

FCC FACT SHEET*
Clarifying Tribal Library Eligibility in the E-Rate Program
Report and Order – 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 students and library patrons with next-generation learning opportunities and services. Section 254(h)(4) of the Communications Act 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 in 1997, 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 issue 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.

This Report and Order, if adopted, would 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.

What the Report and Order Would Do:

- 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.
- Direct the Office of Native Affairs and Policy and the Wireline Competition Bureau, with assistance from the Tribal Liaison at the Universal Service Administrative Company, to target outreach efforts and programs for Tribal libraries.
- Adopt new metrics to gauge the participation of Tribal libraries in the E-Rate program.

* 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)
)

REPORT AND ORDER*

Adopted: []

Released: []

By the Commission:

I. INTRODUCTION

1. The E-Rate program provides support to schools and libraries across the nation to obtain affordable, high-speed broadband services and internal connections to connect today's students and library patrons with next-generation learning opportunities and services. Since the beginning of the program, E-Rate support has helped libraries afford these services and provide free, public Internet access to their communities. But for far too long, Tribal libraries have been unable to participate fully in the E-Rate program. This situation has exacerbated enduring inequities, as Tribal libraries often serve as a critical source of Internet access in underserved areas across the nation.

2. Today, we take steps to address one of the barriers to participation and clarify the eligibility of Tribal libraries for E-Rate program support by updating the definition of "library" in our E-Rate program rules to include Tribal libraries. By doing so, we seek to resolve a longstanding issue for

* This document has been circulated for tentative consideration by the Commission at its January 27, 2022 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 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 47 U.S.C. § 254(b)(6) ("Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h)."); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780, para. 1 (1997) (First Report and Order).

3 See, e.g., ADS Advanced Data Services Comments at 1 (ADS) (emphasizing the importance of public internet access in communities where broadband is unavailable or unaffordable to households, which is often the case in many Tribal areas where broadband is limited and costly).

4 Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6, Notice of Proposed Rulemaking, FCC 21-107, 2021 WL 4735488, at *1 paras. 2-3 (Oct. 1, 2021) (Tribal Libraries NPRM); 47 CFR §§ 54.500-501(b)(1).

Tribal libraries in the E-Rate program rules, consistent with Congressional action taken in 2018,⁵ and to encourage increased Tribal library access to affordable broadband connectivity through the E-Rate program.

II. BACKGROUND

3. 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.⁶ The E-Rate program provides eligible libraries and library consortia funding for the purchase of Internet access, internal connections, basic maintenance of internal connections, managed internal broadband services, telecommunications, and telecommunications services.⁷

4. Section 254(h)(4) of the Communications Act of 1934, as amended (the Act), states that a library or library consortium is entitled to the “preferential rates and treatment” available through the E-Rate program if it is eligible for assistance from a State library administrative agency under the Library Services and Technology Act (LSTA).⁸ Although the original version of the 1996 Act referenced the Library Services and Construction Act,⁹ Congress amended section 254(h)(4) when it adopted the LSTA in September 1996.¹⁰ Referencing Congress’ amendment, the Commission then adopted sections 54.500 and 54.501(b)(1) in 1997.¹¹ Specifically, the Commission’s E-Rate rules include the definition of library then contained in the LSTA¹² and specify that “[o]nly libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (Pub. L. 104-208)” are eligible for discounts on telecommunications and other supported services.¹³ Based on these program rules, some Tribal libraries have been unable to seek E-Rate support because they were ineligible for LSTA funds from their State library administrative agencies.¹⁴

⁵ Museum and Library Services Act of 2018, Pub. L. 115-410, 132 Stat. 5416 (2018) (Museum and Library Services Act of 2018).

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

⁷ 47 CFR §§ 54.501, 54.502.

⁸ 47 U.S.C. § 254(h)(4) (“(4) Eligibility of users. No entity listed in this subsection shall be entitled to preferential rates or treatment as required by this subsection, if such entity operates as a for-profit business, is a school described in paragraph (7)(A) with an endowment of more than \$50,000,000, or is a library or library consortium not eligible for assistance from a State library administrative agency under the Library Services and Technology Act”).

⁹ See NNTRC Comments at 3; see also Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 74 (codified at 47 U.S.C. § 151 et seq.) (1996 Act).”

¹⁰ Section 254(h)(4) was amended on September 30, 1996, when Congress adopted the Library Services and Technology Act. Pub. L. 104-208, 110 Stat. 3009-313 (making conforming amendments to replace references to the Library Services and Construction Act).

¹¹ *First Report and Order*, 12 FCC Rcd at 8795, para. 32 (adopting the definition of library contained in the Library Services and Technology Act, “[i]n light of an amendment to section 254(h)(4), enacted in late 1996”).

¹² 47 CFR § 54.500. 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. 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.

¹³ 47 CFR § 54.501(b)(1).

¹⁴ 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> (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

(continued....)

5. This issue persisted until recently. In 2018, Congress adopted the Museum and Library Services Act of 2018, amending the LSTA to explicitly include Tribal libraries in the definition of libraries. This revised definition, by law, establishes the eligibility of Tribal libraries for support from a State library administrative agency.¹⁵ Consistent with Congress' action, in May 2021, we included "Tribal libraries" in the Emergency Connectivity Fund program's definition of libraries and made clear that Tribal libraries were eligible for support from the Emergency Connectivity Fund program.¹⁶

6. To address this eligibility issue within the E-Rate program, last fall we adopted a Notice of Proposed Rulemaking proposing to update sections 54.500 and 54.501(b)(1) of the E-Rate program's rules to reflect the amended definition of library included in the Museum and Library Services Act of 2018 and to clarify that Tribal libraries are eligible for support through the E-Rate program.¹⁷ We sought comment on this proposed rule change, as well as the need for any other measures to ensure Tribal schools and libraries have access to the E-Rate program.¹⁸ We also sought comment on any equity-related considerations and how the proposals might promote or inhibit advances in diversity, equity, inclusion, and accessibility.¹⁹ In addition, on October 27, 2021, the Federal Communications Commission's Office of Native Affairs and Policy (ONAP) and the Wireline Competition Bureau (WCB) held a listening session for Tribal leaders, staff, and outreach partners to inform participants about the Commission's efforts to increase Tribal libraries' participation in the E-Rate program.²⁰

III. DISCUSSION

7. To ensure that our nation's Tribal libraries and their library patrons have access to high-speed broadband and to encourage Tribal libraries' participation in the E-Rate program,²¹ we now amend our E-Rate program rules to clarify that Tribal libraries are eligible for E-Rate support. Specifically, we add "Tribal libraries" to the definition of library in section 54.500 of the Commission's rules and remove

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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.”)

¹⁵ Museum and Library Services Act of 2018 (amending the definition of library in 20 U.S.C. § 9122 to include Tribal libraries). The term Tribal library is not itself defined.

¹⁶ *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*).

¹⁷ *Tribal Libraries NPRM* at *2, para. 5.

¹⁸ *Id.* at *3, para. 10.

¹⁹ *Id.* at para. 8.

²⁰ See Letter from Kate Dumouchel, Special Counsel, Telecommunications Access Policy Division, Wireline Completion Bureau, FCC to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6 (filed Dec. 9, 2021).

²¹ *First Report and Order*, 12 FCC Rcd at 8780, para. 1 (“Congress directed the Commission and the states to devise methods to ensure that ‘[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas . . . have access to telecommunications and information services . . . at rates that are reasonably comparable to rates charged for similar services in urban areas.’ Congress further directed the Commission to define additional services for support for eligible schools, libraries, and health care providers, and directed the Commission to “establish competitively neutral rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries.”) (internal citations omitted).

the reference to Public Law 104-208, which contains the version of the LSTA enacted in 1996.²² All stakeholders submitting comments support this rule change, and no commenter opposed it.²³

8. Interested parties agree²⁴ that this rule change is the first step in ensuring that Tribal libraries have access to funding to provide affordable Internet access to their communities. These changes update the E-Rate program rules and ensure that the E-Rate program can support library services in Tribal communities. The changes align with both Congress' 2018 amendments to the LSTA²⁵ and the Commission's Emergency Connectivity Fund program rules.²⁶ Moreover, the changes will simplify administration of the E-Rate and Emergency Connectivity Fund programs for the Universal Service Administrative Company (USAC), which administers both programs and checks applicant eligibility. Consistent with the rules adopted for the Emergency Connectivity Fund program,²⁷ the E-Rate rules clarify that Tribal libraries, which are by statute eligible for support from State library administrative agencies under the LSTA, are eligible for support from the E-Rate program. Receipt of LSTA funds by Tribal libraries is not required for participation in the E-Rate program.²⁸

9. These rule changes should also clarify and simplify E-Rate eligibility for Tribal libraries and, in time, increase Tribal participation in the program. Comments filed by the American Library Association (ALA) and the Association of Tribal Archives, Libraries and Museums (ATALM) include preliminary results of a 2021 ATALM comprehensive digital inclusion survey, which note that only 12 percent of the Tribal libraries responding reported that they had ever applied,²⁹ even fewer than the 15 percent of Tribal libraries that had previously reported receiving E-Rate support.³⁰ This data is especially

²² See Appendix A.

²³ See, e.g., ADS Comments at 1 (supporting the change); American Library Association and the Association of Tribal Archives, Libraries and Museums Comments at 1 (ALA and ATALM) ("Updating the definition to clarify that tribal libraries are eligible for the E-rate is obviously the most critical step the Commission can take to correct this issue"); Kyle Ratcliff Comments at 1 (supporting the proposal and noting that "this is a good idea simply to help elevate the quality of life in rural area[s] where Tribal lands are most commonly located"); Navajo Nation Telecommunications Regulatory Commission Comments at 3 (NNTRC) (supporting the proceeding and efforts to bring more Tribal libraries into the E-Rate program); National Tribal Telecommunications Association Comments at 2 (NTTA) (fully supporting the proposed revisions to the rules); Sydney Watson Comments at 1 (stating that "Inclusion of tribal libraries in the definition contained in part 54 of title 47 of the Code of Federal Regulations is a seemingly trivial and yet undoubtedly needed amendment to the rule"); Wisconsin Department of Public Instruction Comments at 1 (WDPI) (supporting the change); WTA – Advocates for Rural Broadband Comments at 1 (WTA) (supporting the change).

²⁴ See, e.g., WTA Comments at 2 ("Without Internet access at their residence, the next best alternative for many Tribal families and households is to obtain Internet access at the Tribal library. Making all Tribal libraries eligible for E-Rate support will help to ensure that they will be able to provide essential Internet access to the Tribal families and households that often need it the most.").

²⁵ Museum and Library Services Act of 2018 (amending the definition of library in 20 U.S.C. § 9122 to include Tribal libraries).

²⁶ See *Emergency Connectivity Fund Report and Order*, 12 FCC Rcd at 8707, para. 25; see also WTA Comments at 1 (stating that "[t]he very same statutory amendment and rationale [as used in the ECF program] support -- in fact require -- E-Rate program eligibility to be extended to all Tribal libraries.").

²⁷ See *Emergency Connectivity Fund Report and Order*, 12 FCC Rcd at 8707, para. 25.

²⁸ See, e.g., NTTA Comments at 2.

²⁹ See ALA and ATALM Comments at 3.

³⁰ See *Tribal Libraries NPRM*, *2, at para. 6; 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>.

troubling, given that there is reduced broadband access in Tribal areas³¹ and libraries are often the “next best alternative for many Tribal families and households” to obtain Internet access.³² Tribal governments and libraries have had issues interacting with and gaining support from State agencies.³³ The Navajo Nation Telecommunications Regulatory Commission (NNTRC) describes how the Navajo Nation, which spans three states, began an internal process in 2018 to participate in the E-Rate program by engaging with the State library administrative agencies in Arizona, New Mexico, and Utah to establish whether its Chapter Houses were libraries eligible for assistance from those State library administrative agencies under the LSTA.³⁴ NNTRC explains that it took several years and significant resources to determine eligibility, which it argues could have been avoided if the rules we adopt here had been in place then.³⁵

10. Several commenters asked the Commission to clarify who can designate a Tribal library or to interpret the definition of Tribal library in a flexible manner.³⁶ First, we agree that Tribal libraries can be designated by a Tribal Council.³⁷ Second, we understand that “what constitutes a library is reflective of the cultural, educational, and social needs of each tribe,”³⁸ but also remind applicants that they must be eligible by statute for support under the LSTA to be eligible to participate in E-Rate.³⁹ The Institute of Museum and Library Services, the federal agency with expertise in the LSTA and that provides Native American library grants, requires Native American libraries applying for Native American Library Services Enhancement Grants to demonstrate that they have three basic characteristics: “(1) regularly scheduled hours, (2) staff, and (3) materials available for library users.”⁴⁰ We believe that these characteristics are therefore appropriate for Tribal libraries seeking support from the E-Rate program. In response to commenters seeking eligibility for Tribal College libraries,⁴¹ we remind applicants that when the Commission first adopted its rules on library eligibility for E-Rate discounts, it determined that libraries must be independent entities, “whose budgets are completely separate from any

³¹ See, e.g., NTCA-The Rural Broadband Association Comments at 4 (NTCA) (providing findings from the Congressional Research Service that showed “significantly lower levels of broadband access in Indian Country as compared to urban and rural areas in the United States.”).

³² See, e.g., WTA Comments at 2.

³³ See, e.g., NTTA Comments at 3.

³⁴ See NNTRC Comments at 9.

³⁵ *Id.* (“Much of this effort and expense could have been avoided had the FCC simply recognized that Congress intended to allow Tribes to designate their own libraries, rather than having to subjugate themselves to the authority of state librarians.”)

³⁶ See, e.g., NTTA Comments at 4-5 (recommending expansion of Tribal libraries to entities like the more than 200 Boys and Girls Clubs that operate in Tribal areas); ISOC and Salmonberry Comments at 9-10 (supporting expansion of Tribal libraries to include libraries of a Tribal College or University, as well as other community-serving institutions).

³⁷ See, e.g., ALA and ATALM Comments at 2 (explaining that “Tribal libraries are most often formed through a formal resolution from a tribal council.”).

³⁸ See, e.g., *id.*

³⁹ 47 U.S.C. § 254(h)(4).

⁴⁰ See, e.g., Institute of Museum and Library Services, Native American Library Services: Enhancement Grants, Notice of Funding Opportunity for FY 2021, at 5 <https://www.ims.gov/grants/available/native-american-library-services-enhancement-grants> (describing the eligibility requirements).

⁴¹ See, e.g., ISOC and Salmonberry Comments at 10 (seeking expanded eligibility for libraries of a Tribal College or University).

schools (including, but not limited to elementary schools, colleges, and universities.”⁴² As such, Tribal libraries that are part of a Tribal College or university remain ineligible for E-Rate support at this time.

11. On the whole, we expect this rule change to simplify the process for Tribal libraries to apply for E-Rate funding by clarifying their eligibility without requiring Tribal libraries to fit within the precise definitions that may be put in place by a State library administrative agency. By making Tribal library eligibility clear, we aim to further the program goal of ensuring affordable access to high-speed broadband sufficient to support robust connectivity for Tribal libraries by increasing participation in the E-Rate program.⁴³ We also further the Commission’s ongoing obligation to advance digital equity for all,⁴⁴ including Indigenous and Native American persons, people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality.⁴⁵ By lowering the barriers to participating in the E-Rate program, we hope to narrow the digital divide in Tribal regions, “where increased digital inclusion will yield economic, educational, and healthcare outcome improvements.”⁴⁶

12. *Outreach.* Preliminary results of the 2021 ATALM comprehensive digital inclusion survey of Tribal libraries included in ALA and ATALM’s comments show that “38% of respondents had not heard of the E-rate program, 30% were unsure if they were eligible, 13% said the application was too complicated, and 39% would like to learn more about the program.”⁴⁷ We agree with commenters that these numbers demonstrate that we need to do more to increase awareness of the program and training opportunities among Tribal libraries.⁴⁸ Therefore, in conjunction with this rule change, we direct ONAP and WCB, with assistance from the Tribal liaison at USAC,⁴⁹ to target outreach efforts and program training for Tribal libraries.

⁴² 47 CFR § 54.501(b)(2); *see also First Report and Order*, 12 FCC Rcd at 9071, para. 558 (stating that the “independence requirement is consistent with both congressional intent and the expectation of the Joint Board that universal service support would flow to an institution of learning only if it is an elementary or secondary school”).

⁴³ *See Modernizing the E-Rate Program*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8881, para. 26 (2014) (*2014 First E-Rate Order*).

⁴⁴ 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.

⁴⁵ The term “equity” is used here 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).

⁴⁶ *See* NTCA Comments at 7 (applauding “the Commission’s interest in ensuring its policies create broad opportunities for broadband engagement and inclusion”).

⁴⁷ *See* ALA and ATALM Comments at 3.

⁴⁸ *See id.*

⁴⁹ *See 2014 First E-Rate Order*, 29 FCC Rcd at 8967-70, paras. 243-49 (creating a Tribal consultation, training, and outreach program, including through the creation of a formal Tribal liaison at USAC to assist with Tribal-specific outreach, training, and assistance).

13. Tribal library applicants face particular resource challenges in applying.⁵⁰ Therefore, in addition to existing Tribal training materials, we direct USAC, in coordination with ONAP and WCB, to develop training materials targeting Tribal libraries that may be provided during Tribal-specific outreach, as well as to our federal partners, like the Institute of Museum and Library Services, to build awareness and provide information about how to apply before the close of the funding year 2022 application filing window.⁵¹ In creating these targeted outreach goals, we direct USAC to develop training materials focused on first-time E-Rate library applicants and to distribute these materials at national, regional, or local Tribal or library conferences. We also direct ONAP and WCB to undertake efforts to coordinate with organizations like the ALA, ATALM, the American Indian Library Association and the Chief Officers of the State Library Agencies to spread awareness in the current and upcoming funding years.

14. *Measuring Participation.* Adopting these rule changes and targeting specific Tribal library outreach are important steps towards our goal of increasing participation and access to E-Rate support for Tribal libraries. We also, consistent with the recommendation from the Government Accountability Office in 2016,⁵² seek to determine whether we are successfully achieving the E-Rate program's goals, including ensuring affordable access to high-speed broadband sufficient to support robust connectivity for all libraries and making the program's processes fast, simple, and efficient.⁵³ To do so, we now adopt new measures for these two goals by specifically measuring participation of Tribal libraries in future funding years and the speed of processing Tribal library applications, and we direct USAC to measure progress towards achieving the Commission's program goals. By creating specific Tribal library participation performance measures, we can monitor performance of the E-Rate program over time and assess whether the Commission's rules, policies, and outreach need to be revisited to draw more Tribal library applicants into the program.⁵⁴

15. *Other Issues Raised.* The importance of this rule clarification,⁵⁵ combined with the E-Rate program's funding year calendar – which generally accepts funding applications during the first quarter of the calendar year for the upcoming school year – make speedy action critical. Therefore, to ensure these rule changes are effective before the close of the funding year 2022 E-Rate application filing window, we decline to address several of the issues raised by comments to the *Tribal Libraries NPRM* regarding the E-Rate program at this time.⁵⁶ We appreciate the many comments raising broader issues with the E-Rate program and look forward to revisiting these issues.

⁵⁰ See, e.g., NNTRC Comments at 10-11 (discussing the E-Rate application process); ISOC and Salmonberry Comments at 13-14 (noting the GAO's finding that approximately half of the consulted Tribes reported a lack of Tribal capacity to apply for federal funding programs and recommending engaging local capacity as much as possible when developing outreach and training programs).

⁵¹ See, e.g., NTTA Comments at 3-4 (recommending clear and rapid communication of the revised requirements).

⁵² See 2016 GAO Report at 30-31.

⁵³ See 2014 *First E-Rate Order*, 29 FCC Rcd at 8881, 8891 paras. 26, 55 (adopting two of the E-Rate program goals).

⁵⁴ See generally ALA and ATALM Comments at 4 (agreeing that the Commission should establish performance measures to measure progress towards participation and connectivity).

⁵⁵ See, e.g., *id.* at 1 (stating that updating the definition is the most critical step the Commission can take).

⁵⁶ See, e.g., ALA and ATALM Comments at 4-5 (recommending that the Commission add a member to the USAC board to represent Tribal libraries); ISOC and Salmonberry Comments at 3, 11, 13-14 (recommending setting aside five percent of the available E-Rate support for Tribal schools and libraries, as well as using preference rules and other measures to increase the use of local capacity for outreach and training initiatives); NNTRC Comments at 11-12 (seeking broader changes to the E-Rate program rules to reduce complexity or change the recovery rules to reduce the risk of recoveries for good faith program violations); NNTRC Comments at 12-13 (asking the Commission to set a firm statute of limitations for recovery of funds).

IV. PROCEDURAL MATTERS

16. *Final Regulatory Flexibility Analysis.* The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this Report and Order on small entities. The FRFA is set forth in Appendix B.

17. *Paperwork Reduction Act.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13.⁵⁷ 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).⁵⁸

18. *Congressional Review Act.* The Commission will submit this draft Report and Order to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 3, 201-202, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-153, 201-202, 254, and 303(r), this Report and Order IS ADOPTED, and sections 54.500 and 54.501(b)(1) of the Commission’s rules, 47 CFR §§ 54.500 and 54.501(b)(1), ARE AMENDED as set forth in Appendix A, and such rule amendments shall be effective thirty (30) days after the publication of this Report and Order in the Federal Register.

20. IT IS FURTHER ORDERED that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

21. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵⁷ 44 U.S.C. §§ 3501-3520.

⁵⁸ *See* 44 U.S.C. § 3506(c)(4).

APPENDIX A**Final Rules**

For the reasons set forth above, we amend part 54 of title 47 of the Code of Federal Regulations 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.

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.

(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**Final Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission included an 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 the Schools and Libraries Universal Service Support Mechanism Notice of Proposed Rulemaking, *Tribal Libraries NPRM*.² The Commission sought written public comment on the proposals in the *Tribal Libraries NPRM*, including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

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 254.⁴ 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.⁵ 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.⁶

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. In this Report and Order, we update the E-Rate program rules to be consistent with the amended Library Services and Technology Act (LSTA),⁷ and clarify that Tribal libraries are eligible to apply for and receive E-Rate funding.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically address the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. Pursuant to the Small Business Jobs Act of 2010,⁸ which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as

¹ 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).

² Notice of Proposed Rulemaking, FCC 21-107, 2021 WL 4735488 at paras. 2-3 (Oct. 1, 2021) (*Tribal Libraries NPRM*).

³ See 5 U.S.C. § 604.

⁴ See generally 47 U.S.C. § 254.

⁵ *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*).

⁶ 47 CFR § 54.502.

⁷ Museum and Library Services Act of 2018, Pub. L. 115-410, 132 Stat. 5416 (2018) (Museum and Library Services Act of 2018).

⁸ 5 U.S.C. § 604(a)(3).

a result of those comments.⁹ The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. 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.¹⁰ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”¹¹ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹² 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).¹³

7. *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.¹⁴ 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.¹⁵ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.¹⁶

8. 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.”¹⁷ 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.¹⁸ Nationwide, for tax year 2018, there

⁹ *Id.*

¹⁰ 5 U.S.C. § 603(b)(3).

¹¹ 5 U.S.C. § 601(6).

¹² 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.”

¹³ Small Business Act, 15 U.S.C. § 632.

¹⁴ *See* 5 U.S.C. § 601(3)-(6).

¹⁵ *See* SBA, Office of Advocacy, Frequently Asked Questions, “What is a small business?,” <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/11/03093005/Small-Business-FAQ-2021.pdf>. (Nov 2021).

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 601(4).

¹⁸ 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.

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.¹⁹

9. 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.”²⁰ U.S. Census Bureau data from the 2017 Census of Governments²¹ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.²² Of this number there were 36,931 general purpose governments (county²³, municipal and town or township²⁴) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts²⁵ with enrollment populations of less than 50,000.²⁶ 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.”²⁷

¹⁹ 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-ao-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.

²⁰ 5 U.S.C. § 601(5).

²¹ 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>.

²² 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.

²³ 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.

²⁴ 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.

²⁵ 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.

²⁶ 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.

²⁷ 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.

1. Schools and Libraries

10. 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.”²⁸ 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 12.²⁹ 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 is located determines that the library should be considered a library for the purposes of this definition.”³⁰ The rule changes adopted in this Report and Order update the definition of library to add Tribal libraries. 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.³¹ Certain other statutory definitions apply as well.³² The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities.³³ 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 under the rule change in the Report and Order.

2. Telecommunications Service Providers

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”³⁴ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.³⁵ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.³⁶ Of this total, 3,083 operated with fewer than 1,000 employees.³⁷ Thus, under this size standard, the majority of firms in this industry can be considered small.

²⁸ 47 CFR § 54.500.

²⁹ *Id.*

³⁰ *Id.*

³¹ 47 CFR § 54.501.

³² 47 CFR § 54.500.

³³ 13 CFR § 121.201; NAICS codes 611110 and 519120 (NAICS code 519120 was previously 514120).

³⁴ See U.S. Census Bureau, *2017 NAICS Definition, “517311 Wired Telecommunications Carriers,”* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

³⁵ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

³⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110,

(continued....)

12. *All Other Telecommunications.* The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.³⁸ This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.³⁹ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.⁴⁰ The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less.⁴¹ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.⁴² Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49, 999,999.⁴³ Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

13. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments 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 services, paging services, wireless internet access, and wireless video services.⁴⁴ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.⁴⁵ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁴⁶ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more.⁴⁷ Thus under this category and the

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<https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

³⁸ See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ See 13 CFR § 121.201, NAICS Code 517919.

⁴² See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 517919,* <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁴⁴ See U.S. Census Bureau, *2017 NAICS Definition, “517312 Wireless Telecommunications Carriers (except Satellite),”* <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁵ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁴⁶ See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012, NAICS Code 517210,* <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁴⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

14. *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).⁴⁸ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁴⁹ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.⁵⁰ Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.⁵¹ 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.⁵² Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁵³ Therefore, based on Commission data, more than half of these entities can be considered small.

3. Internet Service Providers (ISPs)

15. *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.⁵⁴ 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.⁵⁵ Transmission facilities may be based on a single technology or a combination of technologies.⁵⁶ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.⁵⁷ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.⁵⁸ Of this total, 3,083 operated with fewer than

⁴⁸ See U.S. Census Bureau, *2017 NAICS Definition*, “517312 Wireless Telecommunications Carriers (except Satellite),” <https://www.census.gov/naics/?input=517312&year=2017&details=517312>.

⁴⁹ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

⁵⁰ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

⁵¹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁵² See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

⁵³ *Id.*

⁵⁴ See U.S. Census Bureau, *2017 NAICS Definition*, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

⁵⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false>.

1,000 employees.⁵⁹ Consequently, under this size standard the majority of firms in this industry can be considered small.

16. *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.⁶⁰ The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.⁶¹ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.⁶² Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.⁶³ Consequently, under this size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

17. *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 employees or less⁶⁴ and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.⁶⁵ U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.⁶⁶ Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees.⁶⁷ For Other Communications Equipment Manufacturing, U.S.

⁵⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁰ See U.S. Census Bureau, *2017 NAICS Definition, “517919 All Other Telecommunications,”* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁶¹ See 13 CFR § 121.201, NAICS Code 517919.

⁶² See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012, NAICS Code 517919,* <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

⁶³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁶⁴ See 13 CFR § 121.201, NAICS Code 334220. See also U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,”* <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

⁶⁵ See 13 CFR § 121.201, NAICS Code 334290. See also U.S. Census Bureau, *2017 NAICS Definition, NAICS Code “334290 Other Communications Equipment Manufacturing,”* <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁶⁶ See U.S. Census Bureau, *2012 Economic Census of the United States, Table ID: EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334220,* <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334220&vintage=2012&hidePreview=false>.

⁶⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical

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Census Bureau data for 2012, show that 383 establishments operated for the year.⁶⁸ Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.⁶⁹ Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

18. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.⁷⁰ These products may be stand-alone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless and wire telephones (except cellular), PBX equipment, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.⁷¹ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees.⁷² U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year.⁷³ Of this total, 262 operated with fewer than 1,000 employees.⁷⁴ Thus, under this size standard, the majority of firms in this industry can be considered small.

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

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with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

⁶⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334290&vintage=2012&hidePreview=false>.

⁶⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

⁷⁰ See U.S. Census Bureau, *2017 NAICS Definition*, “334210 Telephone Apparatus Manufacturing,” <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

⁷¹ *Id.*

⁷² See 13 CFR § 121.201, NAICS Code 334210.

⁷³ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334210, <https://data.census.gov/cedsci/table?n=334210&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

⁷⁴ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees.

television broadcast and wireless communications equipment.⁷⁵ 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.⁷⁶ The SBA has established a small business size standard for this industry of 1,250 employees or less.⁷⁷ U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.⁷⁸ Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.⁷⁹ Based on this data, we conclude that a majority of manufacturers in this industry are small.

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

20. The rules adopted in the Report and Order will not result in modified reporting, recordkeeping, or other compliance requirements for small or large entities. In this Report and Order, we update the E-Rate program rules to make clear that Tribal libraries are eligible to apply for and receive E-Rate funding, as well as funding from the Emergency Connectivity Fund program. These 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 program rules to adopt the amended definition of library under the LSTA, for example, will clarify that Tribal libraries are eligible for support by statute. Moreover, this clarity may also alleviate some of the issues that Tribal libraries face when seeking E-Rate support.

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

21. 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.”⁸⁰

22. In the Report and Order, we have taken steps to minimize the economic impact on small entities with the rule changes that we have adopted. 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

⁷⁵ See U.S. Census Bureau, *2017 NAICS Definition*, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

⁷⁶ *Id.*

⁷⁷ See 13 CFR § 121.201, NAICS Code 334220.

⁷⁸ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

⁷⁹ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

⁸⁰ 5 U.S.C. § 603(c)(1) - (4).

which leads to them being underrepresented among E-Rate applicants. We have therefore updated the rules to add Tribal libraries to the definition of library, which may encourage Tribal libraries to apply for and receive E-Rate support. In addition, Tribal libraries will have less difficulty determining eligibility than they have in the past.⁸¹

G. Report to Congress

23. The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.⁸² In addition, the Commission will send a copy of the Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.⁸³

⁸¹ See, e.g., NNTRC Comments at 9 (describing the time and expense required to determine eligibility of Tribal libraries in the three states that the Navajo Nation spans).

⁸² 5 U.S.C. § 801(a)(1)(A).

⁸³ See *id.* § 604(b).