

FCC FACT SHEET***Improving E-Rate Rules and Processes for Tribal Applicants**

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 equipment needed to connect today’s students and library patrons with next-generation learning opportunities and services. In 2022, the Commission amended its definition of library to include Tribal libraries, clarifying that Tribal libraries are eligible to participate in the program. If adopted, this *Notice* would seek comment on ways to further improve program rules and encourage greater Tribal participation in the E-Rate program.

What the Notice Would Do:

- Seek comment on whether the Commission should revise its eligibility rules to allow Tribal college libraries that serve a dual role as a public library in their communities to be eligible for E-Rate support.
- Seek comment on ways to improve the E-Rate application process, such as by simplifying E-Rate forms, providing an additional exemption to the competitive bidding rules, and whether creating an extended or separate application filing window for Tribal libraries would be beneficial to align with the applicable Tribal procurement requirements and approval processes.
- Seek comment on ways to simplify the E-Rate cost-allocation rules and procedures and whether further guidance is needed.
- Seek comment on several proposed program changes, including increasing the maximum discount rate level for category two services from 85% to 90% for Tribal schools and libraries, and increasing the category two five-year \$25,000 funding floor for Tribal schools and libraries.
- Seek comment on increasing Tribal representation and leadership at the Universal Service Administrative Company (USAC) and in the universal service fund programs by adding a Tribal representative to USAC’s Board of Directors.
- Seek comment on establishing a definition of “Tribal” for the E-Rate program.
- Seek comment on whether the Commission should consider any other measures to make it easier for Tribal applicants and other small non-Tribal applicants to access and participate 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)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
Changes to the Board of Directors of the National) CC Docket No. 97-21
Exchange Carrier Association, Inc.)

NOTICE OF PROPOSED RULEMAKING*

Adopted: []

Released: []

Comment Date: (45 days after date of publication in the Federal Register)
Reply Comment Date: (75 days after date of publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internet equipment to connect today’s students and library patrons with next-generation learning opportunities and services.1 In January 2022, the Commission began an initiative to increase Tribal libraries’ access to E-Rate support by first clarifying that Tribal libraries are eligible to participate in the program2 and later launching its Tribal Library Pilot Program to ensure Tribal library institutions have equitable access to the E-Rate program.3 Today, to continue to address the underrepresentation of Tribal libraries in the E-Rate program, we seek comment on ways to further improve program rules and encourage greater Tribal participation in the program. We also seek comment

* This document has been circulated for tentative consideration by the Commission at its February 2023 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 See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Report and Order, FCC 22-8 (2022) (Tribal Library Order). We incorporate the record derived from that proceeding into this one.

3 Tribal Libraries E-Rate Pilot Program, (Oct. 20, 2022), https://www.fcc.gov/tribal-libraries-e-rate-pilot-program; Press Release, FCC, FCC Announces Pilot Program to Help Tribal Libraries Sign Up For E-Rate Program (Oct. 20, 2022), https://www.fcc.gov/document/fcc-announces-pilot-help-tribal-libraries-sign-e-rate.

on whether similar reforms may be needed to encourage greater participation by non-Tribal applicants, especially if they too face barriers that impede equitable access to the E-Rate program.

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.⁴ Since its inception, the E-Rate program has provided support for connectivity to and within schools and libraries, and it has been instrumental in providing students and library patrons access to essential advanced telecommunications and broadband services. Eligible schools, libraries, and consortia of eligible schools and libraries, apply for E-Rate support annually during the application filing window.⁵

3. Although the Commission recently resolved one of the restrictions regarding which libraries are eligible for E-Rate support by amending its definition of “library” in section 54.500 of its rules to include a Tribal library,⁶ other eligibility restrictions remain. For example, section 54.501(b)(2) of the Commission’s rules requires libraries’ budgets to be “completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities)” to be eligible for E-Rate support.⁷ This is because the Commission, in 1997, elected not to include higher education academic libraries out of concern that “institutions of higher learning could assert that their libraries, and thus effectively their entire institutions, were eligible for support,” finding this inconsistent with congressional intent that funding would flow to an institution of learning only if it is an elementary or secondary school.⁸ The Commission also sought to ensure that a school library at an elementary or secondary school could not collect universal support twice for the same service.⁹

4. The E-Rate program’s eligible equipment and services (collectively “eligible services”) are divided into category one and category two services. Category one services provide connectivity to the schools and libraries, while category two services provide connectivity within them.¹⁰ For category one services, the Commission did not set a budget; however, for category two services, there is a five-year, pre-discount budget up to which applicants may request funding.¹¹ In 2019, the Commission set the category two funding floor, or minimum funding level available for smaller schools and libraries, to a pre-discount level of \$25,000, meaning that all applicants could receive funding of at least \$25,000 over a five-

⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

⁵ See 47 CFR § 54.507(c)-(d). Each funding year runs from July 1 through the following June 30. *Id.* § 54.507(b). Funding year 2023, for example, will run from July 1, 2023 through June 30, 2024.

⁶ See *Tribal Library Order* at 3, para. 7; 47 CFR § 54.500 (“A ‘library’ includes . . . [a] Tribal library.”).

⁷ 47 CFR § 54.501(b)(2).

⁸ *Universal Service First Report and Order*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9070, paras. 557-59 (1997) (*Universal Service First Report and Order*).

⁹ *Id.* at 9070, para. 559.

¹⁰ 47 CFR § 54.502(a)(1)-(2).

¹¹ 47 CFR § 54.502(b-d). See also *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219 (2019) (*Category Two Report and Order*); *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8898-8922, paras. 76-133 (2014) (*First 2014 E-Rate Order*); *Modernizing the E-Rate Program for Schools and Libraries, Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15571-78, paras. 77-81 (2014) (*Second 2014 E-Rate Order*).

year period.¹² The Commission also set the pre-discount budget multiplier for all libraries at \$4.50 per square foot¹³ over a five-year funding cycle beginning in funding year 2021.¹⁴

5. Under the Commission's rules, eligible schools and libraries can receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need and the category of service.¹⁵ When it adopted the category two budgets, the Commission lowered the maximum discount rate for category two services.¹⁶ Specifically, the maximum discount rate for category two services and equipment was lowered from 90% to 85% to ensure that E-Rate funds are spread more widely, increase applicant incentive to select the most cost-effective options, and reduce the opportunities for waste, fraud, and abuse of the limited funds.¹⁷

6. The E-Rate program only provides funding for eligible equipment and services within both categories of services, and an eligible services list is updated and published every funding year to assist applicants.¹⁸ However, certain E-Rate eligible equipment or services may have components that are ineligible or can be used for ineligible purposes and, therefore, applicants are required to remove the costs of (or cost allocate) the ineligible portions of the equipment or services from their E-Rate funding requests.¹⁹ Under these rules, if a piece of equipment or service contains ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components.²⁰ The cost allocation must have a tangible basis and the price for the eligible portion must be the most cost-effective means of receiving the eligible equipment or service.²¹ If the ineligible functionality is part of the product without any itemized costs associated with it, it is considered to be "ancillary," and the costs for the product's ineligible functionality do not need to be removed.²²

¹² 47 CFR § 54.502(d)(1)-(4). *See also Category Two Report and Order*, 34 FCC Rcd at 11230-34, paras. 29-30, 34-39. This means that a library can receive discounts on up to \$4.50 per square foot in funding for category two services over a five-year funding cycle or, if the square footage multiplied by the \$4.50 for a library is below \$25,000, a library can receive discounts on up to \$25,000 in costs for category two services or equipment over a five-year funding cycle. For example, a library that is 5,000 square feet would, with the library multiplier of \$4.50, be eligible for \$22,500 in funding over the five-year funding period, but, because the funding floor is \$25,000, would instead be eligible for a \$25,000 in category two budget funding over the same five-year period. If a library was 6,000 square feet, it would be eligible for \$27,000 in category two budget funding over a five-year period. This amount is above \$25,000, so the funding floor would not apply.

¹³ Libraries calculate square footage by providing "the total area for all floors, in square feet, of all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public." 47 CFR § 54.502(d)(3).

¹⁴ 47 CFR § 54.502(d)(1)-(4). *See also Category Two Report and Order*, 34 FCC Rcd at 11230-34, paras. 29-30, 34-39.

¹⁵ 47 CFR § 54.505(c).

¹⁶ 47 CFR § 54.505(c); *First 2014 E-Rate Order*, 29 FCC Rcd at 8901-02, paras. 82-85.

¹⁷ *Id.*

¹⁸ 47 CFR § 54.502(a), (e); *see Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, DA 22-1313, 2022 WL 17886489 (WCB Dec. 14, 2022) (*FY 2023 Eligible Services List*).

¹⁹ 47 CFR § 54.504(a)(1)(v).

²⁰ 47 CFR § 54.504(e)(1).

²¹ USAC, *Cost Allocation for Services*, <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-overview/cost-allocations-for-services/> (last visited Nov. 3, 2022) (providing examples of ineligible components of otherwise eligible services, including an otherwise eligible firewall bundle that includes an ineligible spam license and intrusion prevention license).

²² 47 CFR § 54.504(e)(2) (providing that an ineligible functionality may be considered "ancillary" if (1) a price for the ineligible component that is separate and independent from the price of the eligible components cannot be

(continued....)

7. E-Rate applicants are required to seek competitive bids for the eligible services they seek to purchase using E-Rate funds.²³ The competitive bidding requirements ensure E-Rate participants are informed of available choices and receive the best prices for the requested eligible services and equipment.²⁴ To accomplish this, applicants must submit an FCC Form 470 for posting on the Universal Service Administrative Company's (USAC) website, which requests bids for E-Rate eligible services.²⁵ The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.²⁶ Applicants must then carefully consider all submitted bids, and the price of eligible equipment and services must be the primary factor in selecting the winning bid.²⁷ After entering into a contract for E-Rate eligible services, applicants request support by submitting an FCC Form 471 application to USAC.²⁸ However, as one way of simplifying the E-Rate process and encouraging smaller schools and libraries to obtain vital services, the Commission adopted a rule exempting commercially available internet access services that cost \$3,600 or less per year from the competitive bidding rules, allowing applicants to request these services without filing the FCC Form 470.²⁹

8. Finally, pursuant to the Commission's rules, the E-Rate program is administered by USAC under the direction and supervision of the Commission.³⁰ USAC is led by a board composed of nineteen directors.³¹ The USAC Board is made up of one permanent director and eighteen directors serving three-year terms who are divided into three groups of six directors, each group offset by a year so that six directors are changed every year.³² To provide USAC with a variety of viewpoints, these eighteen directors represent a range of telecommunications stakeholders and market participants, including telecommunications companies, Internet service providers, schools, libraries, and consumer representatives.³³ Further, the USAC Board has three committees responsible for administering specific universal service support mechanisms: a Schools and Libraries Committee, a Rural Health Care Committee, and a High Cost & Low Income Committee.³⁴

III. DISCUSSION

9. Today, we seek comment on several ways to simplify the E-Rate program rules to make it easier for Tribal applicants to participate in the program without contravening congressional directives or

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determined, and (2) the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.) *See also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 21927-28, paras. 36-39 (2003).

²³ 47 CFR § 54.503.

²⁴ *See* 47 CFR §§ 54.503, 54.511.

²⁵ *See id.*; *see also* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (2022) (FCC Form 470).

²⁶ 47 CFR § 54.503.

²⁷ *See* 47 CFR §§ 54.503, 54.511; *see also Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 481.

²⁸ *See* 47 CFR § 54.504.

²⁹ *First 2014 E-Rate Order*, 29 FCC Rcd at 8948-50, paras. 199-202; *see also* 47 CFR § 54.503(e).

³⁰ *See* 47 CFR §§ 54.701, 54.702.

³¹ 47 CFR § 54.703.

³² *Id.*

³³ *Id.*

³⁴ 47 CFR § 54.705.

increasing the risk of waste, fraud, or abuse. For example, through our outreach to Tribal libraries this past year, we recognized that Tribal libraries still encounter barriers that limit access to the E-Rate program, and these barriers negatively impact the members of the Tribal communities that they serve. We seek comment on a number of these issues to determine whether changes or clarifications would help Tribal applicants access E-Rate support and better serve their communities. We also seek comment on any other ways that the Commission can help enable more Tribal applicants to participate in the E-Rate program. Finally, we seek comment on whether similar reforms may be needed to encourage greater participation by non-Tribal applicants, particularly if they face barriers that impede equitable access to the E-Rate program.

10. We anticipate that any revisions to our rules or procedures implementing the E-Rate program would benefit from Tribal consultation. We therefore direct the Office of Native Affairs and Policy (ONAP), in coordination with the Wireline Competition Bureau (Bureau), to conduct government-to-government consultation as appropriate with Tribal Nations about the topics we raise in this NPRM. Tribal Nations may also notify ONAP of their desire for consultation via email to native@fcc.gov.

A. Tribal College Libraries

11. In order to develop a complete record, we seek comment on whether to modify section 54.501(b)(2) of our rules to allow Tribal college libraries that serve a dual role by servicing the Tribal community as a public library to be eligible for E-Rate support. Under present rules, “[o]nly libraries whose budgets are completely separate from any schools” are eligible for E-Rate funding.³⁵ The Commission adopted these safeguards in part to protect limited universal service funds from being diverted to institutions of higher education.³⁶ However, there may be some instances where Tribal college libraries are also serving as the public library for their communities. In comments to the *2021 Tribal Libraries NPRM*,³⁷ a commenter suggested making “public serving librar[ies] of a Tribal College or University” eligible for E-Rate support.³⁸ According to the Department of Education, there are thirty-two accredited Tribal colleges in the United States.³⁹ Of these thirty-two Tribal college libraries, at least nineteen have received Institute of Museum and Library Services (IMLS) grants as direct recipients or subrecipients to provide services to their communities.⁴⁰ Many of these Tribal college libraries may be the only library in the community and take on the public library role in addition to being academic libraries.⁴¹

12. Section 254(h)(4) of the Communications Act of 1934, as amended (Act) excluded certain libraries from eligibility,⁴² but did not define libraries. In adopting the E-Rate program rules, the Commission barred college and university libraries from eligibility, finding this could result in otherwise ineligible institutions draining a substantial amount of universal service support from schools and libraries

³⁵ 47 CFR § 54.501(b)(2); *see also* 47 U.S.C. § 254(h)(4) (establishing that only libraries that are “eligible for assistance from a State library administrative agency under the Library Services and Technology Act” are eligible for universal service support); 20 U.S.C. § 9122(1) (establishing those libraries that are eligible for assistance under the Library Services and Technology Act, which includes academic libraries).

³⁶ *See* 47 U.S.C. § 254(h)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 9070, para. 557.

³⁷ *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 36 FCC Rcd 15083, 15083-84, paras. 2-3 (2021) (*2021 Tribal Libraries NPRM*).

³⁸ *See, e.g.*, ISOC and Salmonberry Tribal Associates Comments, CC Docket No. 02-6, at 9-10 (rec. Nov. 15, 2021).

³⁹ Department of Education, *Tribal Colleges and Universities*, <https://sites.ed.gov/whiaiane/tribes-tcus/tribal-colleges-and-universities/> (last visited Oct. 14, 2022).

⁴⁰ Found using the IMLS Awarded Grants Search Tool at www.imls.gov/grants/awarded-grants.

⁴¹ Government Publishing Office, *Tribal Colleges Librarians Institute (TCLI) 2020 Gathering*, https://www.gpo.gov/docs/default-source/news-content-pdf-files/2020/tribal-college-librarians-institute_typeline_summer-2020.pdf (last visited Oct. 14, 2022).

⁴² *See* 47 U.S.C. § 254(h)(4).

and is therefore inconsistent with section 254(h)(5), which limited support to elementary and secondary schools that meet certain criteria.⁴³ We seek comment on whether we should reconsider the Commission's bar on the eligibility of Tribal college libraries if they are also acting as a public library in their community, and whether doing so is consistent with section 254(h)(5) of the Act. Would making this eligibility change allow the E-Rate program to provide funding to more libraries serving and connecting Tribal patrons? What types of evidence, if any, should we deem sufficient to demonstrate that a Tribal college library is serving a dual role: i.e., acting both in an academic capacity (serving students in a college) and more broadly as a public library (serving all members of the local community)? Should we deem IMLS grants to a Tribal college library as probative in this regard? Why or why not? Should we consider whether there are other Tribal or public libraries in the community already? We seek additional data or examples from commenters to help us determine whether Tribal college libraries are serving this dual role, and if so, whether they are unique in this regard; and to understand what other roles Tribal college libraries might serve in their communities. Should any additional requirements be imposed on Tribal college affiliated libraries to qualify for E-Rate support, such as being open a certain number of hours to the public or permitting any member of the public to request and have materials made available to them?

13. We note that we seek comment only on the needs of the Tribal college library that is also serving as a public library to its Tribal community, and do not propose to use the E-Rate program to fund the connectivity needs of the Tribal college or university. How can we ensure the Tribal college library is supporting the Tribal community and that E-Rate support is not diverted for other higher education purposes contrary to congressional intent that funding flow to an institution of learning only if it is an elementary or secondary school? Should there be limits on the ability of a Tribal college to establish branch libraries? For example, the Commission in 1997 was concerned a college library could establish branches in dormitories in order to fund services to other college buildings.⁴⁴ Here, would limits on branches make sense or could we rely on other measures, like a requirement that the building be open and accessible to the public? Are there any other concerns (e.g., procedural or budgetary) that might present challenges for Tribal college libraries to participate in the E-Rate program? Are there other non-Tribal college libraries that may be serving a dual role as the academic and public library for their community? We also seek data and information about these college libraries and comment on whether there are administrable ways to expand eligibility to Tribal college libraries providing public library services without reversing the Commission's 1997 decision to only make libraries eligible if their budgets were completely separate from colleges or universities. For example, do Tribal college libraries currently receive funding from sources other than the Tribal college or university because they are also serving the dual role as the Tribal community's public library?

B. Simplifying and Improving the E-Rate Application Process

14. We next seek comment on ways that we can streamline the application process and make the E-Rate forms simpler. The American Library Association (ALA) and the Association of Tribal Archives, Libraries, and Museums (ATALM) have previously observed in response to the *2021 Tribal Libraries NPRM* that only 12% of Tribal libraries had ever applied for E-Rate funding.⁴⁵ Among the reasons cited by those that did not apply was the perceived complexity of the E-Rate application and funding process.⁴⁶ We agree that further simplifying the E-Rate forms and processes could help to increase Tribal library participation in the program. Toward that end, we note that one of the goals of the Tribal Libraries E-Rate Pilot Program is to gain an understanding of the applicant experience and use the

⁴³ See 47 U.S.C. § 254(h)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 9070, para. 557.

⁴⁴ *Universal Service First Report and Order*, 12 FCC Rcd at 9070, para. 557.

⁴⁵ ALA and ATALM Comments, CC Docket No. 02-6, at 3 (rec. Nov. 12, 2021) (ALA and ATALM Comments).

⁴⁶ *Id.* (stating 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”).

information to streamline the E-Rate program procedures and processes, particularly for Tribal applicants.⁴⁷

15. Here, we seek comment on how to streamline the FCC forms or change parts of the application process that may be burdensome for Tribal libraries and other similar applicants. How could we simplify the language of the FCC forms, or provide guidance about what the terminology used on the forms means? Which terminology is the most challenging for a Tribal entity? To reduce the number of FCC forms for applicants submitting only a small E-Rate funding request that is less likely to attract competitive bids, should we consider providing an additional exemption to the FCC's competitive bidding rules? For example, should we exempt low-cost purchases if the applicant is seeking category two equipment that totals less than a pre-discount cost of \$3,600, the level that currently exists for the commercially available high-speed Internet access services exemption,⁴⁸ or some other level? Does the existing exemption for commercially available high-speed Internet access services reduce applicant burden? What would a reasonable pre-discount cost be that would not create an undue risk of waste, fraud, and abuse in the program? Should there be a maximum pre-discount price per entity for each category of service in a single funding year? How could we still ensure that applicants are purchasing cost-effective equipment and services? Is there any publicly available, existing pricing data for frequently purchased equipment and services that the Bureau could use to set "safe harbor" price levels for comparable regions, below which competitive bidding would not be required? Would exempting these purchases from competitive bidding encourage additional small and often rural entities, like Tribal libraries and schools, to participate in the program?

16. Would Tribal libraries benefit from having extended or separate application filing windows because of the approval processes that may be needed for their E-Rate eligible procurements and purchases? We understand from speaking with Tribal governments and libraries, for example, that the procurement processes for many Tribal schools are independent from the Tribal government's procurement processes, but the Tribal library's purchases are often included with the Tribal government's procurements. We seek comment on whether the procurement processes for Tribal libraries are more complicated and protracted than Tribal schools' E-Rate procurements. Would a longer application filing window work better with the Tribal government or council's procurement requirements? How much additional time may be needed for Tribal libraries to complete their Tribal procurement processes and receive approval for their requested E-Rate eligible purchases and/or contracts? Are there any drawbacks that the Commission should consider in deciding whether to establish an extended or separate application filing window? Could a separate application window delay a Tribal library from timely obtaining broadband services during the funding year or limit the options available to an applicant?

C. Cost Allocation Rules and Procedures

17. We seek comment on whether and how to simplify the E-Rate program cost allocation rules and procedures. Libraries that share services, equipment, or space with ineligible entities, like an administrative office, are eligible for E-Rate support, but often are required to cost allocate the portion of the cost of the services used by the ineligible entity. Cost allocation is a part of the E-Rate process that can be confusing for all applicants,⁴⁹ but especially for Tribal libraries. For instance, some Tribal libraries are located within another Tribal building (e.g., the Tribal library only uses a portion of the building), share a

⁴⁷ *Tribal Libraries E-Rate Pilot Program* (Oct. 20, 2022), [https://www.fcc.gov/tribal-libraries-e-rate-pilot-program; Press Release, FCC, FCC Announces Pilot Program to Help Tribal Libraries Sign Up For E-Rate Program \(Oct. 20, 2022\), https://www.fcc.gov/document/fcc-announces-pilot-help-tribal-libraries-sign-e-rate](https://www.fcc.gov/tribal-libraries-e-rate-pilot-program; Press Release, FCC, FCC Announces Pilot Program to Help Tribal Libraries Sign Up For E-Rate Program (Oct. 20, 2022), https://www.fcc.gov/document/fcc-announces-pilot-help-tribal-libraries-sign-e-rate).

⁴⁸ 47 CFR § 54.503(e).

⁴⁹ For example, the State E-Rate Coordinators' Alliance (SECA) has a pending petition for reconsideration of a 2019 Order seeking reconsideration of how the use of shared network equipment by a non-instructional building of a school or administrative building of a library is cost allocated, noting the administrative burden and complexity. *See* SECA Petition for Reconsideration, WC Docket No. 13-184, at 4-8 (filed Jan. 21, 2020).

building at different points in the week (e.g., the Tribal library operates four days a week, and the building is used by the Tribal community for other purposes the other three days), and/or share their internet connections with ineligible entities (e.g., the Tribal library obtains internet access as part of the Tribal nation's broader contract). For example, the Navajo Nation has chapter houses that, in addition to housing local government, contain a library that circulates materials and houses book collections for use by their communities.⁵⁰ Tribal libraries in these kinds of circumstances may still receive E-Rate funding, but we recognize the burdens that potential cost allocation requirements may present and the possible deterrent effects of such requirements.

18. We seek comment on the cost allocation challenges applicants, such as Tribal libraries and other small non-Tribal entities, may face. Under the current procedures,⁵¹ are there particular challenges for cost allocation that arise because the Tribal libraries are housed in multi-use buildings? For example, as long as a Tribal library meets the conditions set out in the *Sixth Report and Order* for community use,⁵² the library should not need to cost allocate the use of the bandwidth when the library is closed (e.g., from the parking lot), but are there other scenarios that are challenging for multi-use buildings? Are there ways we could provide guidance on how or when Tribal libraries and other small non-Tribal entities should or should not be required to perform cost allocations? If so, we encourage commenters to provide specific examples of how their library building is used and questions about whether cost allocation would be required. We also seek comment on whether certain types of potentially ineligible use should be permitted without requiring Tribal libraries to cost allocate to simplify the E-Rate application and invoicing processes. Are there other groups affiliated with the Tribal library (e.g., IT departments or governing entities) for which Commission guidance is needed to make cost allocation requirements more manageable? Finally, what are the potential costs of addressing cost allocation challenges? How can we prevent waste, fraud, and abuse in the E-Rate program while making changes in this area?

D. Category Two Discount Rates and Rule

19. While we recognize the issues of digital equity exist for other entities, in this item, we seek comment on making changes to the category two discount rates and rules for Tribal entities. As described above, the maximum category two discount rate is set at 85%, lower than the 90% maximum discount rate for eligible category one services.⁵³ While the Commission adopted this 85% discount rate to encourage applicants to find the most cost-effective options, should the maximum category two discount rate be raised to 90% for Tribal schools and libraries to encourage participation and lower costs for these applicants? Commenters are invited to comment on both the benefits and drawbacks of increasing the discount level from 85% to 90% for category two services. We also seek comment on whether to consider increasing the \$25,000 funding floor for Tribal schools and libraries. If so, what funding floor would be appropriate to ensure Tribal schools and libraries have sufficient category two funding to meet their internal connections and Wi-Fi network needs? Alternatively, should the Commission delegate setting a

⁵⁰ Savannah Maher, *FCC Proposes Rule Change to Help Tribal Libraries with Broadband* (Oct. 25, 2021), <https://www.marketplace.org/2021/10/25/fcc-proposes-rule-change-to-help-tribal-libraries-with-broadband/>.

⁵¹ *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18773-77, paras. 20-27 (2010) (*Sixth Report and Order*) (determining that community use of E-Rate-funded services for schools would be permitted as long as the schools do not request more funding than necessary for educational purposes, do not permit community use during the school's operating hours, and do not charge for the use of such equipment and services).

⁵² *Id.*; see also *Wireline Competition Bureau Confirms that Community Use of E-Rate-Supported Wi-Fi Networks is Permitted During the School and Library Closures Due to COVID-19 Pandemic*, WC Docket Nos. 02-6, 13-184, Public Notice, 35 FCC Rcd 2879 (WCB 2020) (clarifying that libraries, in their ongoing "mission to serve the public," may allow for community use of E-Rate-funded services under the same conditions).

⁵³ 47 CFR § 54.505(c); *First E-Rate Order*, 29 FCC Rcd at 8901-02, paras. 82-85.

different funding floor for Tribal entities to the Bureau, after it seeks notice and comment? If the minimum funding floor is increased, should the Commission consider raising it for all applicants or solely for Tribal schools and libraries? What can we do to prevent waste, fraud, and abuse in the program if we raise the minimum funding floor? Should there be any special considerations regarding the category two budgets of Tribal libraries located in multi-use buildings? Are there any other changes or enhancements that can be made to category two rules to help Tribal schools and libraries and encourage their participation in the E-Rate program?

E. Tribal Representation on USAC Board of Directors

20. To increase Tribal input and representation in the federal universal service programs, we seek comment on a proposal to increase Tribal representation on the USAC Board of Directors (USAC Board) by adding a Tribal community representative director. In their joint comments to the *2021 Tribal Libraries NPRM*, ALA and ATALM suggested adding a director “to the USAC board with purview of tribal libraries and other tribal organizations that are beneficiaries of Universal Service Fund programs.”⁵⁴ We seek comment on this proposal and on how to ensure Tribal entities are fairly represented on the USAC Board and its underlying committees. Should the Commission add a director to the USAC Board to represent Tribal interests pertaining to universal service support provided to low-income households, schools, libraries, health care providers, and Tribally owned telecommunications companies? Would the addition of another director result in a governance imbalance on the Board?⁵⁵ If so, are there alternatives we should consider? Should we consider other changes to the Commission’s rules regarding the USAC Board that would benefit Tribal entities? We seek comment on these questions and other ways to increase Tribal representation and leadership at USAC and in the federal universal service programs.

F. Other Program Improvements

21. In addition to the specific areas we discussed above, we also seek comment on other measures the Commission should consider to make it easier for Tribal schools and libraries and other small non-Tribal entities to participate in the E-Rate program. Are there other ways in which the Commission could increase participation of Tribal schools and libraries or enhance the E-Rate program to help Tribal communities?⁵⁶ What are the largest barriers for Tribal libraries and other small non-Tribal entities that do not currently participate in the E-Rate program? We seek comment on examples of circumstances or considerations unique to Tribal schools or libraries that hinder or impede participation in the E-Rate program. Are there types of guidance or clarifications that the Commission or the Bureau could provide to address areas of confusion? Are there any other rule changes that could specifically help Tribal schools and libraries and other small non-Tribal entities with the E-Rate application, invoicing, and other administrative processes?

22. Are there any specific issues that Tribal entities or other small non-Tribal entities encounter using the E-Rate Productivity Center (EPC), the online account and application management system for the E-Rate program? How can we better target help to Tribal schools and libraries? As noted above, the Commission launched the Tribal Library E-Rate Pilot Program to provide assistance to Tribal

⁵⁴ ALA and ATALM Comments at 4-5.

⁵⁵ See 47 CFR § 54.703(b). Currently, the Board of Directors is composed of eighteen directors and the USAC Chief Executive Officer, resulting in an odd number of members. The addition of another board director could result in an even number of members and could potentially create deadlock ties in board decisions.

⁵⁶ Some of the ideas offered in the comments to the *2021 Tribal Libraries NPRM* are inconsistent with the section 254 of the Telecommunications Act or the Debt Collection Improvement Act (DCIA). See, e.g., NTCA Comments at 6-7 and NNTA Comments at 4-5 (recommending the Commission add Boys and Girls Clubs as eligible entities for E-Rate); NNTRC Comments at 11-13 (asking the Commission to set a firm statute of limitations for recovery of funds); 31 U.S.C. § 3711(a)(1); see also 31 CFR § 901.1 (requiring aggressive collection actions).

libraries and to receive feedback on E-Rate.⁵⁷ Should the Commission consider any additional methods of outreach (e.g., in-person training, one-on-one assistance) to ensure that as many eligible Tribal schools and libraries as possible are aware of the program, understand how the program can help them meet their information technology and connectivity needs, and are prepared to be able to apply and receive support? If so, we seek comment on what these might be. Finally, should we adopt a definition of “Tribal” in the E-Rate program rules?⁵⁸ Currently, Tribal applicants are encouraged to self-identify as a Tribal school or a Tribal library by checking the Tribal box if “the majority of students or library patrons served are Tribal members; if the building to receive service is located partially or entirely on Tribal land; if the applicant is a school operated by or receiving funding from the Bureau of Indian Education (BIE); or if the applicant is a school or library operated by a Tribal Nation.” Is this the appropriate definition of “Tribal” for the E-Rate program? Should we modify it? Are there Tribal schools or libraries that are located off of Tribal land? If so, should we also define “Tribal lands” or other terms to make the definition more inclusive of such entities? We further note that checking whether “the majority of students or library patrons served are Tribal members” may be fact-intensive and burdensome to administer. We therefore seek comment on whether we should remove that language from the existing Tribal definition and rely instead on other means to define “Tribal.”

G. Digital Equity and Inclusion

23. Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁵⁹ 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, invites comment on any equity-related considerations⁶⁰ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

IV. PROCEDURAL MATTERS

24. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁶¹ requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings,

⁵⁷ *Tribal Libraries E-Rate Pilot Program* (Oct. 20, 2022), <https://www.fcc.gov/tribal-libraries-e-rate-pilot-program>; [Press Release, FCC, FCC Announces Pilot Program to Help Tribal Libraries Sign Up For E-Rate Program](#) (Oct. 20, 2022), <https://www.fcc.gov/document/fcc-announces-pilot-help-tribal-libraries-sign-e-rate>.

⁵⁸ The Commission has defined “Tribe” and “Tribal lands” in other contexts. *See, e.g.*, 47 CFR § 73.7000 (defining “Tribe” and “Tribal lands” for certain radio broadcast channel applications); *id.* § 54.5 (defining “Tribal lands” for high-cost support); *id.* § 54.1600(t) (defining “Tribal lands” for purposes of the eligibility of a consumer location for the Emergency Broadband Benefit Program); *id.* § 54.1800(s) (defining “Tribal lands” for purposes of the eligibility of a consumer location for the Affordable Connectivity Program).

⁵⁹ 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.

⁶⁰ 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).

⁶¹ *See* 5 U.S.C. § 603.

unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁶² Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of potential rule and/or policy changes contained in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B.

25. *Paperwork Reduction Act.* This document contains possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

26. *Ex Parte Rules – Permit but Disclose.* Pursuant to section 1.1200(a) of the Commission's rules,⁶³ this Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission's *ex parte* rules.⁶⁴ 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 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.

27. 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.⁶⁵ 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.⁶⁶ 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 proceedings⁶⁷

⁶² 5 U.S.C. § 605(b).

⁶³ 47 CFR § 1.1200(a).

⁶⁴ 47 CFR §§ 1.1200 *et seq.*

⁶⁵ *See id.* § 1.1200(a).

⁶⁶ 5 U.S.C. §§ 551 *et seq.*

⁶⁷ *See generally* 47 CFR § 1.1206.

and exempt from the prohibitions during the Sunshine Agenda period.⁶⁸ 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.

28. *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 Nos. 02-6, 96-45, and 97-41.

- 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>.⁶⁹
- 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 safety of individuals, and to mitigate the transmission of COVID-19.⁷⁰

29. *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 or call the Consumer & Governmental Affairs Bureau at 202-418-0530.

30. *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.⁷¹

31. *Further Information.* For further information, contact Johnny Roddy of the Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-2539 or johnny.rodny@fcc.gov.

V. ORDERING CLAUSES

32. 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.

⁶⁸ See *id.* § 1.1203.

⁶⁹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

⁷⁰ 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>.

⁷¹ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

33. 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

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, 1601-1609, and 1752, unless otherwise noted.

2. Revise § 54.500 by adding the following definition for Tribal:

§ 54.500 Terms and definitions.

Tribal. An applicant is considered “Tribal” if the building to receive service is located partially or entirely on Tribal land, if the applicant is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if the applicant is a school or library operated by a Tribal Nation.

3. Revise § 54.501 by revising paragraph (b)(2) and adding paragraph (b)(4) to read as follows:

§ 54.501 Eligible recipients.

(b) Libraries.

(1) *****

(2) Except as provided in paragraph (b)(4), a library’s eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

(3) *****

(4) A Tribal college or university library that acts as a public library by having dedicated public library staff, regular hours, and a collection for public use in its community shall be eligible for discounts.

4. Revise § 54.502 by revising paragraph (d)(4) to read as follows:

§ 54.502 Eligible services.

(d) *****

(4) Funding floor. Each eligible schools and library shall be eligible for support for category two services of at least a pre-discount price of \$25,000 over five funding years. The Chief of the Wireline Competition Bureau may set a higher pre-discount funding floor for Tribal schools and libraries for category two services, after proposing and seeking public comment on such floor.

5. Revise § 54.503 by revising paragraph (e) to read as follows:

§ 54.503 Competitive bidding requirements.

(e) Exemption to competitive bidding requirements.

(1) An applicant that seeks support for commercially available high-speed Internet access services for a pre-discount price of \$3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) Internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed Internet access services or raise the speed threshold of broadband services eligible for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A Tribal applicant that seeks support for category one or category two services for a total pre-discount price of \$3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

6. Revise § 54.505 to revise paragraph (c) and add paragraph (g) to read as follows:

§ 54.505 Discounts.

(c) *Matrices.* Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

(g) *Tribal Category Two Discount Level.* For the costs of category two services, Tribal schools and libraries at the highest discount level shall receive a 90 percent discount.

7. Revise § 54.703 by revising paragraph (b), subparagraph (b)(12), and paragraph (d), moving subparagraph (b)(13) to (b)(14), and adding new subparagraph (b)(13) to read as follows:

§ 54.703 The Administrator's Board of Directors.

(b) Board composition. The independent subsidiary's Board of Directors shall consist of twenty (20) directors:

(12) One director shall represent state consumer advocates;

(13) One director shall represent Tribal communities; and

(14) The Chief Executive Officer of the Administrator.

8. Revise § 54.705 by revising, moving subparagraph (a)(2)(iv) to subparagraph (a)(2)(v) and subparagraph (a)(2)(v) to (a)(2)(vi), and adding new subparagraph (a)(2)(iv) to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a)*****

(2)*****

(iv) One Tribal community representative;

- (v) One at-large representative elected by the Administrator's Board of Directors;
and
- (vi) The Administrator's Chief Executive Officer

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this 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 Support Mechanism, et al., Notice of Proposed Rulemaking (*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 in the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the *Federal Register*.³

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

2. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In the *Notice*, our primary objectives are to address the underrepresentation of Tribal applicants and increase participation of Tribal libraries. To achieve these objectives, in the *Notice* we explore ways to further simplify the E-Rate program rules, reduce program barriers and burdens, and encourage greater Tribal participation and community representation.

3. Our efforts to simplify the E-Rate program include a request for comment on ways to improve the E-Rate application process, such as by simplifying E-Rate forms, providing an additional exemption to the competitive bidding rules, and whether creating an extended or separate application filing window for Tribal libraries would be beneficial to align with the applicable Tribal procurement requirements and approval processes. We also seek comment on modifying section 54.501(b)(2) of the Commission's rules to allow Tribal college libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community, and on whether and how to simplify the E-Rate program cost allocation rules for Tribal and non-Tribal applicants. Additionally, we seek comment on increasing the category two minimum funding floor for Tribal applicants, and increasing the highest category two discount rate for Tribal applicants to 90 percent.

4. In the *Notice*, we discuss and seek comment on a proposal to increase Tribal perspective and representation on federal universal service programs by creating a seat on the USAC Board of Directors for a Tribal community representative. We also seek comment on how to ensure the fair representation of Tribal entities on the USAC board and its underlying committees, and other ways to increase Tribal representation and leadership at USAC and in the federal universal service programs. In addition, we seek comment on other options the Commission should consider which would make it easier for Tribal schools and libraries to participate in the E-Rate program and other ways to improve the E-Rate program process for Tribal and non-Tribal applicants.

B. Legal Basis

5. The proposed action is authorized pursuant to 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, 254, 303(r), and 403.

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 See 5 U.S.C. § 603(a).

³ See *id.*

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

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁶ 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).⁷

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, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.¹⁰

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.”¹¹ 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.¹² Nationwide, for tax year 2020, there were approximately 447,689 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.¹³

⁴ See *id* § 603(b)(3).

⁵ See *id* § 601(6).

⁶ See *id* § 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.” 5 U.S.C. § 601(3).

⁷ Small Business Act, 15 U.S.C. § 632.

⁸ See 5 U.S.C. § 601(3)-(6).

⁹ 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).

¹⁰ *Id.*

¹¹ See 5 U.S.C. § 601(4).

¹² 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.

¹³ 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

(continued....)

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.”¹⁴ U.S. Census Bureau data from the 2017 Census of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ 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.”²¹

1. Schools and Libraries

10. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.²² This industry comprises establishments primarily engaged in

(Continued from previous page) _____

BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ See 5 U.S.C. § 601(5).

¹⁵ 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>.

¹⁶ 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 tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id.* at tbl.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.

¹⁸ See *id.* at tbl.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.

¹⁹ See *id.* at tbl.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 tbl.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.

²⁰ 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.

²¹ 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 tbls.5, 6 & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

furnishing academic courses and associated course work that comprise a basic preparatory education.²³ A basic preparatory education ordinarily constitutes kindergarten through 12th grade.²⁴ The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.²⁵ The Commission does not have a size standard for small entities specifically applicable to schools. The Commission's definition of schools pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service.

11. Under the E-Rate program an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."²⁶ 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 12.²⁷ For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.²⁸ In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.²⁹ While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of schools in the E-Rate program are small entities under the SBA size standard.

12. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.³⁰ This industry comprises establishments primarily engaged in providing library or archive services.³¹ These establishments are engaged in maintaining collections of documents (e.g., books, journals, newspapers, and music) and facilitating the use of such documents (recorded information regardless of its physical form and characteristics) as required to meet the informational, research, educational, or recreational needs of their user.³² These establishments may also acquire, research, store, preserve, and generally make accessible to the public historical documents, photographs, maps, audio material, audiovisual material, and other archival material of historical interest.³³ All or portions of these collections may be accessible electronically.³⁴ The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.³⁵ For this industry, U.S.

²³ *Id.*

²⁴ *Id.*

²⁵ See 13 CFR § 121.201, NAICS Code 611110.

²⁶ 47 CFR § 54.500.

²⁷ *Id.*

²⁸ 47 CFR § 54.501.

²⁹ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

³⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "519120 Libraries and Archives," <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ See 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.³⁶ Of this number, 1,228 firms had revenues of less than \$10 million.³⁷ Based on this data, the majority of firms in this industry can be considered small.

13. The Commission does not have a size standard for small entities specifically applicable to libraries. The Commission's definition of libraries pertains to entities that participate in the E-Rate program which provides support to eligible schools and libraries to enable access to high-speed Internet access and telecommunications services at affordable rates, consistent with the objectives of universal service. Under the E-Rate program, 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 [] 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."³⁸ For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.³⁹ In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.⁴⁰ While we do not have financial information which would allow us to estimate the number of libraries that would qualify as small entities under SBA's small business size standard, because of the nature of these entities we estimate that the majority of libraries in the E-Rate program are small entities under the SBA size standard.

2. Telecommunications Service Providers

14. *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.⁴¹ 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.⁴² By exception, establishments providing satellite television distribution services using facilities

³⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 519120, <https://data.census.gov/cedsci/table?y=2017&n=519120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&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. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual category for less than \$100,000, to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in this category). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that the U.S. Census Bureau economic data includes sales, value of shipments or revenue information reported by firms. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

³⁸ 47 CFR § 54.500.

³⁹ 47 CFR § 54.501.

⁴⁰ See Universal Service Administrative Company, Annual Report, at 7, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2017/USAC-2017-Annual-Report.pdf>.

⁴¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁴² *Id.*

and infrastructure that they operate are included in this industry.⁴³ Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.⁴⁴

15. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.⁴⁵ U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁴⁶ Of this number, 2,964 firms operated with fewer than 250 employees.⁴⁷ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services.⁴⁸ Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees.⁴⁹ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

16. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.⁵⁰ 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.⁵¹ Providers of Internet services (e.g. dial-up ISPs) or voice over Internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry.⁵² The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.⁵³ U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁵⁴ Of those firms, 1,039 had revenue of less than \$25 million.⁵⁵ Based on this

⁴³ *Id.*

⁴⁴ Fixed Local Service Providers include the following types of providers: Incumbent Local Exchange Carriers (ILECs), Competitive Access Providers (CAPs) and Competitive Local Exchange Carriers (CLECs), Cable/Coax CLECs, Interconnected VOIP Providers, Non-Interconnected VOIP Providers, Shared-Tenant Service Providers, Audio Bridge Service Providers, and Other Local Service Providers. Local Resellers fall into another U.S. Census Bureau industry group and therefore data for these providers is not included in this industry.

⁴⁵ See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁴⁶ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

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.

⁴⁸ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁴⁹ *Id.*

⁵⁰ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁵⁴ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

17. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.⁵⁶ 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.⁵⁷ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁵⁸ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁵⁹ Of that number, 2,837 firms employed fewer than 250 employees.⁶⁰ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services.⁶¹ Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees.⁶² Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

18. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁶³ The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.⁶⁴ For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.⁶⁵ Of this number, 2,837 firms employed fewer than 250 employees.⁶⁶ Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were

(Continued from previous page) _____

⁵⁵ *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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁵⁶ 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>.

⁵⁷ *Id.*

⁵⁸ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁵⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁶⁰ *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.

⁶¹ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁶² *Id.*

⁶³ 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>.

⁶⁴ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁶⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePrevious=false>.

⁶⁶ *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.

407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.⁶⁷ Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees.⁶⁸ Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

3. Internet Service Providers (ISPs)

19. *Wired Broadband Internet Access Service Providers (Wired ISPs)*.⁶⁹ Providers of wired broadband Internet access service include various types of providers except dial-up Internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules.⁷⁰ Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.⁷¹ The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.⁷² U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.⁷³ Of this number, 2,964 firms operated with fewer than 250 employees.⁷⁴

20. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies.⁷⁵ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report*,⁷⁶ we believe that the majority of wireline Internet access service providers can be considered small entities.

⁶⁷ Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2021), <https://docs.fcc.gov/pubId.lic/attachments/DOC-379181A1.pdf>.

⁶⁸ *Id.*

⁶⁹ Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

⁷⁰ See 47 CFR § 1.7001(a)(1).

⁷¹ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

⁷² See 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

⁷³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 517311, <https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁷⁴ *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.

⁷⁵ See *IAS Status 2018*, Fig. 30 (The technologies used by providers include aDSL, sDSL, Other Wireline, Cable Modem and FTTP). Other wireline includes: all copper-wire based technologies other than xDSL (such as Ethernet over copper, T-1/DS-1 and T3/DS-1) as well as power line technologies which are included in this category to maintain the confidentiality of the providers.

⁷⁶ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 44, paras. 34-35, Figs. II.B.2-4, 6. (2020) (*2020 Communications Marketplace Report*).

21. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*⁷⁷ Providers of wireless broadband Internet access service include fixed and mobile wireless providers. The Commission defines a WISP as “[a] company that provides end-users with wireless access to the Internet[.]”⁷⁸ Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the Internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules.⁷⁹ Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband Internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite).⁸⁰ The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.⁸¹ U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.⁸² Of that number, 2,837 firms employed fewer than 250 employees.⁸³

22. Additionally, according to Commission data on Internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction.⁸⁴ The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, based on data in the Commission’s *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general,⁸⁵ as well as on terrestrial fixed wireless broadband providers in general,⁸⁶ we believe that the majority of wireless Internet access service providers can be considered small entities.

23. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications.⁸⁷ The SBA small business size standard for this industry classifies firms with

⁷⁷ Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

⁷⁸ Federal Communications Commission, Internet Access Services: Status as of December 31, 2018 (*IAS Status 2018*), Industry Analysis Division, Office of Economics & Analytics (September 2020). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>.

⁷⁹ See 47 CFR § 1.7001(a)(1).

⁸⁰ 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>.

⁸¹ See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

⁸² See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFIEM, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

⁸³ *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.

⁸⁴ See *IAS Status 2018*, Fig. 30.

⁸⁵ See *Communications Marketplace Report*, GN Docket No. 20-60, 2020 WL 8025117 at 4, paras. 9-13. (2020) (*2020 Communications Marketplace Report*).

⁸⁶ *Id.* at para. 91.

⁸⁷ See U.S. Census Bureau, *2017 NAICS Definition*, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

annual receipts of \$35 million or less as small.⁸⁸ For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.⁸⁹ Of those firms, 1,039 had revenue of less than \$25 million.⁹⁰ Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

4. Vendors of Internal Connections

24. *Vendors of Infrastructure Development or Network Buildout.* The Commission nor the SBA have developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable industries in which manufacturers of network facilities could fall and each have different SBA business size standards. The applicable industries are “Radio and Television Broadcasting and Wireless Communications Equipment”⁹¹ with a SBA small business size standard of 1,250 employees or less,⁹² and “Other Communications Equipment Manufacturing”⁹³ with a SBA small business size standard of 750 employees or less.⁹⁴ U.S. Census Bureau data for 2017 show that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.⁹⁵ Of this number, 624 firms had fewer than 250 employees.⁹⁶ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2017 show that there were 321 firms in this industry that operated for the entire year.⁹⁷ Of that number, 310 firms operated with fewer than 250 employees.⁹⁸ Based on this data, we conclude that the majority of firms in this industry are small.

⁸⁸ See 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

⁸⁹ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 517919, <https://data.census.gov/cedsci/table?y=2017&n=517919&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

⁹⁰ *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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹¹ 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>.

⁹² See 13 CFR § 121.201, NAICS Code 334220.

⁹³ See U.S. Census Bureau, *2017 NAICS Definition*, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

⁹⁴ See 13 CFR § 121.201, NAICS Code 334290.

⁹⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁹⁶ *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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

⁹⁷ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334290, <https://data.census.gov/cedsci/table?y=2017&n=334290&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

⁹⁸ *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. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

25. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.⁹⁹ These products may be stand-alone or board-level components of a larger system.¹⁰⁰ 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.¹⁰¹ The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.¹⁰² U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.¹⁰³ Of this number, 177 firms operated with fewer than 250 employees.¹⁰⁴ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

26. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.¹⁰⁵ 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.¹⁰⁶ The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.¹⁰⁷ U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.¹⁰⁸ Of this number, 624 firms had fewer than 250 employees.¹⁰⁹ Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

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

27. The potential rule changes discussed in the *Notice* if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since

⁹⁹ See U.S. Census Bureau, *2017 NAICS Definition, "334210 Telephone Apparatus Manufacturing,"* <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See 13 CFR § 121.201, NAICS Code 334210.

¹⁰³ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334210, <https://data.census.gov/cedsci/table?y=2017&n=334210&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰⁴ *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.

¹⁰⁵ 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>.

¹⁰⁶ *Id.*

¹⁰⁷ See 13 CFR § 121.201, NAICS Code 334220.

¹⁰⁸ See U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPfirm, NAICS Code 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

¹⁰⁹ *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.

the purpose of the *Notice* is to streamline and simplify procedures, and improve the E-Rate program processes, the Commission anticipates that the rule modifications that may result from the matters upon which we are seeking comment should reduce the economic impact of current compliance obligations on small entities. For example, we seek comment on a specific proposal to simplify the E-Rate program by reducing the number of required forms for entities making low-cost purchases, which would exempt such purchases from the E-Rate competitive bidding process. We also seek comment on whether to modify the application filing window for Tribal libraries providing a longer filing window in light of the approval processes that may be needed for their E-Rate eligible procurements and purchases. Additionally, in the *Notice* we inquire whether there are other rule changes to the application, invoicing, or other administrative processes in the E-Rate program that could be made to specifically help Tribal schools and libraries, and whether and how to simplify the E-Rate program cost-allocation rules and procedures for Tribal and non-Tribal applicants and seek comment. In response to comments, we may simplify and change the forms that applicants use to apply for the E-Rate program as well as modify filing and other administrative requirements, which should ease reporting, recordkeeping, and other compliance requirements for small entities.

28. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *Notice* will require small entities to hire professionals to comply. However, consistent with our objectives to streamline and simply the E-Rate program processes and procedures for Tribal schools and libraries, we do not anticipate that small entities will be required to hire professionals to comply with any rule modifications we adopt. We expect the information we received in comments including where requested, cost information, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *Notice*.

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

29. 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.”¹¹⁰

30. In the *Notice*, the Commission has taken steps to minimize the economic impact on small entities from the changes to the E-Rate program on which we seek comment. Based on outreach with Tribal applicants, we have learned that there are areas that may create burdens for Tribal entities and we seek comment on how to reduce or eliminate those burdens. As mentioned above in Section D, we seek comment on creating a competitive bidding exemption for low-cost funding requests which has the potential to reduce the number of forms for small entities requiring smaller amounts of E-Rate support. Both the competitive bidding exemption and the reduction of the number of necessary forms would reduce the associated costs for these activities for small entities. We seek comment on these matters. We also seek to update program rules and administration processes for applicants and service providers that participate in the E-Rate program which may reduce costs for small entities. More specifically, we explore whether and how the E-Rate program cost-allocation rules and procedures for Tribal libraries can be made simpler.

¹¹⁰ 5 U.S.C. § 603(c)(1) – (c)(4).

31. Further, we inquired in the *Notice* whether to increase the maximum category two discount rate from 85% to 90% for Tribal schools and libraries to increase participation and lower costs for these applicants, and whether we should consider increasing the \$25,000 funding floor for Tribal schools and libraries. If increased, we asked what funding floor would be appropriate to ensure Tribal schools and libraries have sufficient category two funding to meet their internal connections and Wi-Fi network needs. We also considered if the funding floor is increased, whether the Commission should raise it for all rural applicants or just for Tribal schools and libraries; whether there should be any special considerations involving category two budgets of Tribal libraries located in multi-use buildings; whether there are any other changes or enhancements that can be made to category two rules to help Tribal schools and libraries and increase their participation in the E-Rate program and invited commenters to submit comments on both the benefits and drawbacks of increasing the discount level from 85% to 90% for category two services.

32. Additionally, we invited commenters to suggest other measures the Commission should consider to make it easier for Tribal schools and libraries to participate in the E-Rate program. This may result in proposals from small entities that lessen the economic impact of, and increase their participation. The Commission expects the information we receive in comments to allow us to more fully consider ways to minimize the economic impact, and explore additional alternatives to improve and simplify opportunities for small entities to participate in the E-Rate program.

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

33. None.