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SMALL ENTITY COMPLIANCE GUIDE

**Amendment of the Commission's Rules for
Schools and Libraries Universal Service Support Mechanism**

FCC 23-56

CC Docket Nos. 02-6, 96-45, and 97-21

Released July 21, 2023

In accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the revised rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation. The FCC will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or it may clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

On July 20, 2023, the Commission adopted the *Schools and Libraries Universal Service Support Mechanism Report and Order and Further Notice of Proposed Rulemaking (2023 Tribal Libraries Report and Order)*.¹ In the *Tribal Libraries Report and Order* the Commission updated its E-Rate program rules to encourage greater Tribal participation in the E-Rate program through program simplification.

The E-Rate program ensures schools and libraries can obtain affordable, high-speed broadband services and internal connections to connect students and library patrons. The program provides discounts of 20 to 90% on these services to eligible schools and libraries. In 2022, the Commission adopted an Order clarifying that Tribal libraries are eligible for E-Rate support.² The *2023 Tribal Libraries Report and Order* takes further steps to increase Tribal library eligibility and reduce administrative burdens. Specifically, the Commission amended the program rules to allow Tribal college and university (TCU) libraries to apply for and receive E-Rate support, provided they are serving as a public library in their community. It also took steps to simplify the application process by providing additional support and a higher discount for Tribal libraries. Next, it adopted a definition of “Tribal” to better identify Tribal applicants, and finally, it added a Tribal representative to the Universal Service Administrative Company (USAC) Board of Directors to ensure Tribal input into the administration of the universal service support programs.

These rule changes will help ensure that Tribal libraries and their library patrons will have access to E-Rate funding for affordable, high-speed broadband. This furthers the Commission’s E-Rate program goal of ensuring affordable access to high-speed broadband sufficient to support digital learning in schools and robust connectivity for all libraries.

II. COMPLIANCE REQUIREMENTS

A. Definition of Tribal Adopted for E-Rate Program (47 CFR § 54.500)

The Commission adopted the following definition of “Tribal” for purposes of E-Rate funding – an entity is “Tribal” if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A Tribal school or library should check the appropriate Tribal box and provide its Tribal affiliation during the application process.

B. Tribal College and University (TCU) Libraries Now Eligible for E-Rate Funding (47 CFR §§ 54.501(b)(2), (b)(4), 54.503(c)(2)(i)(B); 54.504(a)(1)(ii))

Under the amended rules, a TCU library that serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community is now able to request E-Rate support for eligible equipment and services. TCU libraries may begin the competitive bidding process and apply for E-Rate support in the next E-Rate application filing window that opened in January 2024, for funding year 2024 (which runs from July 1, 2024 through June 30, 2025).

¹ *Schools and Libraries Universal Service Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, and 97-21, Report and Order and Further Notice of Proposed Rulemaking, FCC 23-56 (July 21, 2023) (*2023 Tribal Libraries Report and Order*).

² *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order, 37 FCC Rcd 1458 (2022).

C. Tribal Libraries Eligible for Higher Funding Floor for Category Two Equipment and Services (47 CFR § 54.502(d)(4))

Under the amended rules, smaller Tribal libraries are now eligible for additional support for Category Two equipment and services, which are the equipment and services needed to provide broadband within the library (e.g., wireless access points and cabling). For any Tribal library with less than 12,223 square feet, the library is eligible to request discounts on up to \$55,000 in equipment and services over a five-year budget cycle. The current budget cycle runs from funding year 2021 through funding year 2025, after which a new budget cycle will begin with a fresh Category Two budget.

D. Cost Allocation for Non-Instructional Facilities (47 CFR § 54.502(d)(6))

Under the amended rules, the Commission eliminated the need to perform a cost allocation for shared equipment that is located at a non-instructional facility.

E. Libraries Eligible for Competitive Bidding Exemption for Low-Cost Category Two Equipment (47 CFR § 54.503(e))

All libraries are now eligible for a competitive bidding exemption if they request \$3,600 or less in Category Two equipment or services per library per year. Libraries must still make cost-effective purchases and should be prepared to explain the costs if they do not appear to reflect comparable equipment costs. For example, a library requesting \$1,000 for a device that is commercially available for \$250 will be expected to explain the discrepancy or have the request denied.

F. Tribal Libraries Eligible for Higher Category Two Discount (47 CFR § 54.505(g))

Tribal libraries that were eligible for an 85% Category Two discount are now eligible for a 90% Category Two discount, providing additional support to those areas with the most need.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *2023 Tribal Libraries Report and Order* expanded existing recordkeeping or reporting requirements to TCUs that apply for E-Rate funding and provide E-Rate services. E-Rate applicants and service providers continue to be subject to audits and existing recordkeeping requirements. E-Rate applicants and service providers are required to retain documentation regarding the application for, receipt and delivery of E-Rate-supported equipment and services, and demonstrating compliance with the E-Rate program rules for at least ten (10) years.³

IV. IMPLEMENTATION DATE

The rules in the *2023 Tribal Libraries Report and Order* became effective on September 29, 2023, with the exception of 47 CFR §§ 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which became effective on November 13, 2023.

V. INTERNET LINKS

A copy of the *Tribal Libraries Report and Order* is available at:
<https://docs.fcc.gov/public/attachments/FCC-23-56A1.pdf>.

A copy of the Federal Register Summary of the *2023 Tribal Libraries Report and Order* is available at:
<https://www.govinfo.gov/content/pkg/FR-2023-08-15/pdf/2023-16984.pdf>.

³ 47 CFR § 54.516.

A copy of the Federal Register announcing OMB approval of the two remaining rules is available at: <https://www.govinfo.gov/content/pkg/FR-2023-11-13/pdf/2023-24876.pdf>.

An overview of the E-Rate program, along with information on the other program requirements, can be found on the website of the program's administrator, the Universal Service Administrative Company (USAC), at <https://www.usac.org/e-rate/>.

Additional information and resources made specifically for Tribal library entities is available here at: <https://www.fcc.gov/tribal-libraries>.

A website devoted to Tribal Training opportunities for the E-Rate program can be found on the USAC website: <https://www.usac.org/e-rate/learn/tribal-training/>.