

**FCC FACT SHEET\***  
**Clarifying Tribal Library Eligibility in the E-Rate Program**  
Notice of Proposed Rulemaking – CC Docket No. 02-6

**Background:** The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internal connections to connect today’s students and library patrons with next-generation learning opportunities and services. Section 254(h)(4) of the Communications Act of 1934, as amended, provides that a library or library consortium is not entitled to preferential rates or treatment unless it is eligible for assistance from a State library administrative agency under the Library Services and Technology Act (LSTA). In establishing the E-Rate program, the Commission adopted the definition of library then contained in the LSTA.

Since the adoption of the E-Rate program definition of library, some Tribal libraries have been unable to seek E-Rate support because they were ineligible for LSTA funds from their State library administrative agencies. This jurisdictional conflict remained until 2018, when Congress adopted the Museum and Library Services Act of 2018, amending the LSTA to specifically include Tribal libraries in the definition of libraries that are eligible for support from a State library administrative agency.

In this Notice of Proposed Rulemaking, we propose to update the definition of library in the E-Rate program rules to provide clarity regarding the eligibility of Tribal libraries now included under the LSTA and promote increased participation of Tribal libraries in the E-Rate program. In doing so, we seek to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.

**What the Notice Would Do:**

- Proposes to update sections 54.500 and 54.501(b)(1) of the Commission’s E-Rate program rules to amend the definition of library and to clarify that Tribal libraries are eligible for E-Rate support.
- Seeks comment on whether the Commission should consider any other measures to ensure Tribal entities have access to the E-Rate program.

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\* This document is being released as part of a “permit-but-disclose” proceeding. Any presentations or views on the subject expressed to the Commission or its staff, including by email, must be filed in CC Docket No. 02-6, which may be accessed via the Electronic Comment Filing System (<https://www.fcc.gov/ecfs/>). Before filing, participants should familiarize themselves with the Commission’s *ex parte* rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. *See* 47 CFR § 1.1200 *et seq.*

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Schools and Libraries Universal Support ) CC Docket No. 02-6
Mechanism )
)
)
)

NOTICE OF PROPOSED RULEMAKING\*

Adopted: [] Released: []

Comment Date: [(30 days after date of publication in the Federal Register)]
Reply Comment Date: [(45 days after date of publication in the Federal Register)]

By the Commission:

I. INTRODUCTION

1. The E-Rate Program1 provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internal connections to connect today’s students and library patrons with next-generation learning opportunities and services. Today, we propose to update the definition of library in the Commission’s rules to provide clarity regarding the eligibility of Tribal libraries and promote increased participation of underrepresented Tribal libraries in the E-Rate Program. In doing so, we seek to address a longstanding issue that has impeded Tribal libraries in seeking E-Rate support.2

II. BACKGROUND

2. The E-Rate Program was established in 1996 as a universal service support mechanism to ensure the delivery of affordable advanced telecommunications and information services to eligible schools and libraries.3 Section 254(h)(4) of the Communications Act of 1934, as amended, provides that a library or library consortium is not entitled to preferential rates or treatment unless it is eligible for

\* This document has been circulated for tentative consideration by the Commission at its September 30, 2021 open meeting. The issues referenced in this document and the Commission’s ultimate resolution of those issues remain under consideration and subject to change. This document does not constitute any official action by the Commission. However, the Acting Chairwoman has determined that, in the interest of promoting the public’s ability to understand the nature and scope of issues under consideration, the public interest would be served by making this document publicly available. The FCC’s ex parte rules apply and presentations are subject to “permit-but-disclose” ex parte rules. See, e.g., 47 C.F.R. §§ 1.1206, 1.1200(a). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules, including the general prohibition on presentations (written and oral) on matters listed on the Sunshine Agenda, which is typically released a week prior to the Commission’s meeting. See 47 CFR §§ 1.1200(a), 1.1203.

1 The E-Rate Program is formally known as the schools and libraries universal service support mechanism.
2 See Comments of Navajo Nation Telecommunications Regulatory Commission, WC Docket No. 21-93, at 3 (filed Apr. 5, 2021).
3 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

assistance from a State library administrative agency under the Library Services and Technology Act (LSTA).<sup>4</sup> Consistent with this section, the Commission adopted the definition of library then contained in the LSTA for the E-Rate Program.<sup>5</sup> Specifically, the Commission’s E-Rate rules define a library as (1) a public library; (2) a public elementary school or secondary school library; (3) an academic library; (4) a research library; and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of the definition.<sup>6</sup> The rules also state that “[o]nly libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (Pub. L. 104-208)” shall be eligible for discounts on telecommunications and other supported services.<sup>7</sup>

3. Since the adoption of the E-Rate Program definition of library, some Tribal libraries have been unable to seek E-Rate support because they were ineligible for LSTA funds from their State library administrative agencies.<sup>8</sup> As the Governmental Accountability Office noted in 2006, this has “preclude[d] some tribal libraries from benefiting from a universal service program.”<sup>9</sup> This jurisdictional conflict remained until 2018, when Congress adopted the Museum and Library Services Act of 2018, amending the LSTA to specifically include Tribal libraries in the definition of libraries that are eligible for support from a State library administrative agency.<sup>10</sup>

4. In 2021, the Commission established the Emergency Connectivity Fund Program which allows schools, libraries, and consortia of schools and libraries that are eligible for support under the E-Rate Program to request and receive support for connected devices and/or broadband connections provided to students, school staff, and library patrons who would otherwise lack access to these resources during the COVID-19 emergency period.<sup>11</sup> Like the E-Rate Program rules, the *Emergency Connectivity Fund Report and Order* specifies that, under section 254(h)(4) of the Communications Act, libraries that are not eligible for assistance from a State library administrative agency under the LSTA are not eligible to receive Emergency Connectivity Fund support.<sup>12</sup> However, the *Emergency Connectivity Fund Report and Order* acknowledges the 2018 amendments to the LSTA and clarifies that Tribal libraries, which are now by statute eligible for support from State library administrative agencies under the LSTA, are eligible for support from the Emergency Connectivity Fund Program.<sup>13</sup> As the *Emergency Connectivity Fund Report and Order* was limited to the establishment and implementation of a separate congressionally-appropriated program, the Commission did not update the E-Rate definition for library in that Report and

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<sup>4</sup> 47 U.S.C. § 254(h)(4).

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8795, para. 32 (1997) (*First Report and Order*).

<sup>6</sup> 47 CFR § 54.500.

<sup>7</sup> 47 CFR § 54.501(b)(1).

<sup>8</sup> *See, e.g.*, Government Accountability Office, *Telecommunications: Challenges for Assessing and Improving Telecommunications for Native Americans on Tribal Lands*, at 7, 11 (2006) (2006 GAO Report), <http://www.gao.gov/assets/120/112955.pdf>.

<sup>9</sup> *Id.* at 11 (explaining that the “[Communications] Act stipulates that a library’s eligibility for E-rate support is dependent on whether the library is eligible for certain state library funds. Yet the tribal libraries in at least two states are precluded under state law from being eligible for such funds, which has the effect of making these libraries ineligible to apply for E-rate funds.”).

<sup>10</sup> *Museum and Library Services Act of 2018*, Pub. L. 115-410, 132 Stat. 5416 (2018) (amending the definition of library in 20 U.S.C. § 9122 to include Tribal libraries).

<sup>11</sup> *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, 36 FCC Rcd 8696, 8706-07, para. 24 (2021) (*Emergency Connectivity Fund Report and Order*).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 8707, para. 25.

Order to include a Tribal library.

### III. DISCUSSION

5. Consistent with the 2018 amendments to the LSTA, we propose to update sections 54.500 and 54.501(b)(1) of the Commission's rules to adopt the amended definition of library included in the LSTA and to clarify that Tribal libraries are eligible for support through the E-Rate Program. This amendment will remove the outdated reference to the 1996 version of the LSTA in the E-Rate rules, make the eligibility rules for the E-Rate Program consistent with those of the Emergency Connectivity Fund Program, and promote the increased participation of Tribal libraries in the E-Rate Program by making clear that Tribal libraries are eligible.

6. While some Tribal libraries have received E-Rate support to the extent the relevant State library administrative agencies determined they were eligible for assistance, they are still greatly underrepresented among the total number of E-Rate applicants. According to a report by the Institute of Museum and Library Services (IMLS) and the Association of Tribal Archives, Libraries, and Museums (ATALM), only 15 percent of Tribal libraries reported receiving E-Rate support, in part, due to eligibility requirements.<sup>14</sup> When establishing the rules for the Emergency Connectivity Fund Program, we clarified that Tribal libraries were eligible for support under the Emergency Connectivity Fund Program.<sup>15</sup> We now propose to update the E-Rate rules in a consistent manner to add a Tribal library to the definition of library and remove references to the outdated Public Law 104-208. We propose these changes in order to clarify that because Tribal libraries are statutorily eligible for support from State library administrative agencies consistent with 2018 amendments to the LSTA, they are therefore eligible for support through the E-Rate Program – even if LSTA funds have not been received by a Tribal library. We anticipate that this change will resolve existing confusion about Tribal libraries' eligibility and facilitate access to E-Rate funds. By making Tribal eligibility for E-Rate support clear, we seek to further the goal of increasing Tribal libraries' access to advanced telecommunications and information services, internal connections, and basic maintenance of internal connections through the E-Rate Program. We seek comment on this proposed rule change.

7. We also seek comment on whether the Commission should consider any other measures to ensure Tribal schools and libraries have access to the E-Rate Program. Are there opportunities to increase participation of these Tribal entities in the E-Rate Program, such as through additional trainings or outreach? Are there ways to improve reporting on Tribal entities to gain a more complete understanding of Tribal participation in the E-Rate Program?

8. The Commission, as part of its continuing effort to advance digital equity for all,<sup>16</sup> including Indigenous and Native American persons and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality, invites comment on any equity-related considerations<sup>17</sup> and benefits (if any) that may be associated with the proposals and issues

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<sup>14</sup> See Institute of Museum and Library Services & Association of Tribal Archives, Libraries, & Museums, *Digital Inclusion in Native Communities: The Role of Tribal Libraries* at 22-23, Figure 23 (2014), <http://www.atalm.org/sites/default/files/Report.pdf> (reporting that “we are unsure if the library is eligible for support” was one of the leading reasons for why Tribal libraries do not apply for E-Rate support).

<sup>15</sup> See *Wireline Competition Bureau Seeks Comment on Emergency Connectivity Fund for Educational Connections and Devices to Address the Homework Gap During the Pandemic*, WC Docket No. 21-93, Public Notice, 36 FCC Rcd 5584, 5587-88 (WCB 2021); *Emergency Connectivity Fund Report and Order*, 36 FCC Rcd at 8707, para. 25.

<sup>16</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility.

#### IV. PROCEDURAL MATTERS

9. *Initial Regulatory Flexibility Analysis.*— As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>18</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the proposals addressed in this Notice of Proposed Rulemaking. The IRFA is found in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the Notice of Proposed Rulemaking, and they should have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking and Notice of Inquiry, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.<sup>19</sup>

10. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.<sup>20</sup> In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).<sup>21</sup>

11. *Ex Parte Rules – Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules,<sup>22</sup> this Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.<sup>23</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed

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<sup>17</sup> We define the term “equity” consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

<sup>18</sup> *See* 5 U.S.C. § 603.

<sup>19</sup> *See* 5 U.S.C. § 603(a).

<sup>20</sup> 44 U.S.C. §§ 3501-3520.

<sup>21</sup> *See* 44 U.S.C. § 3506(c)(4).

<sup>22</sup> 47 CFR § 1.1200(a).

<sup>23</sup> 47 CFR §§ 1.1200 *et seq.*

consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

12. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.<sup>24</sup> Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.<sup>25</sup> However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings<sup>26</sup> and exempt from the prohibitions during the Sunshine Agenda period.<sup>27</sup> To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

13. *Comment Period and Filing Procedures.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings must refer to CC Docket No. 02-6.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs>.<sup>28</sup>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, N.E., Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and

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<sup>24</sup> See *id.* § 1.1200(a).

<sup>25</sup> 5 U.S.C. §§ 551 *et seq.*

<sup>26</sup> See generally 47 CFR § 1.1206.

<sup>27</sup> See *id.* § 1.1203.

<sup>28</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

safety of individuals, and to mitigate the transmission of COVID-19.<sup>29</sup>

14. **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

15. **Availability of Documents:** Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.<sup>30</sup> When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street N.E., Washington, DC 20554.

16. **Further Information.** For further information, contact Kate Dumouchel of the Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-1839 or [kate.dumouchel@fcc.gov](mailto:kate.dumouchel@fcc.gov).

## V. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1 through 4, 201-202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking IS ADOPTED.

18. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>29</sup> See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (Mar. 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>30</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

**APPENDIX A**  
**Proposed Rules**

For the reasons set forth above, we propose part 54 of title 47 of the Code of Federal Regulations to be amended as follows:

**PART 54 – UNIVERSAL SERVICE**

1. The authority for part 54 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601-1609, unless otherwise noted.

2. Amend § 54.500 to amend the definition of “library” to read as follows:

**§ 54.500 Terms and definitions.**

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Library. A “library” includes:

- (1) A public library;
  - (2) A public elementary school or secondary school library;
  - (3) a Tribal library;
  - (4) An academic library;
  - (5) A research library, which for the purpose of this section means a library that:
    - (i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and
    - (ii) Is not an integral part of an institution of higher education; and
  - (6) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.
3. Revise § 54.501 by revising paragraph (b)(1) to read as follows:

**§ 54.501 Eligible recipients.**

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(b) Libraries.

(1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (20 U.S.C. § 9122) and not excluded under paragraphs (b)(2) or (3) of this section shall be eligible for discounts under this subpart.

(2) \*\*\*

(3) \*\*\*



## APPENDIX B

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rule Making (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254.<sup>4</sup> On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.<sup>5</sup> Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate Program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.<sup>6</sup>

3. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate Program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. The rules we propose in the NPRM seek to update the E-Rate Program rules to be consistent with the amended LSTA and to clarify that Tribal libraries are eligible to apply for and receive E-Rate funding. We seek comment on our proposals as well as comments as to whether there are other measures the Commission can take to ensure Tribal schools and libraries have access to E-Rate funds, consistent with Section 254(h)(4).

#### B. Legal Basis

4. The proposed action is authorized pursuant to sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403.

#### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of and, where feasible, and estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>7</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small

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<sup>1</sup> 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 - 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> 5 U.S.C. § 603(a).

<sup>4</sup> See generally 47 U.S.C. § 254.

<sup>5</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*).

<sup>6</sup> 47 CFR § 54.502.

<sup>7</sup> 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”<sup>8</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>9</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>10</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.<sup>11</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>12</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.<sup>13</sup>

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>14</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>15</sup> Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.<sup>16</sup>

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> U.S. Census Bureau data from the 2017 Census

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<sup>8</sup> 5 U.S.C. § 601(6).

<sup>9</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632(a)). Pursuant to the RFA, the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>10</sup> Small Business Act, 15 U.S.C. § 632.

<sup>11</sup> See 5 U.S.C. § 601(3)-(6).

<sup>12</sup> See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept 2019).

<sup>13</sup> *Id.*

<sup>14</sup> 5 U.S.C. § 601(4).

<sup>15</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>16</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

<sup>17</sup> 5 U.S.C. § 601(5).

of Governments<sup>18</sup> indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>19</sup> Of this number there were 36,931 general purpose governments (county<sup>20</sup>, municipal and town or township<sup>21</sup>) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts<sup>22</sup> with enrollment populations of less than 50,000.<sup>23</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>24</sup>

### 1. Schools and Libraries

9. As noted, a “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”<sup>25</sup> A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>26</sup> A library includes “(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library

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<sup>18</sup> See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>19</sup> See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also Table 2. CG1700ORG02 Table Notes\_Local Governments by Type and State\_2017.

<sup>20</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

<sup>21</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

<sup>22</sup> See U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes\_Special Purpose Local Governments by State\_Census Years 1942 to 2017.

<sup>23</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>24</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

<sup>25</sup> 47 CFR § 54.500.

<sup>26</sup> *Id.*

is located determines that the library should be considered a library for the purposes of this definition.”<sup>27</sup> The proposals under consideration in the NPRM, if adopted, would update the definition of library to add Tribal libraries to the definition. For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>28</sup> Certain other statutory definitions apply as well.<sup>29</sup> The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities.<sup>30</sup> In funding year 2017, approximately 103,699 schools and 11,810 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA’s size standard, we estimate that fewer than 103,699 schools and 11,810 libraries might be affected annually by our action, notwithstanding the fact that more Tribal libraries may be encouraged to apply for funding should the proposals in the NPRM be adopted.

## 2. Telecommunications Service Providers

10. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.<sup>31</sup> Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>32</sup> U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year.<sup>33</sup> Of this total, 2,964 operated with fewer than 250 employees.<sup>34</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange services.<sup>35</sup> Of this total 1,307 an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>36</sup> Thus, using the SBA’s size standard the majority of incumbent LECs can be considered small entities.

11. We have included small incumbent LECs in this RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g. a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of

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<sup>27</sup> *Id.*

<sup>28</sup> 47 CFR § 54.501.

<sup>29</sup> 47 CFR § 54.500.

<sup>30</sup> 13 CFR § 121.201; NAICS codes 611110 and 519120 (NAICS code 519120 was previously 514120).

<sup>31</sup> *See*, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. *See*, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>32</sup> *Id.*

<sup>33</sup> *See* U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPFIEM, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 517311* <https://data.census.gov/cedsci/table?t=Employment%20and%20Labor%20Force%20Status&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=true>.

<sup>34</sup> *Id.* U.S. Census Bureau data does not say how many firms operated with greater than 250 but fewer than 1500 employees.

<sup>35</sup> *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*) available at <https://www.fcc.gov/general/trends-telephone-service>.

<sup>36</sup> *Id.*

operation.”<sup>37</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>38</sup> We have, therefore, included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired Telecommunications Carriers.<sup>39</sup> The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>40</sup> U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year.<sup>41</sup> Of this total, 2,964 operated with fewer than 250 employees.<sup>42</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>43</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>44</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

13. *Competitive Access Providers (CAPs)*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.<sup>45</sup> Under the SBA size standard a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees.<sup>46</sup> U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year.<sup>47</sup> Of this total, 2,964 operated with fewer than 250 employees.<sup>48</sup> According to Commission data, 1,442 CAPs and competitive local

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<sup>37</sup> 5 U.S.C. § 601(3).

<sup>38</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to William E. Kennard, Chairman, Federal Communications Commission, CC Docket No. 98-147 et al., at 2 (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

<sup>39</sup> See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>40</sup> *Id.*

<sup>41</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 517311* <https://data.census.gov/cedsci/table?t=Employment%20and%20Labor%20Force%20Status&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>42</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>43</sup> *Trends in Telephone Service*, Table 5.3, page 5-5.

<sup>44</sup> *Id.*

<sup>45</sup> See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>46</sup> *Id.*

<sup>47</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 517311* <https://data.census.gov/cedsci/table?t=Employment%20and%20Labor%20Force%20Status&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>48</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “250 employees or more.”

exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.<sup>49</sup> Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>50</sup> Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

14. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments primarily engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.<sup>51</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>52</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.<sup>53</sup> Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more.<sup>54</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

15. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).<sup>55</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>56</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.<sup>57</sup> Of this total, 2,837 firms had fewer than 250 employees and 56 had 250 employees or more.<sup>58</sup> Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>59</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>60</sup> Therefore, more than half of these entities can be considered small.

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<sup>49</sup> *Trends in Telephone Service*, Table 5.3, page 5-5.

<sup>50</sup> *Id.*

<sup>51</sup> U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code 517312 “Wireless Telecommunications Carriers (Except Satellite),” <https://www.census.gov/naics/?input=51&chart=2017&details=517312>.

<sup>52</sup> 13 CFR § 121.201, NAICS code 517312.

<sup>53</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.*: 2017 NAICS Code 517312 <https://data.census.gov/cedsci/table?q=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>54</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>55</sup> U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code 517312 “Wireless Telecommunications Carriers (Except Satellite),” <https://www.census.gov/naics/?input=51&chart=2017&details=517312>.

<sup>56</sup> *Id.*

<sup>57</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.*: 2017 NAICS Code 517312 <https://data.census.gov/cedsci/table?q=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>58</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>59</sup> *Trends in Telephone Service* at Table 5.3, page 5-5.

<sup>60</sup> *Id.*

### 3. Internet Service Providers (ISPs)

16. *Internet Service Providers (Broadband)*. Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.<sup>61</sup> Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.<sup>62</sup> The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.<sup>63</sup> U.S. Census Bureau data for 2017 indicate that 3,054 firms operated the entire year.<sup>64</sup> Of this total, 2,964 operated with fewer than 250 employees.<sup>65</sup> Consequently, under this size standard the majority of firms in this industry can be considered small.

17. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.<sup>66</sup> The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>67</sup> For this category, U.S. Census Bureau data for 2017 shows that there were 1,079 firms that operated for the entire year.<sup>68</sup> Of these firms, a total of 1,039 had gross annual receipts of less than \$25 million.<sup>69</sup> Consequently, under this size standard a majority of firms in this industry can be considered small.

### 4. Vendors of Internal Connections

18. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are "Radio and Television Broadcasting and Wireless Communications Equipment" with a size standard of 1,250

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<sup>61</sup> See, 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICS code as 517311 for Wired Telecommunications Carriers. See, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 517311* <https://data.census.gov/cedsci/table?t=Employment%20and%20Labor%20Force%20Status&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>65</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "250 employees or more."

<sup>66</sup> See U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code 517919 "All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>67</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>68</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 517919* <https://data.census.gov/cedsci/table?q=517919&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>69</sup> See U.S. Census Bureau, *2017 Economic Census of the United States*, TableID: EC1700SIZEREVFirm, *Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017 NAICS Code 517919* <https://data.census.gov/cedsci/table?q=517919&tid=ECNSIZE2017.EC1700SIZEREVFirm&hidePreview=true>.

employees or less<sup>70</sup> and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.<sup>71</sup> U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment, 656 firms operated for the entire year.<sup>72</sup> Of that number, 624 firms operated with fewer than 250 employees.<sup>73</sup> For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 shows that 321 firms operated for the year.<sup>74</sup> Of that number, 310 operated with fewer than 250 employees.<sup>75</sup> Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

19. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.<sup>76</sup> These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.<sup>77</sup> The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees.<sup>78</sup> U.S. Census Bureau data for 2017 show that there were 189 firms that operated for the entire year.<sup>79</sup> Of this total, 177 operated with fewer than 250 employees.<sup>80</sup> Thus, under this size standard, the majority of firms can be considered small.

20. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and

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<sup>70</sup> 13 CFR § 121.201, NAICS Code 334220. *See also* U.S. Census Bureau, 2017 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>71</sup> 13 CFR § 121.201, NAICS Code 334220. *See also* U.S. Census Bureau, 2017 NAICS Definitions, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>72</sup> *See* U.S. Census Bureau, 2017 Economic Census of the United States, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 334220* <https://data.census.gov/cedsci/table?q=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>73</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,250 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>74</sup> *See* U.S. Census Bureau, 2017 Economic Census of the United States, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 334290* <https://data.census.gov/cedsci/table?q=334290&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>75</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 750 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>76</sup> *See* U.S. Census Bureau, 2017 NAICS Definitions, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

<sup>77</sup> *Id.*

<sup>78</sup> 13 CFR § 121.201, NAICS code 334210.

<sup>79</sup> *See* U.S. Census Bureau, 2017 Economic Census of the United States, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.: 2017 NAICS Code 334210* <https://data.census.gov/cedsci/table?q=334210&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>80</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,250 or fewer employees; the largest category provided is for firms with “250 employees or more.”



television broadcast and wireless communications equipment.<sup>81</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>82</sup> The SBA has established a small business size standard for this industry of 1,250 employees or less.<sup>83</sup> U.S. Census Bureau data for 2017 show that 656 firms operated in this industry for the entire year.<sup>84</sup> Of that number, 624 firms operated with fewer than 250 employees.<sup>85</sup> Based on this data, we conclude that a majority of manufacturers in this industry are small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

21. The proposals under consideration in the NPRM, if adopted, should not result in new and/or modified reporting, recordkeeping and other compliance requirements for small or large entities. At this time, the Commission cannot quantify the cost of compliance with the potential rule changes in the NPRM, but we anticipate that the result of any rule changes will produce requirements that are equal to existing requirements, and we do not believe small entities will have to hire attorneys, engineers, consultants, or other professionals in order to comply. Updating the E-Rate rules to adopt the amended definition of library under the LSTA, for example, will clarify that Tribal libraries are eligible for support by statute – as they have been since Congress enacted the Museum and Library Services Act of 2018. Moreover, this clarity may also alleviate some of the issues that Tribal libraries face when seeking E-Rate support. Additionally, we have sought comment on whether there are other measures the Commission can take to ensure Tribal schools and libraries have equal access to E-Rate funds. Regarding our proposal on what documentation should be used to validate a Tribal library, we have sought comment on whether that approach is feasible or practicable for demonstrating eligibility.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>86</sup>

23. In the NPRM, we have taken steps to minimize the economic impact on small entities with the rule changes that we have proposed. Under the current E-Rate rules, only libraries eligible for assistance from a State library administrative agency under the 1996 version of the LSTA are eligible for E-Rate funding. Absent a rule change, Tribal libraries continue to face uncertainty about eligibility which

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<sup>81</sup> 13 CFR § 121.201, NAICS Code 334220. *See also* U.S. Census Bureau, 2017 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

<sup>82</sup> *Id.*

<sup>83</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>84</sup> *See* U.S. Census Bureau, 2017 *Economic Census of the United States*, TableID: EC1700SIZEEMPfirm, *Selected Sectors: Employment Size of Firms for the U.S.*: 2017 NAICS Code 334220 <https://data.census.gov/cedsci/table?q=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=true>.

<sup>85</sup> *Id.* Available census data does not provide a more precise estimate of the number of firms that have employment of 1,250 or fewer employees; the largest category provided is for firms with “250 employees or more.”

<sup>86</sup> 5 U.S.C. § 603(c)(1) - (4).

leads to them being underrepresented among E-Rate applicants. We have therefore proposed updating the rules to add Tribal libraries to the definition of library, which, if adopted, may encourage Tribal libraries to apply for and receive E-Rate support. The Commission expects to more fully consider ways to minimize the economic impact and explore alternatives for small entities following the review of comments filed in response to the NPRM.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

24. None.