Nevada E-Rate Weekly News	Weekly E-Rate Newsletter Vol. 3, No. 48 December 2, 2019

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Funding Status – FY 2019

USAC released Wave 35 for FY 2019 on Wednesday, November 27th. Funding totaled $9.66 million – none for Nevada. Cumulative commitments through November 27th are $1.98 billion including $7.3 million for Nevada.

FCC Orders and NPRMs

FCC Releases USF National Security Rules Order and NPRM:

Following its adoption at the FCC's open meeting the previous Friday, the FCC released the full text of the Order (FCC 19-121) barring the use of Universal Service Fund ("USF") subsidies to fund equipment, components, and services from "covered" companies deemed to provide a national security risk including, at the outset, Huawei and ZTE.

Telecommunications carriers receiving USF funds through the Connect America program — particularly rural wireless carriers planning to construct new 5G cellular networks — will be the most directly affected by the new Order. However, as discussed in our newsletters of November 4th and November 25th, the prohibition on the use of USF funding applies to ALL Universal Service programs, including E-rate.

From an E-rate perspective, applicant use of Huawei and ZTE equipment has been limited. Specifically:

1. The U.S. subsidiaries of Huawei and ZTE both have E-rate SPINs — Huawei Enterprises USA INC, 143036885, and ZTE USA Inc, 143044152 — but neither has ever been listed as a service provider on an E-rate application.

2. Huawei equipment has been sourced through other service providers. For FY 2016-2018, USAC records indicate that E-rate applicants have used a little over $2 million in Huawei-branded equipment and services.
3. No records exist on the use of Huawei and ZTE components within other networking hardware, end-user equipment, or of Huawei and ZTE equipment that may have been "white-labeled" under a third party's brand name.

Going forward, it will be incumbent upon E-rate applicants to assure, at least through service provider certifications and/or contractual restrictions, that no funding is requested for Huawei and ZTE equipment and services. The Order tasks the Wireline Competition Bureau and USAC with revising "its information collection and audit procedures to ensure the reporting of USF expenditures in a manner that will allow efficient oversight and thorough compliance." Although many see this as solely a service provider certification and/or compliance issue, the Order explicitly recognizes that violations could be committed by schools, libraries, or consortia.

The new rules will become effective immediately upon publication in the *Federal Register*. The FCC has specifically stated that they will prohibit funding for Huawei and ZTE equipment and services as of FY 2020 including the new installation in FY 2020 of equipment procured under earlier multi-year contracts. Applicants who have yet to file Form 470s and RFPs for FY 2020 may want to include language disqualifying any bidders not willing to certify compliance with the new rules.

The FCC adopted a Further Notice of Proposed Rulemaking ("NPRM") requiring the removal and replacement of existing equipment made by these covered companies and installed by telecommunications carriers. The FCC does not propose to subject other USF recipients such as schools and libraries to the removal requirement but does seek comments on the proposed E-rate (and rural health care) exclusion. Comments on the NPRM are due 30 days after publication in the *Federal Register*, with reply comments due another 30 days thereafter.

FCC Releases New Suspension and Debarment NPRM:

The FCC initiated a second NPRM (FCC 19-120) last week to adopt "new procedures to provide the agency with broader and more flexible authority to promptly remove bad actors from participation" in the USF and other FCC programs. USF programs currently operate under FCC-specific suspension and debarment rules covering a rather narrow range of conduct effective only in cases of civil judgements or convictions. The proposed new rules would cover a broader range of misconduct and would give the FCC more flexibility to act expeditiously. Under the proposed order, the FCC would participate in a government-wide mechanism with suspension and debarment reciprocity between other federal agencies, most of whom have already adopted OMB-developed Guidelines. This would require program participants to verify that any entity with which they intend to conduct business is not excluded from participating in other federal programs.

The Guidelines for suspension and debarment differ in several ways from the FCC's current rules. In particular, the Guidelines:

1. Differ in scope and reach. The FCC's current rules apply only to USF programs. The new rules would cover all non-procurement transactions including subsidies, grants, loans, and other "payments" reaching further down the supply chain.
2. Provide greater discretion to the agencies to determine which entity to debar and for what misconduct. They do not require a prior court judgement or conviction.
3. Provide greater flexibility in fashioning the terms of a suspension or debarment and whether *immediate action* is required to protect the public interest. Debarments can become effective following a 30-day notice to the offending party. E-rate applicants using services by a newly debarred service provider may continue to use that service but will have an option to discontinue the excluded party's service and find an alternative provider.
4. Establish a government-wide System for Award Management Exclusions ("SAM Exclusion") maintained by the General Services Administration ("GSA").
5. Give agencies some discretion to designate "primary" versus "lower" tier participants with different disclosure requirements. For E-rate purposes, schools, libraries, consortia, and Form 471 service providers would be primary tier participants; contractor, subcontractors, suppliers, and consultants would be lower tier participants.

One of the potential benefits of adopting the more flexible Guidelines for suspensions and debarments (including a lesser "limited denial of participation" status) may be greater transparency in the handling of suspected wrongdoing. Too often we have witnessed applications disappearing into "black holes" with no explanation from USAC about what are presumably pending undisclosed investigations by USAC, the FCC, or the Justice Department. Giving USAC and the FCC authority to more easily suspend or debar applicants and service providers (or even consultants) may bring these concerns to light more judiciously with concurrent opportunities for the affected parties to respond.

Comments on the NPRM are due 30 days after publication in the *Federal Register*, with reply comments due another 30 days thereafter.

Still No FCC Action on Category 2 Rules or ESL for FY 2020:

Consider the following dates, then ask "When will the FCC act?"

February 11	The FCC releases the Wireline Competition Bureau's report (DA 19-71) summarizing the success of the Category 2 five-year budgeting process and recommending its continuance.
July 9	The FCC releases the Category 2 NPRM (FCC 19-58) requesting comments.
August 2	The FCC releases the proposed Eligible Services List ("ESL") for FY 2020 (DA 19-738) requesting comments.
September 3	Close of the reply comment period for the Category 2 NPRM.
September 18	Close of the reply comment period for the proposed ESL.

Now it's December. Ideally, USAC would open the FY 2020 Form 471 application window by mid-January and close it before the end of March. Even if the FCC acts this week — which we hope — applicants would have less than 4 months to complete their competitive bidding cycles before a late March application deadline. That assumes that the FCC waives its own requirement to issue next year's ESL at least 60 days before the opening of the application window.

So we ask again: "When will the FCC act?" Hopefully this week.

E-Rate Updates and Reminders

Upcoming E-Rate Dates:

December 6	Form 486 deadline for FY 2019 funding committed in Wave 16. 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 17 12/13/2019 Wave 18 12/20/2019 Wave 19 12/27/2019 Wave 20 12/30/2019
December 11	USAC webinar "Preparing for FY 2020."
January 10?	Estimated end date of the administrative window for FY 2020, the period in which applicants can — and should — update entity data in their EPC accounts. Once the administrative window is closed, EPC entity data will be locked for the duration of the FY 2020 application window. For details, see USAC's Schools and Libraries News Brief of October 11, 2019.

FCC Decision Watch:

The FCC also issued another set of "streamlined" precedent-based decisions (DA 19-1194) on November 27th. Applicants facing similar problems as those 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 Review deemed moot as a result of subsequent actions taken by USAC or the FCC.
2. Granted:
   a. One Request for Waiver for an applicant deemed to have conducted a fair and open competitive bidding process even though the signed contract was not submitted to the school board as required by local rules.
   b. One Request for Review regarding an eligible Head Start entity.

   c. One Request for Waiver for an invoice deadline extension under extraordinary circumstances.
   d. One Request for Waiver for a late-filed Form 471 due to actions beyond the applicant's control.
   e. Four Requests for Review and/or Waiver involving ministerial and/or clerical errors.
   f. Two Requests for Waiver for appeals deemed to have been filed with USAC within the 60-day appeal window.
   g. Three Requests for Waiver of late-filed waiver requests filed within "a reasonable time."
3. Denied:
   a. One Request for Waiver regarding incorrect service categories posted in a Form 470.
   b. One Request for Waiver seeking an invoice deadline extension.
   c. Five Requests for Waiver for late-filed Form 471s.
   d. Five Requests for Waiver of late-filed appeals or waivers.
   e. Three Requests for Review and/or Waiver involving improper service provider involvement in the competitive bidding process (all related to older applications in which a service provider served as the contact on the Form 470 or was involved in the preparation of the technology plan).
   f. One Request for Review for an ineligible service.

USAC News Brief – None for the Thanksgiving Week

USAC did not issue a Schools and Libraries Program News Brief on Friday, November 29th, due to the Thanksgiving holiday.

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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