



April 27, 2017

Chairman Ajit Pai
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: WC Dockets 10-90, 16-106, 11-42, 13-184

Dear Chairman Pai:

I am writing to express our appreciation to you for acknowledging the difficulties with the E-rate application process in your letter to the Universal Service Administrative Company (USAC) on April 17. The E-rate community within the Schools, Health & Libraries Broadband (SHLB) Coalition has been struggling with the E-rate Productivity Center (EPC) portal and delays in the application process for some time, and we are pleased that these issues are receiving attention at the highest levels.

In that spirit, I also write to convey our concern about the recent set of inquiries sent by USAC on April 14, 2017 to over 100 E-rate applicants seeking support for special construction costs for fiber installation. Both the timing and the substance of these questions have created great uncertainty among E-rate fiber applicants. This uncertainty is likely to discourage schools and libraries from seeking the high-capacity broadband infrastructure that they need, especially in rural markets, and could significantly increase schools' and libraries' broadband costs.

The questions ask for information that is irrelevant to determining whether an application meets E-rate requirements and suggests new limitations on funding that were not contained in the 2014 E-rate Modernization Orders, the FCC's rules, or USAC's training materials. This new line of inquiry comes after applicants have followed all E-rate procurement rules and guidance, completed the already exhaustive Program Integrity Assurance (PIA) Review process, completed their budgeting processes and, in some cases, already signed contracts and begun to deploy their networks. The request for new and detailed information also adds more delay to an already extremely delayed process. In addition, we are concerned that this latest inquiry may result in attempts—using new guidance previously unknown to applicants—to recoup funds for projects already approved and for projects where the special construction of fiber is already underway.

For instance, the questions ask for information about the identity of non-E-rate parties who might use additional fiber strands, even though this information is unnecessary to determine whether or not the special construction is cost-effective for schools and libraries. Furthermore, the questions seem to suggest that a new and different cost allocation methodology must be used when the special construction includes both E-rate eligible and non-eligible fiber strands. Until this point, applicants were advised that they were required only to cost allocate out the incremental costs of any unused excess fiber strands being installed by the vendors, in addition to any increased incremental deployment costs, if any. The USAC slide presentation says that, after allocating out the cost of the excess fiber strands, “all other special construction costs would be fully eligible.”¹ This guidance was disseminated by USAC and was also used by FCC staff during nationwide meetings conducted with numerous individual state officials. E-rate applicants and service providers relied on this guidance in conducting their competitive procurements and many of them entered into multi-year contracts for fiber services.

We respectfully request that the existing guidance provided to the applicant community (and that continues to be displayed on the USAC website)² should be honored for all Funding Year 2016 and 2017 E-rate fiber based funding requests so that applicants can move forward to deploy their much-needed broadband services. Going forward, we ask the FCC and USAC to re-confirm in writing that, if no incremental special construction costs are incurred due to the installation of unused excess fiber, then all special construction charges are E-rate eligible.

The 2014 E-rate Modernization Orders introduced additional fiber and wireless service options that have already brought substantial benefits to schools and libraries. Hundreds of schools and libraries have applied for funding for fiber-based services (both leased lit and dark fiber services) and, in far more limited situations, they have requested funding for the self-provisioning option. Applicants are obtaining much higher bandwidth at lower prices than they were able to achieve in the past, and the new fiber rules are allowing the installation of fiber to areas of the country that were previously unserved. Many other applicants were able to obtain significant price reductions for lit fiber services by leveraging the competitive choices offered by dark fiber or self-provisioned fiber. In addition and importantly, the 2014 Orders forged a path for states to contribute matching funds to enable schools and libraries to take advantage of the new special construction opportunities to meet their critical needs. According to the USAC website, at least eleven states have appropriated funding for special construction of fiber to schools and libraries; these state plans could be severely impacted by the new cost allocation approach that is suggested by the new USAC questions.³

¹ See slide #22 of the presentation located at <http://www.usac.org/res/documents/SL/training/2015/Applicant-Training-05-Fiber-Options.pdf>.

² Id.

³ See. <http://www.usac.org/sl/applicants/beforeyoubegin/state-matching-provision.aspx>.

We encourage the FCC and USAC to maintain the existing policies adopted in 2014 that promote competition and cost-effective fiber options for schools and libraries. We are seeking to maintain an orderly and transparent process for applicants who follow the rules. Placing new limits on special construction options even when it is the most cost-effective option would cause E-rate disbursements to rise, and cause consumers to pay a higher contribution on their phone bills. It would not be fair to applicants to change the guidance to applicants in mid-stream or after projects have already been funded, or to subject applicants to additional cost allocation requirements that were not defined or known during the competitive bidding process. Most important, it would not serve the interests of the country if students and library patrons are not able to receive the broadband connectivity or develop the broadband skills that they so sorely need.

Again, we appreciate your efforts to improve the operations of the E-rate program, and we look forward to working with you to resolve these concerns as soon as possible. Please feel free to contact me directly if you have any questions about this letter. I can be reached at jwindhausen@shlb.org or by phone at (202) 256-9616.

Sincerely,



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cc: Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Kris Monteith, Acting Bureau Chief, Wireline Competition Bureau
Chris Henderson, CEO, USAC
Craig Davis, Vice President, Schools and Libraries Program, USAC
Dr. Daniel Domenech, Chair, Schools and Libraries Committee, USAC Board

Eligibility of Products and Services – Leased Lit Fiber or Leased Dark Fiber

Issue

USAC has some additional questions regarding your special construction funding request.

What is the issue?

FRN requests support for special construction related to leased lit fiber or leased dark fiber. E-rate funding is only available for eligible schools, libraries, and consortia made up of eligible schools and libraries, to purchase eligible services that will be used for an eligible educational purpose. E-rate supported services may not be resold. In addition, special construction charges related to the installation of new fiber are only eligible for E-rate support if the fiber is lit within the same funding year as the funding request (i.e., for fiber strands lit by June 30). To confirm compliance with these rules, we need to verify the scope of the fiber installation associated with the above-referenced FRNs, when the fiber will be lit, how the fiber will be used, and whether any fiber installed will be used at any time by a party other than the applicant.

Please read all of the questions, descriptions, and requests below. Please give enough detail, insight, and clarity to help the reviewers fully understand your specific situation.

Check the boxes for statements that apply, and where applicable, type the information requested into the text boxes. If your information is too detailed for the text box, or if you need to provide additional documentation, click “Browse” to upload relevant files or documentation.

Question(s)

Please answer **all** of the following questions and/or provide the documentation requested. For all documentation attached please identify which question it corresponds to.

#	Questions	Response (Required)
1	<p>For FRN <Insert FRN> please indicate the total number of fiber strands that will be installed at the time of construction.</p> <p>Note 1: By “total number of fiber strands,” we mean the total number of strands installed as part of the special construction build, irrespective of whether the strands: (a) will be lit for the applicant’s use or a potential other purpose; (b) will be lit this funding year or a future funding year; (c) have been cost-allocated out of the funding request; or (d) were not included in the one-time charges quoted to the applicant for the special construction project in the first instance.</p> <p>Note 2: If you do not have access to this information, please contact your service provider to request it.</p>	
2	<p>Of the total number of strands identified in response to Question 1, how many of the strands will be installed for the applicant’s exclusive use <u>and</u> will be lit within this funding year?</p> <p>Note: For the purpose of the questions in this document,</p>	

	<p>“applicant” refers to an applicant’s eligible schools and/or libraries. It does not apply to members of a consortium that are ineligible for E-rate support.</p>	
2(a)	<p>How many recipients of service will be served by the strands identified in response to Question 2?</p> <p>Note: Please state whether multiple recipients of service are located in one building and will be served by the same set of fiber strands.</p>	
2(b)	<p>What will be the lit date for the fiber strands identified in response to Question 2 (if different segments of the build will be lit at different times prior to June 30, provide the latest lit date)?</p>	<p>____/____/____</p>
3	<p>Enter the total number of remaining strands here [Answer to Q1 – Answer to Q2 = Answer to Q3] (“Excess Fiber Strands”).</p> <p>If the response to this question is zero (0), you may disregard the remaining questions in this document. Otherwise, proceed to Question 4.</p>	
4	<p>Will <u>ALL</u> of the Excess Fiber Strands installed in your project be specifically for the applicant’s exclusive future use (e.g., anticipated growth in bandwidth requirements or future expansion)?</p> <p>If yes, proceed to Question 4(a). If no, proceed to Question 6.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
4(a)	<p>Will all of the Excess Fiber Strands installed for the applicant’s exclusive future use remain dormant (dark) until lit for the applicant’s exclusive use during a future funding year (i.e., no other party will use the Excess Fiber Strands between the time they are installed and the time the applicant is ready to use them in the future)?</p> <p>If yes, proceed to Question 4(b). If no, proceed to Question 7.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
4(b)	<p>Have the Excess Fiber Strands been cost-allocated out of the special construction FRN?</p> <p>If yes, proceed to Question 4(c). If no, proceed to Question 5.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
4(c)	<p>Please state the amount cost-allocated out of the special construction FRN and provide documents showing the basis for the cost-allocation. If your documents do not</p>	

	<p>delineate specific costs of fiber installation, explain the tangible basis for the cost-allocation provided. Please contact the service provider for any additional information required to respond to this question.</p> <p>After doing so, you may disregard the remaining questions in this document. You may be contacted in a separate communication regarding your responses to these questions.</p>		
5	<p>An applicant may install Excess Fiber Strands that will not be lit within the same funding year as the funding request if: (i) the strands are installed exclusively for the applicant’s future bandwidth needs; and (ii) the strands will remain dormant until lit for the applicant’s exclusive future use. The cost of such Excess Fiber Strands must be allocated out of the relevant special construction FRN. Remaining special construction charges do not have to be cost-allocated.</p> <p>Because the above-referenced cost-allocation was not included in your funding request, the amount of the funding request will need to be adjusted. Please provide the information requested by Questions 5(a)-(c). If you do not have the information requested in Questions 5(a)-(c), contact the service provider to obtain it.</p> <p>After providing the requested information, you may disregard the remaining questions in this document. You may be contacted in a separate communication regarding your responses to these questions.</p>		
	5(a)	Please provide the specific cost of the Excess Fiber Strands that: (i) will not be lit this funding year; (ii) are being installed for the applicant’s exclusive future use; and (iii) will remain dormant until lit for the applicant.	
	5(b)	Please provide the documentation identifying the cost of the Excess Fiber Strands stated in response to Question 5(a).	
	5(c)	If your documentation does not delineate the cost of the Excess Fiber Strands, please provide the tangible basis for the cost identified in response to Question 5(a) above.	
6	<p>You have stated that Excess Fiber Strands will be installed as part of your project. You have also indicated that the Excess Fiber Strands will not be installed for the exclusive future use of the applicant</p>		<input type="checkbox"/> Yes <input type="checkbox"/> No

	<p>Will the Excess Fiber Strands be installed as part of the special construction project <u>solely</u> because using a cable with a higher strand count than what will be lit for the applicant's use within this funding year has been deemed to be more cost effective than installing just the number of strands that will be lit for the applicant's use within this funding year?</p> <p>If yes, proceed to Question 6(a). If no, proceed to Question 7.</p>	
6(a)	<p>Please provide an explanation and any documents demonstrating that the higher strand solution, resulting in the installation of the Excess Fiber Strands, is the most cost effective option. Please be as specific as possible. For example, if the applicant seeks to light 6 strands for its use this year, but a 12-strand cable was deemed more cost-effective, provide a breakdown of the relative costs of installing 6-strands vs. 12-strands, and provide supporting documentation.</p> <p>Proceed to Question 6(b).</p>	
6(b)	<p>Will all of the Excess Fiber Strands remain dormant (dark) unless lit for the applicant's exclusive use during a future funding year (i.e., no other party will use the Excess Fiber Strands until used exclusively by the applicant in the future)?</p> <p>If yes, you may disregard the remaining questions in this document. You may be contacted in a separate communication regarding your responses to these questions.</p> <p>If no, proceed to Question 7.</p> <p>Note: Please answer Question 6(b) irrespective of whether the Excess Fiber Strands: (a) would be lit this funding year or a future year by the applicant or any entity other than the applicant; (b) have been cost-allocated out of the funding request; or (c) were not included in the one-time charges quoted to the applicant for the special construction project and stated in the FRN.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
7	<p>You have indicated that Excess Fiber Strands will be installed as part of your project. You have also indicated that either:</p> <ul style="list-style-type: none"> ▪ The Excess Fiber Strands will not be installed for the applicant's exclusive future use; ▪ The Excess Fiber Strands will be installed for the applicant's 	

	<p>exclusive future use, but will not remain dormant (dark) until the fiber is used by the applicant in a future year;</p> <ul style="list-style-type: none"> ▪ The Excess Fiber Strands will not be installed solely because installation of a higher strand count than what will be lit for the applicant's use this funding year has been deemed to be the most cost-effective option; or ▪ The Excess Fiber Strands will be installed solely because installation of a higher strand count than what will be lit for the applicant's use this funding year has been deemed to be the most cost-effective option, but the Excess Fiber Strands will not remain dormant (dark) until they are used by the applicant in a future year. <p>Please provide the information requested by Questions 7(a)-(d).</p> <p>Note: Answers to these questions are required irrespective of whether the Excess Fiber Strands: (a) would be lit this funding year or a future year; (b) have been cost-allocated out of the funding request; or (c) were not included in the one-time charges quoted to the applicant for the special construction project and stated in the FRN.</p>	
7(a)	<p>What other party is planning to use the Excess Fiber Strands? If multiple parties plan to use the Excess Fiber Strands, please identify all of them.</p>	
7(b)	<p>On what date does the other party plan to start using the Excess Fiber Strands? If multiple parties plan to use the Excess Fiber Strands, please identify the dates that each party plans to start using them.</p>	<p>___/___/_____</p>
7(c)	<p>Is the applicant receiving any compensation in exchange for the planned use of the Excess Fiber Strands by another party (e.g., is the applicant being paid a fee, receiving a gift, receiving services/products in trade, or otherwise being compensated for use of the Excess Fiber Strands)?</p> <p>If so, please describe the compensation that the applicant will receive.</p>	
7(d)	<p>Please provide any contracts or other documents pertaining to the information provided in response to Questions 7(a)-(c). If you do not know the answers to one or more of the questions above, please contact the service provider to obtain them.</p> <p>Proceed to Question 8.</p>	

8	<p>Please provide the specific cost of installing the Excess Fiber Strands for use by another party as described in Question 7. Your response should include the both costs of the Excess Fiber Strands themselves and any additional special construction charges incurred due to the addition of the Excess Fiber Strands to the build (i.e., beyond what would be necessary if only the fiber strands that will be lit for the applicant's use within this funding year were installed).</p>	
8(a)	<p>Please provide the documentation substantiating the costs identified in response to Question 8. If you do not have such documents, please contact the service provider.</p> <p>Then proceed to Question 9.</p>	
8(b)	<p>If you are unable to provide the documentation requested by Question 8(a), please explain the tangible basis for the costs you have identified in response to Question 8.</p> <p>Then proceed to Question 9.</p>	
9	<p>Have the costs that you identified in response to Question 8 been identified in your special construction FRN as ineligible costs allocated out of the funding request?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

2015 Applicant Training

Fiber Options

Cost Allocation

- For shared or multi-purpose fiber build projects, costs necessary to get the fiber to the school or library are eligible.
 - E-rate will not fund capacity beyond what the applicant needs in that funding year. Applicants may not seek E-rate funding for fiber that the applicant is not using.
 - *Example:* Applicant needs 12 strands of fiber. Construction is for 96 strands. If no plans for other customers, only remove cost for 84 additional strands, but all other special construction costs would be fully eligible.