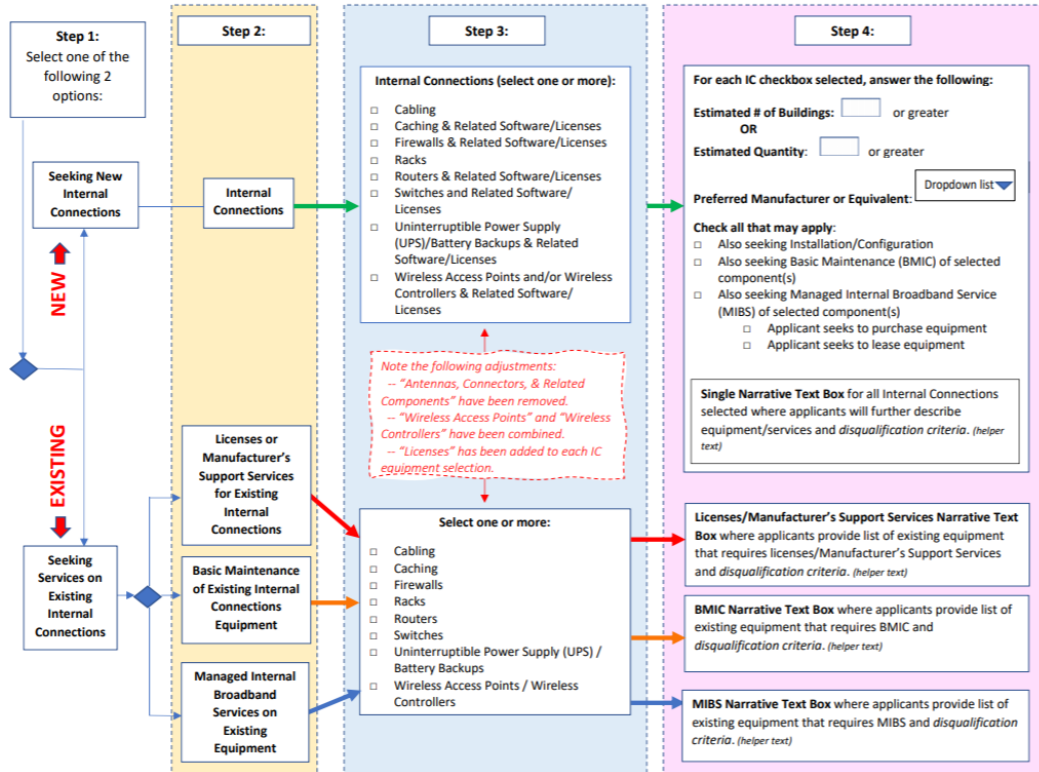
SECA Recommended Category 1 Form 470 Flow Chart

APPENDIX 1 (10/31/2019)



SECA Recommended Category 2 Form 470 Flow Chart

APPENDIX 2 (10/31/2019)



Reply comments on the Form 470 redesign are due November 15th.
FCC Proposals re. National Security Threats

The FCC publicly circulated a proposed Report and Order, Notice of Proposed Rulemaking, and Order ([FCC-CIRC1911-01](#)), scheduled to be voted upon at the FCC's November 19th open meeting, addressing issues of "National Security Threats to the Communications Supply Chain Through FCC Programs." (For background, see our [newsletter of April 2, 2018](#)). As summarized in an attached fact sheet:

What the Report and Order Would Do:

- Adopt a rule that prospectively prohibits the use of USF funds to purchase or obtain any equipment or services produced or provided by a company posing a national security threat to the integrity of communications networks or the communications supply chain ("covered company").
- Initially designate Huawei Technologies Company and ZTE Corporation as covered companies for purposes of this rule and establish a process for designating additional covered companies in the future.

What the Further Notice Would Do:

- Propose to require USF recipients that are eligible telecommunications carriers (ETCs) to remove existing equipment and services produced or provided by covered companies from their networks.
- Propose to establish a reimbursement program to offset reasonable transition costs and make the requirement that ETCs remove covered equipment and services contingent on the availability of a funded reimbursement program.

What the Order Would Do:

- Adopt an information collection to help assess the extent to which ETCs have Huawei and ZTE equipment in their networks as well as the costs associated with removing and replacing such equipment.

The primary impact of the new rules will be on the eligible telecommunications carriers receiving USF support through the High Cost/Connect America fund, particularly rural wireless carriers who have been major customers of economical Huawei equipment.

From an E-rate perspective, the most important aspects of the proposed rules are as expressed in the following paragraph:

77. We next clarify how our rule shall apply for E-Rate and Rural Health Care recipients. Specifically, unlike other USF recipients, E-Rate and Rural Health Care recipients apply for funding to cover specific services and equipment on coordinated basis, with funding tied to a particular funding year. To ensure prospective only effect, the rule we adopt will apply to all funding years that start after the designation of a covered company (so we would expect the rule prohibiting purchases from Huawei and ZTE that we initially designate today to apply for Funding Year 2020, starting July 1, 2020). This provides a common administrative deadline for applicants and USAC and should allow sufficient time for E-Rate and Rural Health Care applicants to be trained to include service provider security compliance as a necessary factor in the selection of providers for the forthcoming funding year.¹⁹¹ We believe that this decision strikes the best balance for promoting national security in a way that is practicable for E-Rate and Rural Health Care participants. For earlier funding years, we direct USAC to process Operational Service Provider Identification Number (SPIN) changes and service substitutions to swap out non-compliant equipment for compliant equipment upon a showing that the equipment not yet installed would be prohibited under our rule.¹⁹²

As a practical aspect, prohibitions on Huawei and ZTE equipment are unlikely to affect many E-rate applicants. The USA subsidiaries of both companies have SPINs, but neither has been directly designated as a service provider in an approved E-rate application. Indirectly, however, some Huawei equipment has been funded when incorporated in offerings of other providers. USAC data, for example, shows approximately \$2.3 million in Huawei equipment and services —

primarily switches and wireless equipment — having been requested by 24 applicants in their FY 2016-2018 applications. What is more difficult to determine is the extent to which Huawei and ZTE components or sub-parts — also covered by the proposed rules — are incorporated in finished products assembled by other manufacturers.

Applicants seeking to protect themselves under the prospective national security threat rules may wish to include certification requirements in their bids and/or contracts prohibiting the inclusion of any products or components from Huawei, ZTE, or any other “covered company” designated by the FCC.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

November 4	Form 486 deadline for FY 2019 funding committed in Wave 11. 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 12 11/08/2019
	Wave 13 11/15/2019
	Wave 14 11/22/2019
	Wave 15 11/29/2019
November 13 – November 21	Remaining USAC 2019 fall applicant/tribal training sessions (see USAC’s 2019 Training webpage for a schedule of the sessions).

Nominations for the USAC Board:

Nominations to fill six expiring-term positions on the USAC board were due for FCC consideration last Monday — one for a position representing libraries and one of two positions representing schools (see [DA 19-835](#)).

The nomination for the library position, filed by the [American Library Association](#) (“ALA”), and supported by numerous other parties, was for Amber Gregory. Ms. Gregory serves as the Manager of E-Rate Services for the Arkansas State Library and currently serves as Chair of the ALA’s E-rate Task Force. We fully expect the FCC to appoint Ms. Gregory to the Board replacing Robert Bocher, a staunch E-rate supporter, who is completing his second term.

Three nominations were received for the school position, all with impressive credentials. They are:

- [Daniel Domenech](#), the Executive Director of The School Superintendents Association (“AASA”), and current USAC Board member now serving as the Chair of the Schools & Libraries Committee. Dr. Domenech’s nomination was proposed by AASA with support from a number of organizations including ALA and the Consortium for School Networking (“CoSN”).
- [Julia Benincosa Legg](#), the State E-rate Coordinator for the West Virginia Department of Education. Ms. Legg was nominated by the State Educational Technology Directors Association (“SETDA”).

- [Laura Hunter](#), the Chief Operating Officer of the Utah Education and Telehealth Network. Ms. Hunter was nominated by America’s Public Television Stations (“APTS”).

FCC Decision Watch:

The FCC also issued another set of “streamlined” precedent-based decisions ([DA 19-1120](#)) on September 30th. 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. Two Requests for Waiver deemed moot as a result of subsequent actions taken by USAC or the FCC.
- b. Two Requests for Waiver for failure to comply with the Commission’s basic filing requirements.
- c. Five Petitions for Reconsideration already fully considered and rejected.
- d. Three Petitions for Reconsideration filed beyond the 30-day deadline set for reconsideration requests. The FCC noted that one Petition had been filed only one-day too late. However, unlike the 60-day appeal and waiver deadlines on which the FCC has the authority to grant a degree of leniency, 30 days is a statutory defined deadline for Petitions for Reconsideration and cannot be waived by the FCC.

2. Granted:

- a. Two Petitions for Reconsideration for late Form 471s filed within a “reasonable period.” Both Form 471 filing delays were the result of funding and/or contractual delays associated with new building construction.
- b. Three Requests for Waiver of the application window for Form 471s filed within 14 days of the deadline.
- c. One Request for Review for a late-filed Form 486.
- d. Six Requests for Review and/or Waiver involving ministerial and/or clerical errors.
- e. One Request for Review involving the payment of an applicant’s non-discounted share to a third party who, in turn, did remit the payment to the service provider.
- f. Six Requests for Waiver of late-filed waiver requests including one attributed to a USAC error.

3. Denied:

- a. Six Requests for Review and/or Waiver regarding incorrect service categories posted in Form 470s. A seventh Request for Waiver was granted in part for one FRN, correctly posted on a Form 470 but incorrectly filed on a Form 471, and denied in part for a second FRN that was incorrectly posted on a Form 470.
- b. Eleven Requests for Waiver seeking invoice deadline extensions.
- c. Fourteen Requests for Waiver for late-filed Form 471s.

- d. Seven Requests for Waiver of late-filed appeals or waivers.
- e. Two Requests for Review and/or Waiver, both for the same service provider and applicant, for “improper service provider involvement” in the competitive bidding process. This was a unique situation dating back to 2005 involving a relationship between an educational service agency and a telecommunications partnership formed to provide WAN services across 3 rural counties.

USAC News Brief Dated November 1 – Missed October Deadlines

[USAC’s Schools and Libraries News Brief of November 1, 2019](#), is entitled “What to Do if You Missed Your October Deadline” and discusses available corrective options. In brief:

- October 28 Deadline for submitting FY 2018 invoices for recurring services or submitting a request for extending that invoice deadline for an additional 120 days.
 - If either of those deadlines was missed, then the only option is to request a waiver from the FCC.
 - If a timely invoice was filed, but is denied or reduced by USAC in error, the remedy is to file an appeal with USAC.

- October 29 Deadline for submitting Form 486s for FY 2019 funding approved in Waves 1-10.
 - If a Form 486 deadline was missed, the applicant should file their Form 486 as soon as possible. In the meantime, they should track their EPC News Feed for an FCC Form 486 Urgent Reminder Letter that will give them another 15 days to submit the Form 486 without penalty.

- October 31 Nominal deadline for adding “business type” information to the Form 498.
 - Applicants will receive emails or calls urging them to update their Form 498s as soon as possible.
 - The News Brief warns that applicants without updated Form 498s may experience invoice processing delays.

Last week’s News Brief also discusses updates to the USAC website that will be launched next Monday.

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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