

USF Tracker - March 27, 2020

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Commentary

On March 10, Kelley Drye held its Annual webinar on the [state of the Universal Service Fund](#). We gave an overview of trends in the Fund, discussed the importance of creating an ethics and compliance plan ahead of stringent new suspension and debarment rules that are in the works and predicted the one big thing that would be driving policy discussions in each of the funds. Oh how the world has changed since that time. Only a few days after our webinar, restrictions to combat the spread of new coronavirus 19 (COVID-19) began to escalate, with schools and businesses closing, “social distancing” becoming a thing and the FCC and other instruments of government shifting to remote environments. Our report this month is full of emergency actions taken by the FCC to respond to the disruptions the COVID-19 pandemic has caused, including waivers of key rules, extensions of deadlines and interim actions to enable our communications networks to handle the increased use of conferencing and collaboration tools, distance learning and telehealth applications. Read below to see how each program has been affected. We also encourage you to consult the [Kelley Drye COVID-19 Resource Center](#) for all of our content on how the pandemic is impacting businesses and the law.

Until this subsides, we hope you will stay safe, follow CDC guidelines and carry on as best you can under our temporary new normal. When we get to the other side of this pandemic, we think we will be proud of how the communications industry was ready for the challenges and we will be surprised at how many of the new ways we’re operating become the standard for non-crisis operations as well. Best wishes from Kelley Drye’s Communications Practice Group!

Contributions

- On March 27, The Wireline Competition Bureau seeks comment on a request for waiver filed by Securus Technologies, LLC (Securus). Securus requests an immediate waiver from the application of Universal Service Fund (USF) contribution obligations as set forth in Section 54.706 of the Commission’s rules with respect to inmate calling services (ICS) providers on an interim basis.

Lifeline

- On March 17, the Wireline Competition Bureau issued an [order](#) (DA 20-285) waiving the Lifeline program’s recertification and reverification requirements (sections 54.405(e)(4) and 54.410(f) of the Commission’s rules) until May 16, 2020. This FCC order follows several state orders and decisions prohibiting or discouraging public utilities from disconnecting consumer’s communications services. The FCC order also postpones the March 26, 2020 effective date of the requirement under section 54.406(a) of the Commission’s rules that eligible

telecommunications carriers must require their enrollment representatives to register with USAC to May 25, 2020. However, the order does not waive the de-enrollment requirement for non-usage of the Lifeline service, setting up a conflict with at least one state public utility commission non-disconnection order.

High Cost/Connect America Fund (CAF)

- On March 20, the Wireline Competition Bureau, in coordination with the Rural Broadband Auctions Task Force and the Office of Economics and Analytics, [provided guidance](#) to applicants for and recipients of USF support allocated through a competitive bidding mechanism regarding the eligibility of non-U.S. banks to issue letters of credit. Under the guidance, a non-U.S. bank that has a branch office located in New York City, New York and will accept a letter of credit draw certificate from the Universal Service Administrative Company (USAC) via overnight courier, in addition to in-person presentations, will be considered qualified to issue letters of credit if the bank also meets the Commission's other non-U.S. bank eligibility requirements.
- On March 17, the Wireline Competition Bureau, in coordination with The Rural Broadband Auctions Task Force and the Office of Economics and Analytics, [announced the release](#) of the preliminary list of census blocks and a map of areas that have been deemed initially eligible for the Rural Digital Opportunity Fund Phase I auction.
- On March 17, the Wireline Competition Bureau issued a Public Notice seeking comment on a request for expedited waiver filed by Skybeam, LLC requesting that the Commission waive the letter of credit rules for rural broadband experiments support recipients and instead allow Skybeam to comply with the recently adopted letter of credit provisions of section 54.804(c).
- On March 16, a CAF II Auction supply was [authorized](#) for a tribal provider in Idaho.
- On March 13, The Wireline Competition Bureau issued a Public Notice seeking comment on a Request for Waiver and Petition for Rulemaking filed by the Connect America Fund Phase II Coalition.
- On March 2, the FCC [proposed bidding procedures](#) for this year's \$16 billion rural broadband auction.
- On March 2, two [petitions were granted](#) for waiver of the letter of credit commitment letter deadline for the Connect America Fund Phase II auction (Auction 903).

Schools and Libraries (E-Rate)

- On March 23, the Wireline Competition Bureau [reminded schools and libraries](#) that are closed due to the coronavirus COVID-19 outbreak that they are permitted to allow the general public to use E-Rate-supported Wi-Fi networks while on the school's campus or library property.
- On March 18, the Wireline Competition Bureau released an [order](#) (DA 20-290) waiving gift rules in the Rural Health Care and E-Rate programs to “enable service providers to offer, and RHC and E-Rate program participants to solicit and accept, improved broadband connections or equipment for telehealth or remote learning.” The order is intended to allow schools, libraries and rural healthcare providers to meet anticipated short-term demands outside of the restrictions of the programs. By waiving the gift rules, applicants are free to accept – and service providers are free to offer – arrangements that would otherwise qualify as gifts. For example, a service provider might make significantly discounted service available, might waive data caps or might provide free (or loaner) equipment to meet additional demand, all of which might have disqualified the service provider from future E-Rate or RHC bidding. Under the order, the gift rules (47 C.F.R. sections 54.503(d)(1), 54.603(b), 54.611(b)(2), 54.622(h)(1), 54.623(a)(1)(vi), 54.627(c)(3)(ii)(H), and 54.627(d)(1)(ii)(F)) will be waived through September 30, 2020.
- On March 13, the Wireline Competition Bureau issued a [public notice](#) (DA 20-273) directing USAC to extend the deadline for E-Rate applicants to submit their Funding Year 2020 FCC Form 471 applications to April 29, 2020. Additionally, the public notice directed USAC to automatically provide all applicants with a 14-day extension for any Program Integrity Assurance (PIA) requests.
- On March 12, the Wireline Competition Bureau announced E-Rate and RHC programs' [inflation-based caps](#) for funding year 2020.
- On March 5, the Telecommunications Access Policy Division [addressed 12 requests](#) seeking review of decisions by USAC or a waiver of the FCC's rules concerning requests by E-Rate program funding recipients to change their vendors through an operational SPIN change. The Division granted five requests where the applicant demonstrated a “legitimate reason” to change service providers but denied seven requests that failed to justify the change.

Rural Health Care

- On March 26, the Wireline Competition Bureau [waived](#) a number of deadlines relating to the Rural Health Care program. The Bureau extended until June 30, 2020 the filing deadline for FY 2020 RHC requests, automatically extended responses to USAC requests for information from 14 days to 28 days and extended by an additional 60 days any appeal and waiver deadlines for all deadlines occurring between March 11, 2020 to September 30, 2020. In addition, in the Healthcare Connect Fund, the Bureau extended a service provider's invoice deadlines by 180 days and extended by one year the service delivery date for FY 2019 requests. Finally, for both programs, the Bureau permitted applicants to extend evergreen contracts into FY 2020 in two

instances: (1) where the initial contract expired in FY 2019 (waiving the requirement that a contract include an option to extend) and (2) where the evergreen period expired in 2019. In both instances, a one year extension of the contract is permitted without the requirement to conduct competitive bidding.

- On March 12, the Telecommunications Access Policy Division denied a request for waiver from Finger Lakes Community Health on behalf of NY Community Broadband Partnership of the three-year limitation on a multi-year funding commitment for a FY15 funding commitment in the RHC Program's HCF Program.
- On March 12, the Wireline Competition Bureau announced E-Rate and RHC programs' [inflation-based caps](#) for funding year 2020.
- On March 4, the Wireline Competition Bureau sought comment on an Application for Review filed by ENA of a Bureau order upholding USAC's denial of funding in a FY 2016 Telecom Program application. Comments are due April 3, with reply comments due April 20.
- On March 4, the Wireline Competition Bureau sought comment on an Application for Review filed by Tanana Chiefs Conference of a Bureau order upholding USAC's denial of funding of three requests for funding submitted after the FY 2016 Telecom Program application deadline. Comments are due April 3, with reply comments due April 20.