

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

Report and Order and Further Notice of Proposed Rulemaking – CC Docket Nos. 02-6, 96-45, 97-21

**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. This Report and Order and Further Notice of Proposed Rulemaking would provide Tribal libraries enhanced access to E-Rate funding, improve and simplify program rules, and seek comment on ways to further improve and simplify program rules for all E-Rate applicants.

**What the Report and Order and Further Notice of Proposed Rulemaking Would Do:**

- Update the Commission’s E-Rate program rules to allow Tribal college and university libraries that serve as public libraries in their communities, to apply for and receive E-Rate support.
- Update the Commission’s E-Rate program rules to create an exemption to the competitive bidding requirements for all libraries seeking E-Rate support for category two services that total a pre-discount price of \$3,600 or less per library per funding year.
- Update the Commission’s E-Rate program rules to increase the maximum category two discount rate to 90% and the category two funding floor to \$55,000 for Tribal libraries.
- Provide guidance on cost allocation issues experienced by applicants.
- Adopt a definition of “Tribal” for the E-Rate program.
- Amend the Commission’s E-Rate program rules to add a Tribal community representative to the Universal Service Administrative Company (USAC) Board of Directors.
- Direct USAC to provide increased outreach and training to Tribal applicants.
- Seek comment on ways to further simplify the E-Rate program for all applicants.

---

\* 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 Nos. 02-6, 96-45, and 97-21 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 Service 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. )

REPORT AND ORDER AND FURTHER 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:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION..... 1
II. BACKGROUND..... 2
III. DISCUSSION ..... 11
A. Making Tribal College and University Libraries Eligible for E-Rate..... 12
B. Improving and Simplifying the E-Rate Application Process..... 18
1. Streamlining the Process for All Library Applicants Making Low-Cost Purchases ..... 19
2. Modifying Category Two Rules to Support Tribal Libraries ..... 23
3. Providing Guidance on Cost-Allocation Rules and Procedures..... 26
C. Improving Communication between the Commission and Tribal Nations..... 32
IV. FURTHER NOTICE OF PROPOSED RULEMAKING..... 41
A. Updating Eligible Services ..... 42

\* This document has been circulated for tentative consideration by the Commission at its July 20, 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.

B. Changing or Clarifying the E-Rate Competitive Bidding Requirements..... 49

C. Streamlining the E-Rate Program Forms ..... 60

D. Seeking Information on Other College Libraries Acting as Public Libraries ..... 68

E. Modifying E-Rate Invoice and Disbursement Standards..... 69

F. Updating E-Rate Program Definitions..... 74

V. PROCEDURAL MATTERS..... 79

VI. ORDERING CLAUSES..... 89

APPENDIX A – Final Rules

APPENDIX B – Proposed Rules

APPENDIX C – Final Regulatory Flexibility Analysis

APPENDIX D – Initial Regulatory Flexibility Analysis

**I. INTRODUCTION**

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and Wi-Fi equipment to connect today’s students and library patrons with next-generation learning opportunities and services.<sup>1</sup> In January 2022, the Commission began an initiative to increase Tribal libraries’ access to E-Rate support, recognizing the valuable role that these entities serve in providing high-speed Internet access to Tribal communities. The Commission first clarified that Tribal libraries are eligible to participate in the program<sup>2</sup> and later launched a Tribal Library Pilot Program to ensure that Tribal library entities have equitable access to the E-Rate program.<sup>3</sup> Building on those efforts, the Commission initiated a rulemaking proceeding in February 2023 to seek comment on additional rule changes to improve Tribal participation in the E-Rate program.<sup>4</sup> Today, we take steps to further enhance Tribal applicants’ access to the E-Rate program through program simplifications and other changes that aim to encourage greater Tribal participation in the program. At the same time, we take steps to simplify the E-Rate processes, where appropriate, for other E-Rate applicants and seek comment on further possible rule changes suggested by commenters in a further notice of proposed rulemaking (*E-Rate FNPRM*).

**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.<sup>5</sup> 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

---

<sup>1</sup> The E-Rate program is formally known as the schools and libraries universal service support mechanism.

<sup>2</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Report and Order, 37 FCC Rcd 1458 (2022) (*Tribal Library Order*). We incorporate the record derived from that proceeding into this one.

<sup>3</sup> *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>.

<sup>4</sup> *Schools and Libraries Universal Service Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Notice of Proposed Rulemaking, FCC 23-10, 2023 WL 2124459 (Feb. 16, 2023) (*Tribal E-Rate NPRM*).

<sup>5</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et seq.).

window that is generally open between mid-January and mid-March, prior to the start of the upcoming funding year.<sup>6</sup>

3. Although the Commission recently resolved one of the limitations on 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,<sup>7</sup> 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.<sup>8</sup> This is because when the Commission addressed the eligibility of schools and libraries in 1997, it 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.<sup>9</sup> The Commission also sought to ensure that a school library at an elementary or secondary school could not collect universal service support twice for the same service.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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-year period.<sup>13</sup> The Commission also set the pre-discount budget multiplier for all libraries at \$4.50 per square foot,<sup>14</sup> over a five-year funding cycle beginning in funding year 2021.<sup>15</sup>

---

<sup>6</sup> See 47 CFR § 54.507(c)-(d). Each funding year runs from July 1 through the following June 30. See 47 CFR § 54.507(b). Funding year 2023, for example, runs from July 1, 2023 through June 30, 2024. The funding year 2023 application filing window was open from January 18, 2023 to March 28, 2023.

<sup>7</sup> See *Tribal Library Order*, 37 FCC Rcd at 1460, para. 7; 47 CFR § 54.500 (“A ‘library’ includes . . . [a] Tribal library.”).

<sup>8</sup> 47 CFR § 54.501(b)(2).

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9070, paras. 557-59 (1997) (*Universal Service First Report and Order*).

<sup>10</sup> *Id.* at 9070, para. 559.

<sup>11</sup> 47 CFR § 54.502(a)(1)-(2).

<sup>12</sup> 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*).

<sup>13</sup> 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 \$25,000 in category two budget funding over the same five-year period. If a library

(continued....)

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.<sup>16</sup> When it adopted the category two funding budgets, the Commission lowered the maximum discount rate for category two services.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> If the ineligible functionality is part of the product or service without any itemized costs associated with it, it is considered to be "ancillary," and the costs for the product's or service's ineligible functionality do not need to be removed.<sup>23</sup>

7. The Commission has established rules and procedures for commonly recurring cost allocations. Non-instructional facilities (NIFs) are school buildings without classrooms and library buildings without public areas, such as administrative buildings and data centers. Category two E-Rate

(Continued from previous page) \_\_\_\_\_

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.

<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> 47 CFR § 54.505(c).

<sup>17</sup> 47 CFR § 54.505(c); *First 2014 E-Rate Order*, 29 FCC Rcd at 8901-02, paras. 82-85.

<sup>18</sup> *Id.*

<sup>19</sup> 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) (*FY2023 Eligible Services List*).

<sup>20</sup> 47 CFR § 54.504(a)(1)(v).

<sup>21</sup> 47 CFR § 54.504(e)(1).

<sup>22</sup> 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 June 28, 2023) (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).

<sup>23</sup> 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 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) (*Third Report and Order*).

support is generally not available for NIFs, unless the equipment is “essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose.”<sup>24</sup> In the December 2019 *Category Two Report and Order*, the Commission declined to modify rules regarding category two eligibility or cost-allocation requirements for NIFs.<sup>25</sup> With regard to requiring cost allocation for NIFs, the Commission stated, at that time, that the cost allocation of the NIFs portion of the shared use was unlikely to be a significant burden.<sup>26</sup>

8. E-Rate applicants are also required to seek competitive bids for the eligible services they seek to purchase using E-Rate funds.<sup>27</sup> 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.<sup>28</sup> To accomplish this, applicants must submit an FCC Form 470 for posting on the Universal Service Administrative Company’s (USAC) website, which opens a competitive bidding process for the requested E-Rate eligible services.<sup>29</sup> The applicant must describe the requested services with sufficient specificity to enable potential service providers to submit bids for such services.<sup>30</sup> Applicants must then carefully consider all received bids, and the price of eligible equipment and services must be the primary factor in selecting the winning bid.<sup>31</sup> After entering into a contract for E-Rate eligible services, applicants request support by submitting an FCC Form 471 application to USAC.<sup>32</sup> However, as one way of simplifying the E-Rate process and encouraging smaller schools and libraries to obtain vital services through the program, 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 FCC Form 470.<sup>33</sup>

9. Finally, pursuant to section 54.701 of the Commission’s rules, the federal universal service fund (USF) and the universal service support programs, including the E-Rate program, are administered by USAC under the direction and oversight of the Commission.<sup>34</sup> USAC is led by a board composed of nineteen directors.<sup>35</sup> The USAC Board is made up of one permanent director and eighteen

---

<sup>24</sup> 47 CFR § 54.502(b)(6); *see also Universal Service First Report and Order*, 12 FCC Rcd at 9017-18, 9021, para. 459 (1997) (making internal connections eligible); *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440, paras. 208-210 (1997) (*Fourth Order on Reconsideration*) (finding that NIFs are generally ineligible for internal connections, which are eligible only when necessary to transport information to individual classrooms); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Sixth Report and Order, 25 FCC Rcd 18762, 18779, paras. 31-32 (2010) (*Sixth Report and Order*) (making residential dorms for schools with unique student populations eligible for category two support because they meet the definition of educational purposes).

<sup>25</sup> *Category Two Report and Order*, 34 FCC Rcd at 11238-39, paras. 50-51.

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

<sup>27</sup> 47 CFR § 54.503.

<sup>28</sup> *See* 47 CFR §§ 54.503, 54.511.

<sup>29</sup> *See id.*; *see also Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (2022) (FCC Form 470).

<sup>30</sup> 47 CFR § 54.503.

<sup>31</sup> *See* 47 CFR §§ 54.503, 54.511; *see also Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 481.

<sup>32</sup> *See* 47 CFR § 54.504.

<sup>33</sup> *First 2014 E-Rate Order*, 29 FCC Rcd at 8948-50, paras. 199-202; *see also* 47 CFR § 54.503(e).

<sup>34</sup> *See* 47 CFR §§ 54.701, 54.702.

<sup>35</sup> 47 CFR § 54.703.

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.<sup>36</sup> 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 low-income consumer representatives.<sup>37</sup> 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.<sup>38</sup>

10. On February 16, 2023, the Commission adopted a Notice of Proposed Rulemaking (*Tribal E-Rate NPRM*) seeking comment on a variety of proposed program improvements meant to encourage Tribal participation in the E-Rate program.<sup>39</sup> The Commission sought comment on amending our eligibility rules to permit Tribal college libraries that serve as public libraries to apply for and receive E-Rate funding.<sup>40</sup> The Commission also sought comment on a variety of potential E-Rate application simplifications and improvements, including making changes to the competitive bidding process and application deadlines.<sup>41</sup> The Commission further sought comment on enhancing access to category two funding through changes to the maximum discount rate and increasing the funding floor budget.<sup>42</sup> Finally, the Commission sought comment on adding a Tribal representative to the USAC Board of Directors, and making other improvements such as adopting a definition of “Tribal” for the E-Rate program and improving USAC outreach to applicants.<sup>43</sup> In addition to the *Tribal E-Rate NPRM*, the Consumer and Governmental Affairs Bureau’s (CGB) Office of Native Affairs and Policy (ONAP) and the Wireline Competition Bureau (Bureau) held two Tribal Consultations and Listening Sessions to engage directly with Tribal leaders and community representatives on April 13, 2023 and May 19, 2023.<sup>44</sup> These Tribal Consultations and Listening Sessions added to the knowledge gained by ONAP and Bureau staff who traveled to Tribal communities and Tribal libraries around the country to learn more about the connectivity challenges and issues that Tribes continue to face in applying for E-Rate support.<sup>45</sup>

---

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

<sup>37</sup> *Id.*

<sup>38</sup> 47 CFR § 54.705.

<sup>39</sup> See *Tribal E-Rate NPRM*, 2023 WL 2124459, \*3, para. 9.

<sup>40</sup> *Id.* at \*4-5, paras. 11-13.

<sup>41</sup> *Id.* at \*5-6, paras. 14-16.

<sup>42</sup> *Id.* at \*8, para. 19.

<sup>43</sup> *Id.* at \*8-9, paras. 20-22.

<sup>44</sup> See Letter from Molly O’Conor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed Apr. 19, 2023) (April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*); Letter from Molly O’Conor, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed May 31, 2023) (May 19, 2023 Tribal Consultation and Listening Session *Ex Parte*).

<sup>45</sup> See, e.g., Press Release, FCC, FCC Chairwoman to Join Tribal Representatives in New Mexico to Promote Tribal Library Connectivity Efforts (Dec. 6, 2022), <https://www.fcc.gov/document/chairwoman-visits-new-mexico-promote-tribal-library-connectivity>. Staff also traveled to Suquamish, Washington; Lummi Nation School Library; Lummi Library; Little Boston Library; and Nisqually Library. A virtual roundtable was also held for Alaska Tribal Libraries and an in-person roundtable was held at the Morongo Band of Mission Indians Council Chambers in Banning, California.

### III. DISCUSSION

11. Consistent with our efforts to encourage more Tribes to participate in the E-Rate program, we now take steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, we expect to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, we also amend our rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. First, we modify our rules to allow Tribal college and university (TCU)<sup>46</sup> libraries to apply for and receive E-Rate support, provided they are also serving as a public library in their community. Next, we adopt a number of changes to simplify and improve the E-Rate application process for Tribal library and other applicants. We also take steps to enhance communication with Tribal Nations by providing additional outreach to Tribal entities and leaders and by adopting a definition of “Tribal” to better identify Tribal applicants. Finally, we also add a Tribal representative to the USAC Board of Directors to ensure Tribal input into the administration and oversight of the federal USF and the universal service support programs. Taken together, we expect that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to participate in the E-Rate program. We also seek comment on additional rule changes and clarifications suggested by commenters to further streamline and approve the application process for all E-Rate applicants. We consider certain of those suggestions in the *E-Rate FNPRM* below.

#### A. Making Tribal College and University Libraries Eligible for E-Rate

12. Based on a review of the record and consistent with our authority pursuant to section 254(h) of the Communications Act of 1934, as amended, we adopt our proposal to make TCU libraries eligible for E-Rate support when they also serve as a public library in their community.<sup>47</sup> Commenters that addressed this issue unanimously supported the rule change and provided evidence about how TCU libraries offer valuable library services to their communities.<sup>48</sup>

13. The American Library Association (ALA) argues, for example, that TCU libraries like Iisagvik College’s Tuzzy Consortium Library do not just serve students, faculty, and staff, but also the wider community, even providing workforce and career programs to members of the public, and should therefore be permitted to draw on the E-Rate program support like any other library.<sup>49</sup> During the April 13, 2023 Tribal Consultation and Listening Session, the Director of Education for the Inupiat Community of the Arctic Slope, Mark Roseberry, explained that their TCU library is responsible for serving their entire Alaskan community and that the library would greatly benefit from E-Rate funding.<sup>50</sup> The

---

<sup>46</sup> See Letter from the American Indian Higher Education Consortium (AIHEC) to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 02-6, 96-45, 97-21, at 14 (filed June 8, 2023) (AIHEC *Ex Parte*) (noting the definition of ‘Tribal College or University’ in section 316(b) of the Higher Education Act of 1965 is “an institution that— (A) qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a note); or (B) is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).”) (quoting 20 U.S.C. § 1059c(b)(3)).

<sup>47</sup> See *Tribal E-Rate NPRM* at \*4-5, paras. 11-13.

<sup>48</sup> See 47 U.S.C. § 254(h)(2)(B); see, e.g., Advanced Data Services (ADS) Comments at 1; American Library Association (ALA) Comments at 4-5; Alaska Department of Education and Early Education and Alaska State Library Reply at 5; State E-rate Coordinators’ Alliance (SECA), Schools, Health & Libraries Broadband Coalition (SHLB), Consortium for School Networking (CoSN), and State Educational Technology Directors Association (SETDA) Comments at 6-7 (Joint Commenters); Mille Lacs Band of Ojibwe Reply at 1; National Tribal Telecommunications Association (NTTA) Comments at 3; Wisconsin Department of Public Instruction (WiDPI) Reply at 2; Washington State Library Comments at 3; WTA – Advocates for Rural Broadband (WTA) Comments at 6; AIHEC *Ex Parte* at 2.

<sup>49</sup> See ALA Comments at 4.

<sup>50</sup> April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B at 1 (supporting the eligibility of Tribal college libraries that serve as public libraries).



American Indian Higher Education Consortium (AIHEC) noted that, of the 35 accredited TCUs, 31 open their libraries to the public as the only public library in their rural communities, acting as a vital resource in the communities they serve.<sup>51</sup> AIHEC further commented that TCU libraries serve the public at their own expense despite facing Internet connection costs ranging from 21 to 70 times the national average at much slower speeds.<sup>52</sup> It noted that TCU libraries, such as Oglala Lakota College, provide a wide variety of services to the public for free, offering computers and Internet access to community members who would not otherwise have access to the Internet so that they can do homework, complete research, and find employment.<sup>53</sup> We find that permitting TCU libraries that also serve as public libraries to receive E-Rate support will provide a meaningful benefit to Tribal communities, particularly where the TCU library may be the only library in its community. We therefore will consider a TCU library eligible to apply for E-Rate support if it serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community.

14. In making this change, we seek to balance our goal of improving broadband connectivity on Tribal lands with our duty as a responsible steward of limited universal service resources. We therefore adopt limitations to ensure that E-Rate support is restricted to TCU library use only, and not to support the broader connectivity requirements of the higher education institution. For example, TCU libraries cannot request funding for services or equipment beyond the needs of the library, and any category two equipment must be installed within the eligible library only and cannot be installed in another location within the TCU.<sup>54</sup> Commenters suggest that TCU libraries not be required to perform cost-allocation calculations because they are burdensome and would potentially deter TCU libraries from seeking support.<sup>55</sup> To address this concern, accordingly, we will not require TCU libraries to perform cost-allocation calculations of the college student and staff usage at the library versus public usage of bandwidth, as members of the college community are also members of the public. If, however, the TCU library is seeking E-Rate support for a portion of the total bandwidth used at the Tribal college or university, it will be required to calculate the bandwidth usage from other parts of the Tribal college or university, and include only the library portion of bandwidth use in its E-Rate funding request. Such limitations will ensure that E-Rate funding is not improperly provided to the other TCU buildings like classrooms and dormitories.

15. The State E-Rate Coordinators' Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters), in their comments, also suggest that a TCU library should only be eligible when there is no other Tribal library accessible to the community.<sup>56</sup> We are not convinced that this restriction is either necessary or meaningful. First, there are a very limited number of TCU libraries, which limits the impact of granting eligibility. It is also administratively challenging to determine whether another Tribal library is "accessible" to the community. Finally, we do not impose similar restrictions in the E-Rate program to limit funding when two or more libraries may be serving the same community. If an otherwise eligible library is providing services to the public and members of the

---

<sup>51</sup> AIHEC *Ex Parte* at 2.

<sup>52</sup> *Id.* at 4-5.

<sup>53</sup> *Id.* at 7-8.

<sup>54</sup> *See, e.g.*, Joint Commenters Comments at 5-6; Alaska Department of Education and Early Education and Alaska State Library Reply at 5. We will permit Tribal college libraries to request E-Rate support for the portion of a shared category two switch located outside of the library if it is housed in college or university data center.

<sup>55</sup> *See, e.g.*, ALA Comments at 4 (stating that cost allocation would add unnecessary complications for Tribal college library applicants and severely hinder program participation); WiDPI Reply at 2 (suggesting that removing the cost allocation by the Tribal college would have a very minimal impact on the program); AIHEC *Ex Parte* at 11-12 (discussing the challenges that cost allocation poses).

<sup>56</sup> *See, e.g.*, Joint Commenters Comments at 7.

public are making use of those services, the presence of another eligible library accessible to that community has no impact on the eligibility of either library. For these reasons, we decline to adopt this restriction at this time.

16. We find that our action is consistent with our statutory authority under section 254(h) of the Communications Act to enhance access to advanced telecommunications and information services for libraries.<sup>57</sup> In defining which libraries would be eligible for E-Rate support in 1997, the Commission initially adopted rules barring all college and university libraries from eligibility so as to guard against “institutions of higher learning [that] could assert that their libraries, and thus effectively their entire institutions, were eligible for support,” finding it inconsistent with congressional intent that funding would flow to an institution of learning only if it is an elementary or secondary school.<sup>58</sup> Here, the presence of other program protections, as well as the very limited number of TCUs and the value of the services they provide to their Tribal communities persuade us to change our rules and ensure that TCU libraries that also serve as a public library are not barred from eligibility. Though one commenter suggested granting eligibility to non-TCU libraries at small colleges or in rural areas,<sup>59</sup> we do not have a sufficient record to evaluate this issue and seek further comment in the *FNPRM*.

17. Allowing TCUs that serve as public libraries to participate in E-Rate is also consistent with the federal government’s special treatment of TCUs. TCUs are unique higher education institutions that are controlled or chartered by a federally recognized Tribe, governed by a board of whose members are a majority Indian, and have a majority of Indians as its student body.<sup>60</sup> Congress provides support for TCUs as part of its responsibility to provide for Indian education and facilitate its policy of enabling Tribal control of all matters relating to the education of Indian students.<sup>61</sup> Congress has stated that the federal government has a special responsibility, as part of its overall trust responsibility to Indian Tribes, for the education of Indian students, and the federal government has long recognized and “charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.<sup>62</sup> Accordingly, TCUs are unique higher education institutions that are entitled to special treatment from the federal government based on their trust relationship between the United States and Indian Tribes and their mission of providing education to Indian students.

## **B. Improving and Simplifying the E-Rate Application Process**

18. Building on our proposals in the *Tribal E-Rate NPRM*, we next implement several measures to streamline and simplify the E-Rate application process for Tribal libraries and other similarly situated applicants. First, we streamline the application process for libraries making small purchases. Next, we increase the category two discount rate for Tribal library applicants with the most need, helping to offset the costs of in-building equipment and services. We also increase the minimum amount of funding that is available for category two purchases, with the goal of encouraging Tribal libraries that do not currently participate in the program to apply for E-Rate support. And finally, we provide guidance on a number of cost-allocation calculation issues that stakeholders have raised to reduce the administrative burden and streamline the E-Rate program overall. Collectively, we expect these changes to contribute to the Commission’s ongoing goals of both improving and streamlining the program, and reducing barriers to accessing E-Rate funding for Tribal applicants.

---

<sup>57</sup> 47 U.S.C. § 254(h)(2)(A).

<sup>58</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9070, paras. 557-59.

<sup>59</sup> See e.g., ADS Comments at 1 (suggesting small or rural college libraries also be made eligible); ADS Reply at 1 (reiterating their suggestion from their initial comments).

<sup>60</sup> 25 U.S.C. §§ 1801(a)(4); 1804.

<sup>61</sup> 25 U.S.C. §§ 1802; 2011.

<sup>62</sup> 25 U.S.C. § 2000; *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 176 (2011).

## 1. Streamlining the Process for All Library Applicants Making Low-Cost Purchases

19. To streamline the application process and simplify what is required for libraries making low-cost equipment purchases, we adopt a competitive bidding exemption for all library applicants seeking E-Rate support for category two equipment or services that total a pre-discounted amount of \$3,600 or less in a single funding year. The exemption will simplify the E-Rate application process because it will allow libraries to purchase low-cost category two services and equipment without filing an FCC Form 470 to solicit bids and waiting 28 days before entering into a contract. A category two funding request will be eligible for this exemption only if the total cost per library is \$3,600 or less; and the cost cannot be averaged across a number of libraries.<sup>63</sup> By adopting this exemption to the competitive bidding process, we believe it will be easier for smaller libraries, including Tribal libraries and libraries serving rural communities, to apply for E-Rate support when they are making limited purchases of equipment to install or upgrade their Wi-Fi networks.

20. Commenters broadly supported expanding the existing competitive bidding exemption to include category two equipment and services, with suggestions ranging from support for the proposed \$3,600 exemption to eliminating the competitive bidding requirement entirely for Tribal entities.<sup>64</sup> Because competitive bidding is essential to ensuring cost-effective purchasing in the E-Rate program, we disagree with commenters that suggest we eliminate competitive bidding for Tribal entities entirely or where there is only one commercial service offering.<sup>65</sup> At the same time, we acknowledge that there are administrative costs associated with the E-Rate application process that can be burdensome, particularly for smaller entities.<sup>66</sup> We believe that adopting a \$3,600 exemption for libraries requesting category two equipment and services, matching the existing \$3,600 competitive bidding exemption for commercially available high-speed Internet access services,<sup>67</sup> strikes the right balance in simplifying the E-Rate application process, while retaining competitive bidding requirements where appropriate to ensure that limited E-Rate resources are spent efficiently and effectively. We expect that the exemption will provide a meaningful benefit to all library applicants, both Tribal and non-Tribal, by making it easier to receive funding for the Wi-Fi network equipment and services they need.

21. We emphasize that library applicants may only request E-Rate support based on the actual cost of the equipment or service requested. We caution library applicants and service providers that we will still require cost-effective purchases under this exemption in order to avoid waste in the program, and we direct USAC to review the costs for equipment and services and to deny funding for

---

<sup>63</sup> For example, if a library system requests category two support for three libraries, the amount of funding for each library must be \$3,600 or less to be eligible for this exemption from filing the FCC Form 470.

<sup>64</sup> See, e.g., ADS Comments at 2 (supporting an initial exemption at \$3,600); ALA Comments at 6-7 (encouraging the Commission to exempt purchases of \$10,000 or less from the competitive bidding process); NTTA Comments at 4 (recommending a competitive bidding exemption if the Tribal library can demonstrate that there is only one provider in their service area offering commercially available broadband at a published price); USET Comments at 2 (stating that a general exemption to the program's competitive bidding rules should be adopted); WTA Comments at 4 (recommending an increase of the competitive bidding exemption to \$10,000 or doing away with it entirely for Tribal and other rural schools and libraries).

<sup>65</sup> See, e.g., *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480; *Request for Review by Ysleta Independent School District of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26431, para. 53 (2003) (*Ysleta Order*) (“The Commission has determined that seeking competitive bids for eligible services is the most efficient means for ensuring that eligible schools and libraries are fully informed of their choices and are most likely to receive cost-effective services.”).

<sup>66</sup> See, e.g., ALA Comments at 7 (noting that the E-Rate process would be simplified with a competitive bidding exemption).

<sup>67</sup> 47 CFR § 54.503(e).

purchases that are determined to not be cost-effective. In this regard, we note that it is generally straightforward to review and compare the costs of category two equipment, given that it tends to be widely commercially available, in order to ensure that applicants are not seeking reimbursement for wasteful spending.<sup>68</sup> We also agree with ALA that libraries may be subject to state and local requirements that help ensure that these low-cost purchases are still cost-effective.<sup>69</sup>

22. Based on the record, we also extend this competitive bidding exemption to all library entities, finding that it will provide a meaningful benefit to many current library applicants. We estimate, for example, that setting the threshold at \$3,600 would have permitted 43% of independent libraries to request category two E-Rate support without filing FCC Form 470 in funding year 2022.<sup>70</sup> At present, a competitive bidding exemption for category two equipment and services costing less than \$3,600 allows us to determine whether this small exemption can help libraries, but we are not precluded from amending this level in the future.<sup>71</sup> Based on limited record evidence, we decline to extend the exemption to school entities at this time, but seek further comment on this question in the *E-Rate FNPRM* below.

## 2. Modifying Category Two Rules to Support Tribal Libraries

23. To increase Tribal library access to category two funding, we increase the maximum discount rate for category two services for Tribal libraries to 90%, and we increase the category two funding floor to \$55,000 for Tribal libraries. We expect that these changes will help Tribal libraries to better meet their needs by reducing the share that they must pay for Wi-Fi networks and increasing the amount of support they can receive. At the same time, we expect that the budgetary impact to the E-Rate program will be minimal.<sup>72</sup> Taken together, we expect that these measures will encourage greater participation in the E-Rate program by Tribal libraries that will offer a substantial benefit to the communities they serve, at minimal cost to the overall E-Rate program.

24. Tribal libraries tend to be under-resourced, operating on a limited budget to meet the diverse needs of their patrons. Many lack full-time, permanent library staff, much less a dedicated information technology (IT) staff member,<sup>73</sup> often relying on the same IT staff that serves the larger Tribal government.<sup>74</sup> While we appreciate the request by applicants for more support for staffing costs,<sup>75</sup>

---

<sup>68</sup> *Ysleta Order*, 18 FCC Rcd at 26432, para. 54 (explaining that a request for routers at prices two or three times greater than the prices available from commercial vendors would not be cost-effective, absent extenuating circumstances).

<sup>69</sup> See, e.g., ALA Comments at 7.

<sup>70</sup> See Universal Service Administrative Company, *E-Rate Request for Discount on Services: Basic Information (FCC Form 471 and Related Information)*, <https://opendata.usac.org/E-rate/E-Rate-Request-for-Discount-on-Services-Basic-Info/9s6i-myen> (last visited June 28, 2023) (calculating the percentage of libraries that do receive E-Rate support as part of a library system and requested a pre-discount amount of \$3,600 or less in total in funding year 2022).

<sup>71</sup> See ADS Comments at 2 (suggesting setting the exemption at \$3,600, but considering raising it in the future if too few applicants use it).

<sup>72</sup> See Universal Service Administrative Company, *E-Rate Request for Discount on Services: Basic Information (FCC Form 471 and Related Information)*, <https://opendata.usac.org/E-rate/E-Rate-Request-for-Discount-on-Services-Basic-Info/9s6i-myen> (last visited June 28, 2023) (providing information about the number of libraries that self-identified as Tribal that requested funding for category two services.).

<sup>73</sup> See Washington State Library Reply at 3.

<sup>74</sup> See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 2 (explaining how Tribal IT departments often have many priorities in their community). One May 19 Tribal Listening Session participant suggested E-Rate funding be provided for staffing, however, we lack authority to provide funding for staffing at this time. See also Letter from J. Michael Chavarria, Governor, Santa Clara Indian Pueblo, to Denise Bambi Kraus, Chief, Office of Native Affairs and Policy, FCC, CC Docket Nos. 02-6, 96-45, 97-21 (filed June 1, 2023).

section 254 of the Communications Act constrains what services are eligible for E-Rate program support.<sup>76</sup> Given these statutory constraints that limit our ability to fund certain costs, we therefore have tried to identify other options to make Internet connectivity more affordable for Tribal libraries. We believe that a five percentage point increase to the maximum discount rate, from 85% to 90%, will make category two services more affordable, allowing Tribal libraries to stretch their limited budgets to better meet their community's Wi-Fi network connectivity needs. Commenters agreed and broadly supported an increase, arguing that a higher discount rate would make a "big difference"<sup>77</sup> to applicants and would result in important additional savings to Tribal applicants.<sup>78</sup> In an April 13, 2023 Tribal Consultation and Listening Session, Tribal participants from Alaska noted that costs are very high in their remote communities, and that an increase in the discount rate would be especially helpful.<sup>79</sup> By making category two services more affordable, we expect that this increase will provide a meaningful benefit to Tribal libraries, that in turn, will encourage greater participation in the E-Rate program.

25. Increasing the category two funding floor to \$55,000 from the current floor of \$25,000 will also significantly aid Tribal libraries, where the remoteness of Tribal libraries on Tribal lands makes purchasing, installing, and maintaining equipment more difficult and, therefore, more costly.<sup>80</sup> This means that Tribal libraries will be eligible to receive up to a pre-discount amount of \$55,000 in category two funding over a five-year period, based on the actual costs of the equipment or services. This increase is consistent with the Washington State Library suggestion that because category two costs of serving small remote libraries is approximately \$11,000 per year, setting the funding floor at \$55,000 for the five-year budget cycle may be more appropriate.<sup>81</sup> These amounts were estimated based on a recent state pilot project to connect a number of single and very small library systems (fewer than five branches) with a basic Wi-Fi package.<sup>82</sup> The NTTA claimed that, in many of these remote and expensive-to-serve communities, the Internet connection available through the Tribal library may be the only broadband available to community members and recommended increasing the funding floor to \$35,000.<sup>83</sup> Based on this record evidence, we agree that an increase in minimum funding levels would help ensure that sufficient E-Rate funding is available to meet the Wi-Fi network requirements of Tribal libraries, and we set the category two services five-year funding floor at \$55,000. While we limit the \$55,000 funding floor to Tribal library entities at this time, we will evaluate the impact of this change and consider whether to expand it to all libraries if we find that it has a significant impact on the ability of libraries to meet the needs of their communities and is likely to increase participation in the E-Rate program.

### 3. Providing Guidance on Cost-Allocation Rules and Procedures

26. As part of our efforts to simplify the E-Rate program, the *Tribal E-Rate NPRM* sought comment on common cost-allocation issues that Tribal libraries and other non-Tribal applicants experienced, noting that cost allocation can be confusing for all E-Rate applicants and may pose particular

(Continued from previous page) \_\_\_\_\_

<sup>75</sup> *Id.*

<sup>76</sup> See 47 U.S.C. § 254(h)(1)(B).

<sup>77</sup> Washington State Library Reply at 3.

<sup>78</sup> WTA Comments at 4-5.

<sup>79</sup> See April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B.

<sup>80</sup> See, e.g., *id.*; Washington State Library Reply at 2-3 (noting that remote, single site libraries have unique challenges due to rurality, a lack of dedicated IT staff, limited budgets, and no economies of scale).

<sup>81</sup> Washington State Library Reply at 2.

<sup>82</sup> Washington State Library Reply at 1 (noting that the basic package included a router, one to three switches, three to five indoor wireless access points, and an uninterruptible power supply unit, along with ongoing support for installation and maintenance).

<sup>83</sup> NTTA Comments at 5.

challenges for Tribal libraries, especially those located in multipurpose buildings.<sup>84</sup> Commenters provided a number of examples where cost allocation can complicate the application process,<sup>85</sup> as well as scenarios wherein schools and libraries are required to cost allocate for the minimal Internet usage of a variety of in-building offerings, such as offices, health kiosks and other healthcare services, childcare, and vocational and technical classes available to the public.<sup>86</sup> These and similar services, though ineligible themselves for E-Rate support, may provide significant benefit, while having a minimal impact on the school's or library's total Internet usage<sup>87</sup> and no real impact on schools and libraries' decision-making process in determining the level of Internet service they need. Yet, schools and libraries that decide to offer these valuable services to their students, staff, and library patrons are required to conduct cost-allocation calculations to remove those portions of minimal ineligible Internet usage by these services.<sup>88</sup> In addition, if a school or library selects a product or service containing an ineligible component and that product or service is the most cost-effective means of receiving the eligible component functionality, those ineligible components are ancillary, and costs do not need to be allocated between the eligible and ineligible components.<sup>89</sup>

27. We agree with commenters that conducting cost allocations to exclude costs associated with minimal ineligible use or service components can be challenging, especially with regards to services.<sup>90</sup> As a means of providing a safe harbor, we adopt a presumption that if at least 90% of an applicant's requested Internet service is being used for eligible purposes, the remaining ineligible use of

---

<sup>84</sup> See *Tribal E-Rate NPRM* at \*7, paras. 17-18.

<sup>85</sup> See, e.g., ADS Comments at 2-3 (recommending a simplification of cost allocation to accept alternative reasonable methodologies for cost-allocation); ALA Comments at 10 (recommending no cost allocation at Tribal college libraries); Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (recommending relaxing the cost-allocation requirements and allowing for ancillary use consistent with the *Sixth Report and Order's* community use requirements and suggesting cost allocation of advanced firewall services be eliminated); Joint Commenters Comments at 10-11, 13-14, 17 (recommending changes to the burdensome cost-allocation requirements for non-instructional facilities, cabling, and ancillary use by childcare or health clinics located at a school); WTA Comments at 5 (recommending no cost allocations for category two equipment within a Tribal library in a multipurpose building and suggesting methods to avoid cost allocation for Tribal libraries, namely, purchasing a separate connection for the Tribal library or conducting a study of a typical month to determine use of a shared broadband connection to determine the cost allocation).

<sup>86</sup> See, e.g., ADS Comments at 3 (discussing healthcare kiosks potentially using E-Rate supported services at a library); Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (recommending relaxing the cost-allocation requirements for instances of a single room in an eligible library being used for minimal office uses in a village); Joint Commenters Comments at 17 (providing examples of uses of E-Rate supported services that could be considered ancillary).

<sup>87</sup> Joint Commenters Comments at 17 ("Currently, children under the age of 3 are not considered eligible to use E-rate supported services and as such, although minimal, schools would be required to cost allocate the Internet usage of these children and the staff that care for them.... These classes are typically electrical, plumbing, masonry, carpentry and automotive classes that use little Internet, yet what services are used through these classes are required to be cost allocated from an E-rate request or reimbursement."); Alaska Department of Education and Early Education and Alaska State Library Reply at 4 ("This is frustrating because the office may be infrequently used, and the bandwidth usage may be minimal.").

<sup>88</sup> *Id.*

<sup>89</sup> 47 CFR § 54.504(e)(2) ("If a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service."); see also Joint Commenters at 9.

<sup>90</sup> See ADS Comments at 3; Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5; Joint Commenters Comments at 17.

the Internet service will be presumed to be ancillary and, therefore, cost allocation is not required. This does not mean that we currently find healthcare, childcare services, or services for students under the age of three to be eligible for E-Rate support, nor does it mean that if less than 90% of an applicant's requested Internet service is being used for eligible purposes that the ineligible portion cannot be demonstrated to be ancillary.<sup>91</sup> However, we agree with commenters that if an applicant selected the most cost-effective Internet service offering to meet its needs, then the minimal ineligible use of that Internet service should be treated as ancillary and cost allocation is not required. In this regard, we emphasize that applicants may request only the amount of bandwidth needed for eligible use. We therefore determine that permitting minimal ancillary use, without requiring cost allocation, will not result in waste or additional costs to the E-Rate program, because applicants may only request what they need to support eligible uses. We expect this finding will provide clarity to applicants about when an ineligible use of Internet service can be presumed to be ancillary, consistent with our existing rules and without creating an undue risk of waste, fraud, and abuse of limited E-Rate funds. In turn, we expect it will also simplify the application process for some applicants.

28. For Tribal library applicants, the Alaska Department of Education and Early Development and the Alaska State Library provided an example where a Tribal library is in a building with a room that is infrequently used as an office by an ineligible entity.<sup>92</sup> They noted that relaxing the cost allocation requirements for minimal or occasional use of a single room from an eligible location could make a real difference for these applicants in small villages where the library may act as the hub of that community. In these instances, if the Tribal library is selecting the most cost-effective means of receiving the eligible service without regard to the value of the ineligible components, the burden to allocate a portion of the cost for any ineligible use may decrease participation by these small entities.<sup>93</sup> So, with the presumption stated above, we expect the occasional office use could be considered ancillary and cost allocation would not be required, as long as 90% of the requested Internet service is used for the library's eligible purposes. We decline to fully remove cost allocation requirements for all Tribal libraries housed in a multipurpose building<sup>94</sup> because of concerns that the exception could lead to the E-Rate program funding largely ineligible services – for instance, if a large administrative building has a small Tribal library located within one room in the building – but we seek additional comment on this issue on the *E-Rate FNPRM* below.

29. Next, we address concerns raised by the Joint Commenters and clarify that for all schools and libraries, expenses associated with cabling that is primarily being used to provide broadband connectivity within schools and libraries need not be cost allocated, provided it is the most cost-effective means of receiving the eligible service.<sup>95</sup> The Joint Commenters note that applicants have periodically experienced difficulties receiving E-Rate support for cabling, or have been required to return funding based on what equipment the cabling was connected to after installation.<sup>96</sup> They further explain that these issues typically arise in the context of installing internal cabling throughout a building that “provide data

---

<sup>91</sup> For example, if the applicant seeks additional bandwidth as a result of the ineligible uses or selected a bid based on the value of the ineligible use, that would not be compliant with the ancillary use rule.

<sup>92</sup> Alaska Department of Education and Early Education and Alaska State Library Reply at 4-5 (noting the frustration surrounding cost allocation in these cases of minimal use).

<sup>93</sup> See, e.g., NTTA Comments at 5 (suggesting that allowing Tribal library community building to provide E-Rate discounted broadband access to the building would increase program participation).

<sup>94</sup> See, e.g., USET Comments at 3-4 (commenting that no cost allocation should be imposed on a Tribal administrative building, cultural center, or community service center that also houses what a Tribal Nation has defined as a library).

<sup>95</sup> See *FY2023 Eligible Services List*, at Appendix B, p.8 (listing cabling as an eligible broadband internal connection).

<sup>96</sup> See, e.g., Joint Commenters Comments at 13-15.

transmission to specific points located in the ceilings or in walls of a school or library building, thus creating a ‘drop’ or ‘jack’ for various types of equipment to connect to, and then gain access to the communications network.”<sup>97</sup> Cabling is conditionally eligible for E-Rate support, which means that it is ineligible for E-Rate funding when it is for an ineligible use, such as for a security camera network or voice network, and the costs must be allocated or removed from the funding requests.<sup>98</sup> However, we agree that it is unworkable to determine conditional eligibility of the cabling on a drop-by-drop basis, particularly after the fact, depending on what broadband-enabled device is plugged into the local area network cabling. Many devices may be connected to a school or library’s local area network, both wired and wirelessly, and the devices connected to a network may change over time. We therefore find that the eligibility determination should be based on the purposes of the network as a whole, rather than for each cabling “drop” or “jack”. As such, cabling “drops” or “jacks” that are part of a local area network primarily serving an eligible purpose (i.e., distributing broadband throughout a school or library building) are eligible for E-Rate and do not require cost allocation. We anticipate that this will help applicants by providing them certainty to request category two funding for the cabling needed for their Wi-Fi networks without concern that in the future an auditor will seek recovery of a small portion of that E-Rate funding due to a broadband-enabled device, such as a security camera, being attached at a later date. At the same time, we expect applicants’ category two budgets will constrain them from requesting more cabling drops than necessary for their local area networks. Regardless of this clarification, we remind applicants that cabling is ineligible to the extent it is installed specifically for a security camera network or for a dedicated voice network.

30. Finally, we address an issue with the cost allocation required for shared equipment that is located at a non-instructional facility, including library administrative buildings.<sup>99</sup> While NIFs are eligible for category one support, category two support is generally not available for NIFs unless the equipment is “essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose.”<sup>100</sup> This is generally a district switch located in an administrative building or data center. Under the current rules, a school district or library system generally cannot use any of its budget for category two equipment for a NIF. The exception for essential, shared equipment still applies, and therefore, applicants can purchase this type of equipment to be located in a NIF, but the rules now explicitly state that the applicant must remove the costs associated with the NIF’s use of the shared equipment.<sup>101</sup> As a result, we have since learned that applicants have been required to undergo complicated cost-allocation calculations that have proven to be administratively burdensome, resulting in the removal of a small fraction of the funding request for the needed equipment,

---

<sup>97</sup> *Id.* at 13.

<sup>98</sup> See 47 CFR § 54.504(e).

<sup>99</sup> See Joint Commenters Comments at 10-12; Petition for Reconsideration of the State E-Rate Coordinators’ Alliance Regarding Shared NIF Equipment Cost Allocation Requirement, WC Docket No. 13-184, (filed Jan. 21, 2020) (SECA Petition for Reconsideration).

<sup>100</sup> 47 CFR § 54.502(a)(6); see also *Universal Service First Report and Order*, 12 FCC Rcd at 9017-18, 9021, para. 459 (1997) (making internal connections eligible); *Fourth Order on Reconsideration* 13 FCC Rcd at 5440 paras. 208-210 (finding that NIFs are generally ineligible for internal connections, which are eligible only when necessary to transport information to individual classrooms); *Sixth Report and Order*, 25 FCC Rcd at 18779, paras. 31-32 (making residential dorms for schools with unique student populations eligible for category two support because they meet the definition of educational purposes).

<sup>101</sup> See *Category Two Report and Order*, 34 FCC Rcd at 11238-39, paras. 50-51; 47 CFR § 54.502(d)(6) (“When applying for category two support for eligible services to a non-instructional school building or library administrative building, the applicant shall deduct the cost of the non-instructional building’s use of the category two services or equipment.”)



undercutting our efforts to streamline the category two application process.<sup>102</sup> As long as the applicant is choosing the most cost-effective offering for the shared equipment (e.g., a district switch) without regard for the NIF's use, we agree that the applicant should not be required to cost allocate the NIF's use of the shared equipment. In recognition of this, we now amend our rules to no longer require cost allocation to remove the costs associated with the NIFs' use of the shared equipment in NIFs and related-library administrative buildings. Removing these requirements will permit applicants to forego these complex cost-allocation procedures as they seek to equip their schools and libraries with the category two equipment they need to serve their students and library patrons.<sup>103</sup>

31. We recognize that there still exist potential cost-allocation challenges for those Tribal libraries that share space with other governmental and/or community organizations or services, often in unique configurations. We therefore direct USAC to publicly post plain language guidance, approved by the Bureau, providing examples of Tribal library cost allocations as they may arise.<sup>104</sup> This could help other Tribal library applicants understand whether they need to cost allocate in their particular situation and provide examples on how they should cost allocate, if required. We also seek comment in the *E-Rate FNPRM* below if there are additional cost-allocation examples that would benefit from further Commission guidance.<sup>105</sup>

### C. Improving Communication between the Commission and Tribal Nations

32. To further strengthen our government-to-government relationship with Tribal Nations and to improve communication with Tribal communities to better support Tribal entities applying for and receiving E-Rate funding, we also make a number of changes to our rules and processes. First, we establish a formal definition of Tribal within the E-Rate program to better identify those Tribal applicants seeking E-Rate funding. Second, we amend our rules to add a Tribal representative to the USAC Board of Directors who will represent the Tribal community and provide valuable insights for the administration of the USF and the universal service programs. Lastly, we direct USAC to provide greater outreach to Tribal applicants, and all applicants, so as to create a smoother application process. Taken together, we expect these actions will strengthen the government-to-government relationship between the Commission and Tribal Nations, so that we may better support Tribal libraries and schools, and the communities that they serve.

33. *Tribal Definition.* To ensure that Tribal entities can be identified as Tribal when applying for E-Rate support and that Tribal libraries can receive the above-described increase in category two funding, we adopt and add the following definition for "Tribal" in section 54.500 of the Commission's E-Rate rules:

An entity is 'Tribal' for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)) that is recognized as eligible for the

---

<sup>102</sup> See Joint Commenters Comments at 11 (urging the Commission to change this unnecessary cost allocation requirement.); see also SECA Petition for Reconsideration, at 7 (providing examples of how to cost allocate the use of shared equipment by a NIF).

<sup>103</sup> See SECA Petition for Reconsideration. We make these changes effective 30 days after publication in the Federal Register and dismiss the petition for reconsideration based on this rule change.

<sup>104</sup> See, e.g., ALA Comments at 10 (noting that plain language guidance with scenarios of what different types of cost allocation would require will aid in building Tribal library applicant E-Rate capacity).

<sup>105</sup> See, e.g., WTA Comments at 5 (recommending that cost allocations be removed from category two services of all eligible libraries are schools).

special programs and services provided by the United States to Indians because of their status as Indians.

34. This definition of Tribal is modified slightly as compared to the definition proposed in the *Tribal E-Rate NPRM* as a result of the record we received.<sup>106</sup> We chose not to include those entities for whom “the majority of students or library patrons served are Tribal members” as being Tribal because, as one commenter noted,<sup>107</sup> this approach would be difficult to demonstrate and administer.<sup>108</sup> Additionally, after discussion with Tribal representatives during the May 19, 2023 Tribal Consultation and Listening Session<sup>109</sup> we determined that both that portion of the definition and the Tribal lands portion of the definition proposed in the *Tribal E-Rate NPRM* were adequately covered by the remaining portion of the proposed definition.<sup>110</sup> We also included the “Alaska native village, regional corporation, or village corporation” language based upon suggestions from the May 19 Tribal Consultation and Listening Session<sup>111</sup> that we incorporate language from the definition of Tribal used by the Institute of Museum and Library Services (IMLS).<sup>112</sup> The Alaska Department of Education and Early Development and the Alaska State Library in their joint comments supported this approach.<sup>113</sup> While one commenter suggested maintaining the present system whereby applicants self-identify as Tribal,<sup>114</sup> the above-mentioned category two rule changes require implementation of a definition for Tribal applicants to evaluate their eligibility for the enhanced benefits. In addition, to better track and more easily identify Tribal entities and their Tribal affiliation, we will also collect the applicant’s Tribal affiliation as part of the application process.

35. *USAC Board of Directors.* Next, we adopt our proposal to add a new director to the USAC Board of Directors to represent the interests of Tribal communities.<sup>115</sup> Consistent with our existing rules governing the USAC Board, we establish a new seat on the Board and require Tribal entities to nominate a person to this seat to represent the interests of Tribal communities. This idea was first

---

<sup>106</sup> See *Tribal E-Rate NPRM*, at \*9, para. 22; see also April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B, at 3; Alaska Department of Education and Early Development and the Alaska State Library Reply at 1-2.

<sup>107</sup> Mille Lacs Band of Ojibwe Reply at 2 (suggesting that the “majority of students or library patrons served” language would be difficult to administer).

<sup>108</sup> We also chose not to include the Boys & Girls Clubs of America Native Services locations in the definition of “Tribal,” as the record does not support a finding that these locations would be eligible as either a library or a school. *Contra* NTTA Comments at 2 (suggesting that these locations be added to the definition of “Tribal”); ADS Reply at 3-4 (supporting the comments of NTTA on adding these locations to the definition of “Tribal”).

<sup>109</sup> See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 1-2.

<sup>110</sup> See *Tribal E-Rate NPRM*, at \*9, para. 22.

<sup>111</sup> See May 19, 2023 Tribal Consultation and Listening Session *Ex Parte* at 2.

<sup>112</sup> See Institute of Museum and Library Services, Native American Library Services: Enhancement Grants, FY 2023 Notice of Funding Opportunity, at 5 <https://www.ims.gov/sites/default/files/2023-01/fy23-ols-nae-nofo.pdf> (describing the eligibility requirements for applicants and stating:

“For the purpose of funding under this program, “Indian tribe” means any tribe, band, nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. A list of eligible entities is available from the Bureau of Indian Affairs.”

<sup>113</sup> See Alaska Department of Education and Early Development and the Alaska State Library Reply at 1-2.

<sup>114</sup> ADS Comments at 4.

<sup>115</sup> *Tribal E-Rate NPRM*, at \*8, para. 20.

suggested by ALA and the Association of Tribal Archives, Libraries, and Museums (ATALM) in their joint comments to the *2021 Tribal Libraries NPRM*, wherein they explained how such a position could simultaneously provide USAC with information from the Tribal community and provide the Tribal community with information directly from USAC.<sup>116</sup> Commenters that addressed the addition of a Tribal director unanimously supported the proposal.<sup>117</sup> Participants at the April 13, 2023 Tribal Consultation and Listening Session were also supportive of this proposal, noting that USAC's Board would benefit from having a Tribal perspective that could speak to the unique political and geographical identity of Tribal communities, a sentiment reiterated by Chief Executive Melanie Benjamin in reply comments filed by the Mille Lacs Band of Ojibwe.<sup>118</sup> Adding a Tribal director to the Board allows USAC, the USF, and all the universal service programs USAC administers to benefit from the perspective that a Tribal representative will provide.

36. Our existing rules with regards to directors will also apply to the Tribal director. The Tribal community shall nominate by consensus a new director.<sup>119</sup> If consensus on a nominee is not reached or a nominee is not provided, the Chair of the Commission shall select an individual to be the Tribal director.<sup>120</sup> The Tribal director will also serve a three-year term but will be eligible to serve for subsequent terms.<sup>121</sup> In addition, we add the Tribal director to the Schools and Libraries Committee so that the Tribal board member can participate in and assist the Committee in carrying out its responsibilities and duties regarding the E-Rate program.<sup>122</sup> As with other Board member positions, the Tribal director may also serve on other USAC Board committees as well. Since there will now be an even number of directors on the USAC Board, we direct USAC to make any necessary changes to its bylaws to ensure procedures are in place to determine an outcome in the case of a tie.

37. *Outreach and Training.* We seek to aid Tribal library applicants by directing USAC to provide additional training and outreach throughout the application, invoicing and post-commitment processes. The Tribal Libraries E-Rate Pilot Program we tested last year demonstrated the value of one-to-one and cohort assistance, tailored to the needs of new Tribal library applicants. We received positive feedback from participants and commenters alike, who have requested ongoing support to navigate the technical and administrative processes.<sup>123</sup> The Pilot Program also provided helpful lessons learned for both USAC and the Commission to enhance future E-Rate Tribal related trainings. We therefore direct

---

<sup>116</sup> ALA and ATALM Comments, CC Docket No. 02-6, at 4-5 (rec. Nov. 12, 2021) (ALA and ATALM Comments).

<sup>117</sup> See, e.g., ALA Comments at 11; Alaska Department of Education and Early Development and Alaska State Library Reply at 5 (“Alaska encourages the FCC to undertake these steps so that USAC and its Directors have input from all of the program’s stakeholders. Treat Tribal libraries with the same set of program rules while recognizing that Tribal issues have their own layers of complexity and a Tribal voice on the USAC Board would help to bring an awareness that has been missing in the past.”); Mille Lacs Band of Ojibwe Reply at 2 (supporting the change to “ensure that there will be a person at the table that can represent tribal interests”); NTTA Comments at 6 (fully supporting the idea); USET Comments at 4 (strongly recommending this proposal); WTA Comments at 2 (adding a member is “an excellent way for the Commission and its Universal Service Fund (‘USF’) administrator to achieve flexibility by keeping informed regarding issues, changing conditions and special circumstances”); AIHEC *Ex Parte* at 13.

<sup>118</sup> See, e.g., April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B, at 2-3; Mille Lacs Band of Ojibwe Reply at 2.

<sup>119</sup> See 47 CFR § 54.703(c)(1).

<sup>120</sup> See 47 CFR § 54.703(c)(3).

<sup>121</sup> See 47 CFR § 54.703(d).

<sup>122</sup> See 47 CFR § 54.705(a)(1).

<sup>123</sup> See, e.g., Alaska Department of Education and Early Development Reply at 6; ALA Comments at 13; Mille Lacs Band of Ojibwe Reply at 1; USET Comments at 3; WiDPI Reply at 3; see also April 13, 2023 Tribal Consultation and Listening Session *Ex Parte*, Attach. B at 1, 7.

USAC to establish an enhanced training program that includes both cohort and on-demand learning opportunities that are targeted to Tribal E-Rate applicants. Where possible, we encourage USAC to conduct hands-on, in-person training opportunities, as suggested by ALA.<sup>124</sup> Enhancing Tribal governments' and libraries' awareness of the E-Rate program, as well as program requirements, is integral to the other changes we adopt herein. We also direct USAC to provide specific support for TCU libraries, which will be eligible for the E-Rate program for the first time. We encourage USAC to identify any TCU library applicants and provide them with additional resources to assist them in the setting up their entity profiles in the E-Rate Productivity Center (EPC) and through the application and reimbursement processes.

38. In addition to enhanced training, commenters identified other outreach opportunities to better support Tribal library applicants. Specifically, as suggested by ALA in their initial comments, we direct USAC to identify and conduct outreach to first-time Tribal applicants (may also be known as billed entities or BENs) to provide additional information concerning the review process and to inquire as to any questions the first-time filer or applicants may have.<sup>125</sup> Commenters also expressed confusion related to how a library, including a Tribal library, should set up their billed entity when the respective local government is the entity that pays the bill to vendors.<sup>126</sup> Consistent with the comments from the Alaska Department of Education and Early Development and the Alaska State Library, we direct USAC to post guidance on its website for first-time Tribal library applicants on how to properly set up a library in EPC when the Tribal government, rather than the library, is the entity responsible for paying bills and invoices.<sup>127</sup> We also direct USAC to publish library-specific guidance, upon approval from the Bureau, on issues libraries commonly experience while navigating the E-Rate program.

39. We decline to adopt an extended or separate application filing window for Tribal libraries, as that could cause confusion, but we direct the Bureau to continue considering requests for waiver of the FCC Form 471 application filing deadline, recognizing the special circumstances that Tribal library applicants face when applying for the E-Rate program.<sup>128</sup> From speaking with Tribal governments and libraries, we recognize that the procurement processes for Tribal libraries can be on different timelines from the procurement processes for Tribal schools, that there are fewer staff to handle such filings, and that it can be time-consuming to get approvals for procurements from Tribal officials.<sup>129</sup> However, commenters suggested that extending the filing window or creating a wholly separate filing window would not be helpful at this time and that waiver requests are a better way to assist Tribal libraries in applying for E-Rate support.<sup>130</sup> Therefore, recognizing that the E-Rate process may be particularly challenging for small entities like Tribal libraries, we urge such entities to file timely waiver requests of the FCC Form 471 application filing deadline and to describe in such requests relevant special

---

<sup>124</sup> ALA Comments at 13.

<sup>125</sup> *See id.* at 9.

<sup>126</sup> *See* Joint Commenters Comments at 18.

<sup>127</sup> *See* Alaska Department of Education and Early Development and the Alaska State Library Reply at 3-4 (explaining the confusion from setting up "forced consortia" when the Tribal government is the billpaying entity for the library and therefore is labeled a "consortium lead" in the system even when there is just a single library).

<sup>128</sup> *See, e.g., Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 21-93, 10-90, 02-60, 06-122, Public Notice, DA 23-333, 13 (WCB rel. Apr. 28, 2023) (waiving the funding year 2023 application filing deadline for a Tribal library that applied after the deadline).

<sup>129</sup> *See, e.g.,* ADS Comments at 2 (noting that Tribal libraries are often dependent on a Tribal government's procurement schedule); Mille Lacs Band of Ojibwe Reply at 1 (explaining the process for working through the application); May 19, 2023 Tribal Consultation and Listening Session *Ex Parte*, at 2 (explaining how limited staffing capacity can make it difficult for small Tribal libraries to apply every year).

<sup>130</sup> *See* Alaska Department of Education and Early Education and Alaska State Library Reply at 6.

circumstances, such as delays from additional Tribal approvals. We expect the Bureau to adjudicate any such requests quickly. In this way, we maintain useful program deadlines while also providing assistance to Tribal library applicants.

40. Finally, as suggested by commenters,<sup>131</sup> we direct USAC to develop a mechanism to remind all registered users in EPC three weeks prior to the invoice filing deadline for each funding request (FRN) where no requests for reimbursement have been submitted yet, with instructions on how to file for reimbursement and how to file for a 120-day invoice filing deadline extension. This reminder will offer applicants and service providers an opportunity to avoid missing the invoice filing deadline and to avoid imperiling their ability to receive reimbursement for their E-Rate funding requests. While we hope that this reminder will assist applicants and service providers that may have overlooked the invoice filing deadline, we caution applicants and service providers that it is their responsibility to comply with the Commission's invoice filing deadline rule, regardless of whether or not USAC has sent a reminder of the deadline. We expect this direction to USAC will benefit all E-Rate applicants, especially Tribal library applicants who may be new to the E-Rate reimbursement process.

#### IV. FURTHER NOTICE OF PROPOSED RULEMAKING

41. Consistent with the changes we adopt above, in this Further Notice of Proposed Rulemaking (*E-Rate FNPRM*), we seek comment on the discrete issues discussed below that may further simplify the administration of the E-Rate program and reduce burdens for all applicants, including Tribal and other small, rural entities. Specifically, to continue meeting our program's performance goal of making the E-Rate application process and other E-Rate processes fast, simple, and efficient,<sup>132</sup> we seek comment on a number of suggestions raised by commenters in the *Tribal E-Rate NPRM* proceeding<sup>133</sup> aimed at streamlining or simplifying the program for all participants.<sup>134</sup>

##### A. Updating Eligible Services

42. *License/Software Distinction.* We first seek comment on allowing all eligible multi-year software-based services that are purchased with category two equipment to be requested and reimbursed in the same manner. Currently, software-based services are eligible as Internal Connections service when they are necessary for the operation of a piece of eligible Internal Connections equipment, such as a client access license.<sup>135</sup> However, bug fixes, security patches, and technical assistance-based software services are eligible as Basic Maintenance of Internal Connections (BMIC) services.<sup>136</sup> As explained in the *Sixth Report and Order*, “[r]equests for basic maintenance will continue to be funded . . . if, but for the maintenance at issue, the service would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such service.”<sup>137</sup> Applicants are currently required to amortize the cost of BMIC-related services, including for example, software-based technical assistance services, across the length of the BMIC multi-year contract, and cannot receive full funding for the BMIC software-based technical assistance services in the first year of the contract, even if the applicant has prepaid for the multi-year BMIC software service with the purchase of the category two equipment. This means that the current E-Rate rules allow the applicant to receive full funding for an internal connections-related multi-year software service in the first funding year, but for other multi-year software-based services for technical assistance, like bug fixes, which are considered to be BMIC

<sup>131</sup> See Joint Commenters Comments at 39.

<sup>132</sup> *First 2014 E-Rate Order*, 29 FCC Rcd at 8891-92, paras. 55-56.

<sup>133</sup> See *Tribal E-Rate NPRM*.

<sup>134</sup> See generally, Joint Commenters Comments.

<sup>135</sup> See, e.g., *FY2023 Eligible Services List*, Appendix B, at 8.

<sup>136</sup> See *id.* at 9.

<sup>137</sup> See *Sixth Report and Order*, 25 FCC Rcd at 18809, para. 107.

services, the applicant must split the cost of the multi-year software service evenly for each funding year, even if the applicant was required to prepay for the multi-year BMIC software-based services at the start of the contract period.<sup>138</sup> This procedure stems from the Commission's efforts in 2010 to only have the E-Rate program pay for basic maintenance services that are actually provided over the course of the funding year, and to prevent the E-Rate program from being used to prepay for BMIC services that were never used or needed by the applicant.<sup>139</sup>

43. In their comments to the *Tribal E-Rate NPRM*, the Joint Commenters explain that this distinction in the treatment of multi-year software-based services causes confusion during the competitive bidding process, where applicants are concerned about funding denials if they select the incorrect service subcategory (i.e., use internal connections instead of BMIC) on FCC Form 470, and places a burden on applicants that requires them to divide the cost of a prepaid multi-year BMIC software-based service request across multiple funding years.<sup>140</sup> We therefore seek comment on the proposal to treat these particular software-based services (e.g., bug fixes, security patches, and software-based technical assistance) in the same way we currently treat eligible Internal Connections software-based services, like client access licenses. We also propose to allow applicants that sought bids on their FCC Form 470 only for Internal Connections software services to be permitted to request funding for their multi-year BMIC software-based services without being found to have violated our competitive bidding rules for failing to check the correct box for this software request, and to allow applicants requesting these types of software-based services to be funded based on how the software-based service is contracted and invoiced with the service provider (e.g., funding a multi-year software-based service for bug fixes in a single funding request during the first year of service if the service is paid for in that first year). We seek comment on these proposals.

44. *Transition of Services.* Applicants and service providers have also sought additional clarification on how to request E-Rate support when an applicant is transitioning services between two providers during the same funding year.<sup>141</sup> To prevent funding duplicative services, program procedures do not allow USAC to commit funding to two funding requests for the same service, to the same recipients, that overlap in time. At the same time, due to concerns about exceeding the E-Rate funding cap, the Commission's service substitution rules require that post-commitment service substitutions be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.<sup>142</sup> As such, applicants are encouraged to work with their service providers to try to determine the cutover dates when transitioning service to a new provider during a funding year. We recognize, however, that this can be difficult to determine with accuracy, months in advance of the planned transition.

45. One approach is to allow applicants to request twelve months of service from the higher-priced service offering, and then file a post-commitment request to change the service provider once the cutover dates are known. We note that this suggestion results in the service request being funded higher

---

<sup>138</sup> USAC, FAQs: Basic Maintenance of Internal Connections (BMIC), Q2, <https://www.usac.org/e-rate/learn/faqs/basic-maintenance-of-internal-connections-bmic/> (last visited June 28, 2023).

<sup>139</sup> See *Sixth Report and Order*, 25 FCC Rcd at 18809-10, paras. 107-108; *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 17324, 17325-17326, paras. 5-6 (WCB 2010) (*2010 Clarification Order*) (clarifying that services such as software upgrades and patches, including bug fixes and security patches, and online and telephone-based technical assistance and tools that are typically standard fixed priced offerings will continue to be funded as BMIC without an applicant having to demonstrate that work was performed).

<sup>140</sup> See Joint Commenters Comments at 22-23; see also Alaska Department of Education and Early Development and Alaska State Library Reply at 3.

<sup>141</sup> See ALA Comments at 9.

<sup>142</sup> 47 CFR § 54.504(d)(2).

than the actual costs of the services, and may inflate the overall demand for E-Rate support for that year. However, we seek comment on whether this is still the best way to allow for mid-year service provider transitions, or whether we should consider alternative guidance or a rule change regarding these types of mid-year transitions. For instance, should we consider amending our service substitution rules to allow applicants in this unique situation to request a service substitution that will result in an increase in the pre-discount price if the transition occurs at a different date than had been anticipated and requested? If so, should we require applicants to include an explanation in their service substitution request documenting the reasons that the change resulted in an increase in the pre-discount price? Should we limit USAC's ability to grant such a service substitution request on the availability of funding for the applicable funding year under the funding cap? Based on prior years' data, we do not expect this to be a large amount of funding, but we generally do not increase annual E-Rate demand post-commitment. Are there any other issues that we should take into account by allowing applicants to potentially receive a commitment amount higher than the one originally approved for the services? How might such increases in funding impact the annual E-Rate cap adopted by the Commission? Are there budget control measures that we should adopt to ensure this new proposal does not cause the Commission to exceed the cap? We seek comment on these questions and how mid-year service provider transitions should be handled in the E-Rate program.

46. *Duplicative Services.* We next seek comment on the Joint Commenters' request for additional clarification regarding cost-effective purchasing on services from two different providers. In the *Second Report and Order*, the Commission found that requests for duplicative services, or services that provide the same functionality for the same population in the same location during the same time, are ineligible and contravene the program requirements that discounts be provided based on the reasonable needs and resources of the applicant.<sup>143</sup> It also found that requests for duplicative services are not cost-effective, but the Commission recognized that determining whether particular requests are functionally equivalent depends on the circumstances.<sup>144</sup> In the *Macomb Order*, USAC denied a funding request from the Macomb Intermediate School District Technology Consortium, which requested T-3 connections to provide Internet access to its school district from three separate service providers.<sup>145</sup> The Commission agreed that the school district violated section 54.511 of the Commission's rules by not selecting the most cost-effective service offering among the bids considered,<sup>146</sup> but provided the school district with funding for all three T-3 connections at the amount associated with the least expensive of the three providers.<sup>147</sup>

47. The Joint Commenters request clarification that applicants may seek needed services from multiple providers as part of the same procurement, so long as the applicant is limited to E-Rate funding based on the least expensive service when one provider could have met all the applicant's needs.<sup>148</sup> We seek comment on this proposal and the desire by schools to purchase services from multiple providers in the same procurement. How often is the scenario in the *Macomb Order* present in current school network configurations? How can USAC best evaluate whether applicants need the services requested from multiple providers, or whether the services are actually duplicative, such as requests for redundant or failover connections? What kind of documentation can applicants and/or service providers use to demonstrate that the services are not duplicative services (i.e., redundant or failover connections)?

---

<sup>143</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202 (2003) (*Second Report and Order*) (codifying 47 CFR § 54.511(a)).

<sup>144</sup> *Id.* at 9210, para. 24.

<sup>145</sup> *Requests for Review by Macomb Intermediate Unit Technology Consortium, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 22 FCC Rcd 8771 (2007) (*Macomb Order*).

<sup>146</sup> 47 CFR § 54.511(a).

<sup>147</sup> *Macomb Order*, 22 FCC Rcd at 8774, para. 9.

<sup>148</sup> See Joint Commenters Comments at 32.

What safeguards can we use to only fund services that are needed and are being used by the applicant? The rules require that price must be the primary factor in considering which service offering is the most cost-effective, but should we require price to be the only factor in order to ensure applicants select the least expensive service option in these scenarios when the applicants wishes to use multiple providers for the requested services? Are additional safeguards needed to ensure competitive bidding is still effective for ensuring cost-effective services when applicants seek to contract with multiple service providers for the requested services? What information or data may need to be collected on the funding application forms to demonstrate the requested services are needed and are not duplicative services? Are there other issues that the Commission should consider in allowing multiple service providers to be selected for the same procurement and requested services?

48. *Other Simplification Opportunities.* We seek comment on other changes to the eligible services list and cost allocation requirements that could simplify the E-Rate program, particularly for new and smaller applicants. For example, should we revise the eligible services list to use the same terms as used on FCC Form 470 or FCC Form 471? For instance, would it make more sense to use the terms from FCC Form 470 like fiber, cable, copper, wireless, and other in the eligible services list of data transmission and/or Internet access services, rather than listing out specific types, like “Broadband Over Power Lines”?<sup>149</sup> Are there terms in the eligible services list that should be updated or streamlined? Are there updates we could make to the eligible services list process to make it easier to approve and release the list with sufficient time for review, before applicants must submit their funding applications? For cost allocation requirements, are there additional changes we could make to clarify when applicants must cost allocate parts of their E-Rate funding requests? Are there other examples of challenging cost-allocation calculations that the Commission could further streamline for Tribal applicants? Are there other examples of ancillary use unique to Tribal libraries or small entities that share buildings on which the Commission could consider providing further guidance? Are there particular challenges with cost allocation of category two services used in multipurpose buildings, that we could simplify?<sup>150</sup> We seek comment on these questions and other suggestions for simplifying the cost-allocation and other complex procedures in the E-Rate program.

## **B. Changing or Clarifying the E-Rate Competitive Bidding Requirements**

49. The E-Rate program’s competitive bidding requirements reflect the Commission’s determination that competition is the most efficient and effective means for applicants to select the most cost-effective service offerings. The Commission has long held that a fair and open competitive bidding process is fundamental to the integrity of the E-Rate program.<sup>151</sup> Thus, the Commission has consistently required applicants to treat all potential bidders equally throughout the procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage.<sup>152</sup> Selecting the most cost-effective bid and ensuring that price of the eligible equipment and services is the primary factor considered in the bid evaluation process are other fundamental requirements of the Commission’s competitive bidding rules.<sup>153</sup>

---

<sup>149</sup> See, e.g., *FY2023 Eligible Services List*, at Appendix B, 7.

<sup>150</sup> See, e.g., WTA Comments at 5 (stating that cost allocations for category two services and associated facilities providing connectivity solely with the walls of eligible libraries and schools are unnecessary).

<sup>151</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 9076-80, paras. 570-80 (requiring applicants to conduct a fair and open competitive bidding process when seeking support for eligible products and services); *Fourth Order on Reconsideration*, 13 FCC Rcd at 5425-26, para. 185 (stating that competitive bidding is a key component of the Commission’s effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates).

<sup>152</sup> *Id.*; see also *Third Report and Order*, 18 FCC Rcd at 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources).

<sup>153</sup> See *Ysleta Order*, 18 FCC Rcd at 26428, para. 47.



50. *Competitive Bidding Exemptions.* In their comments to the *Tribal E-Rate NPRM*, the American Library Association (ALA) recommends that small libraries requesting less than \$10,000 in E-Rate funding to be subject to fewer competitive bidding requirements and less rigorous review during the application process by treating funding requests under \$10,000 as *de minimis*.<sup>154</sup> Specifically, ALA explains that libraries rely on state and local procurement rules for these purchases and additional competitive bidding requirements are not needed because of the low amount of requested funding. We seek comment on this proposal to create a competitive bidding exemption for E-Rate funding requests under \$10,000 submitted by libraries. In the Report and Order, we adopted a competitive bidding exemption for libraries making category two purchases of \$3,600 or less, per funding year. We seek additional comment on expanding the exemption for libraries making smaller annual E-Rate requests (i.e., less than \$10,000), along with data to support such a change. For example, ALA notes that 62.3% of libraries requested less than \$10,000 in total support for category one and category two services in funding year 2023, and 100% of libraries in certain rural states, like Montana, did so.<sup>155</sup> However, the Commission also relies on fair and open competitive bidding to result in applicants making cost-effective purchases. If we adopt this proposal, how can the Commission ensure that applicants are still making cost-effective purchases? What state, local, or Tribal procurement rules are in place for purchases that are under \$10,000? Should we also consider an exemption for school entities? If the exemption is expanded to schools, how can we protect the E-Rate program from waste, fraud, and abuse? For example, ALA's proposal relies on the fact that libraries are subject to state and local procurement laws and requirements; are all school entities subject to state, local or Tribal procurement requirements? For example, are private schools subject to any specific state, local, or Tribal procurement requirements? We seek comment on these questions and supporting data for adopting a competitive bid exemption for E-Rate purchases under \$10,000 per funding year.

51. *Mid-Year Bandwidth Increases.* We next seek comment on adopting a limited exception to our competitive bidding rules to allow applicants to seek bandwidth increases in between E-Rate funding cycles. The E-Rate program rules require applicants to competitively bid services using FCC Form 470.<sup>156</sup> This process starts at least 28 days before the applicant files their E-Rate funding requests during the annual application filing window, but can occur six months before, or—in the case of multi-year contracts—years before the funding request is submitted.<sup>157</sup> Applicants are encouraged to seek bids for and sign contracts for a range of bandwidths in order to accommodate changes in bandwidth needs in the future, but applicants are not always able to anticipate changes in their bandwidth needs. In 2020, for example, the Bureau opened a second application filing window in September to address increased on-campus bandwidth needs as a result of remote learning challenges from the COVID-19 pandemic.<sup>158</sup> However, in other instances, applicants may be unable to increase their bandwidth mid-funding year without potentially violating the E-Rate program competitive bidding rules.<sup>159</sup>

---

<sup>154</sup> See ALA Comments at 7.

<sup>155</sup> See *id.*

<sup>156</sup> 47 CFR § 54.503.

<sup>157</sup> An applicant can enter into multi-year contracts or contracts with voluntary extensions without reposting an FCC Form 470 application and complying with the 28-day rule each year. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 6732, 6736, paras. 10-12 (WCB 1999) (clarifying that applicants may sign multi-year contracts).

<sup>158</sup> See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 35 FCC Rcd 10347 (WCB 2020).

<sup>159</sup> For example, if a school district competitively bids and requests E-Rate funding in January for services on a contract that provides pricing for 1 Gbps bandwidth, but the applicant determines in September that it requires 2 Gbps, there is no mechanism for the applicant to increase that bandwidth from the service provider on their E-Rate funding request.

52. The Joint Commenters therefore suggest an exception to the competitive bidding rules to allow applicants to increase bandwidth during the school year (i.e., mid-funding year) by submitting a service substitution request to increase the bandwidth using their current provider at the existing committed amount without being found to have violated the program's competitive bidding rules.<sup>160</sup> We seek comment on this proposal and how to allow for bandwidth increases without opening the door to applicants avoiding our competitive bidding rules or unfairly favoring incumbent service providers. What limitations would need to be adopted in order to ensure that the exception for mid-funding year bandwidth increases is not misused? How can USAC keep track of such mid-funding year bandwidth increases? Do commenters agree that applicants be allowed to request a service substitution request increasing the bandwidth, limited at the original funding commitment cost?<sup>161</sup> Should such applicants be required to competitively bid for the increased bandwidth in the subsequent funding year? We seek comment on these questions and other issues the Commission should consider in adopting this exception to the E-Rate competitive bidding requirements.

53. *Providing Guidance to Applicants on When Competitive Bidding Must be Restarted.* We next seek comment on how to reduce confusion about when changes made to the information provided on FCC Form 470 or related requests for proposals (RFP) requires an applicant to restart the competitive bidding process and wait at least 28 days before selecting their service offering(s). Under the Commission's competitive bidding rules, applicants must conduct a fair and open competitive bidding process.<sup>162</sup> This means that applicants must treat all potential bidders equally throughout the entire procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage.<sup>163</sup> Furthermore, applicants must describe the requested services with sufficient specificity to enable potential service providers to submit responsive bids for such services.<sup>164</sup> Sometimes, the facts are clear that the requested E-Rate services were not fairly competitively bid and there was a violation of the competitive bidding rules. For example, applicants may not request E-Rate support for services that were not included on FCC Form 470.<sup>165</sup> Similarly, applicants that fail to indicate the existence of a RFP have also been denied E-Rate support for suppressing fair and open competitive bidding.<sup>166</sup> As such, in some instances, when applicants make a change to an FCC Form 470—such as by modifying the services being requested or by including an omitted RFP—that would change whether a service provider reviewing the original FCC Form 470 could submit responsive bids, the competitive bidding process should be restarted to allow all potential bidders the opportunity to bid based on the additional or modified information, and the applicant should wait at least 28 days after making these

---

<sup>160</sup> Joint Commenters Comments at 33-34.

<sup>161</sup> See 47 CFR § 54.504(d)(2).

<sup>162</sup> 47 CFR § 54.503(a).

<sup>163</sup> See *supra* note 30.

<sup>164</sup> 47 CFR § 54.503(c)(1)(2).

<sup>165</sup> See, e.g., *Request for Review of a Decision of the Universal Service Administrator by Albert Lea Area Schools et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 4533, 4541-42, paras. 14-15 (WCB 2009) (*Albert Lea Order*) (finding that petitioners violated the Commission's competitive bidding rules by not including the type of service on the FCC Form 470 the applicant requested on its FCC Form 471).

<sup>166</sup> See, e.g., *Request for Review of A Decision of the Universal Service Administrator by Spokane School District 81*, CC Docket No. 02-6, Order, 28 FCC Rcd 6023, 6024, para. 3 (WCB 2013) (denying appeal where applicant failed to indicate the existence of an RFP on its FCC Form 470, but issued an RFP to interested bidders, because "only those vendors receiving the RFP were privy to details and specific instructions concerning the procurement of the desired services" and "not all prospective service providers were on a level playing field"; further noting that "[b]y not indicating the existence of an RFP on its FCC Form 470, [the applicant's] noncompliance with the rules created the risk that it artificially constricted the potential pool of applicants that could meet its specific requirements").

changes before selecting the most cost-effective service offering(s).<sup>167</sup> In other cases, the Commission has granted requests for review where an applicant changed information on FCC Form 470 or associated RFP without finding a competitive bidding violation because the change did not impact potential bidders' ability to be able to submit responsive bids.<sup>168</sup>

54. As these examples indicate, whether a change to FCC Form 470 or RFP results in an unfair competitive bidding process is often a fact-specific inquiry. We therefore seek comment on scenarios where we can provide more guidance on whether an applicant's changes to their FCC Form 470 or RFP requires it to restart the competitive bidding process and wait at least 28 days before selecting its service offering(s). E-Rate participants are encouraged to provide examples of instances where they believe changes to FCC Form 470 and/or RFP do not result in an unfair competitive bidding process as all potential bidders would still be able to submit responsive bids although certain information was modified in FCC Form 470 and/or RFP. Are there any presumptions or safe harbors the Commission could adopt so that applicants could have more certainty about whether and when they need to restart the competitive bidding process because of that specific change that was made to FCC Form 470 and/or RFP? For instance, should applicants correcting errors in their bandwidth requests by less than 50% not be required to restart the competitive bidding clock (i.e., the minimum 28 day waiting period)? Are there other types of common changes to FCC Form 470 and/or RFP that should not require applicants to restart their competitive bidding process? We seek comment on these questions and what type of guidance or clarifications would be helpful for the Commission to provide on when changes to FCC Form 470 and/or RFP would not result in an unfair competitive bid process and when the applicant would be required to restart their competitive bid process and wait a minimum of 28 days before selecting the most cost-effective service offering(s) after making the change or modification.

55. *Spam Bids and Bids Received After 28 Day Waiting Period.* Under the E-Rate competitive bidding rules, applicants are required to carefully consider all received bids, with price being the primary factor, and select the most cost-effective service offering.<sup>169</sup> Applicants must also wait at least 28 days before selecting the most cost-effective service offerings.<sup>170</sup> Applicants are permitted to set deadlines to close the competitive bid process (of at least four weeks after FCC Form 470 is filed) or establish other disqualification factors in FCC Form 470.<sup>171</sup> The Joint Commenters explain that

---

<sup>167</sup> USAC, Ministerial & Clerical Errors, <https://www.usac.org/e-rate/applicant-process/competitive-bidding/ministerial-clerical-errors/> (last visited June 28, 2023) (providing examples based on E-Rate precedent for when a new FCC Form 470 should be filed).

<sup>168</sup> See, e.g., *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, WC Docket Nos. 02-60, 06-122, Public Notice, 35 FCC Rcd 6451, 6452 n.5 (WCB 2020) (finding that there was no violation of the minimum 28-day waiting period when all potential bidders had access to the same information, including information about five prospective locations that had been inadvertently omitted from one list but included in other lists to which all bidders had access); *Requests for Review of the Decisions of the Universal Service Administrator by Green Bay Area Public School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 17036, para. 1 (WCB 2010) (granting relief after finding that all bidders had access to the same information during the competitive bidding process via the FCC Form 470 despite the school district's failure to indicate that it had issued a separate request for proposals for the services at issue).

<sup>169</sup> 47 CFR § 54.511.

<sup>170</sup> 47 CFR § 54.503(c)(4) (stating that the entity "shall then wait at least four weeks from the date on which its description of services is posted...before making commitments with the selected providers of services").

<sup>171</sup> See, e.g., *Requests for Review of a Decision of the Universal Service Administrator by Baltimore City School District and Cobb County School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 26 FCC Rcd 11193, 11199, para. 12 (WCB 2011) (explaining that applicants should provide notice to all potential bidders as to the specific criteria to be evaluated, which criteria will be used as disqualification criteria, and the circumstances under which bidders will be disqualified from further consideration).

applicants are receiving more spam bids and other automated or “robo” responses to their FCC Form 470 that do not contain the information on the specific services requested by the applicant and seek guidance on whether these bid responses have to be considered and retained.<sup>172</sup> They also seek guidance on whether and how long bids must be considered after the required four weeks have passed.<sup>173</sup> Specifically, the Joint Commenters explain that service providers have set up automated responses to be sent, often within 24 hours, after an FCC Form 470 has been posted on USAC’s website.<sup>174</sup> In addition, multiple automated bid responses may be sent to the applicant for a single FCC Form 470.<sup>175</sup> However, the automated bid responses do not contain the pricing and other information requested in FCC Form 470 and require the applicant to reach out to the service provider for additional information.<sup>176</sup> The Joint Commenters request that the Commission clarify that spam and other automated bid responses do not meet the definition of an authentic bid and that applicants may, but are not required to, consider spam or other automated bid responses or be required to retain copies of the spam and other automated bid responses pursuant to the document retention rule.<sup>177</sup> The Joint Commenters further explain that requiring applicants to acknowledge and retain spam and other automated bid responses is an onerous burden, and that the Commission should impose some minimal responsibility on service providers to submit responsive bids to the applicants and the automated bid responses should not be used as a basis to deny funding because of a non-compliant competitive bid process.<sup>178</sup>

56. For purposes of disqualifying spam or other automated bid responses or consideration of bids received after a deadline set in FCC Form 470, the Joint Commenters request that the Commission clarify the requirements and confirm that spam and other automated bid responses do not need to be treated as bids and that applicants may rely on the 28 day allowable contract date (ACD) as the deadline for submitting bids when FCC Form 470 is silent on the bid submission deadline.<sup>179</sup> In general, we would expect applicants to carefully consider all bids received before the bid selection process has occurred, unless they provided a specific bid submission deadline and noted that bids received after the deadline would be disqualified on FCC Form 470. In light of the concerns raised by the Joint Commenters, we first seek comment on the types of spam and other automated bid responses that are being generated and sent to the applicant once or soon after their FCC Form 470 is posted. Please include examples of these types of bid automated bid response communications and other data regarding the frequency and number of automated responses that applicants receive after posting their FCC Form 470. We seek further comment on the Joint Commenters’ request that the ACD be used as the bid response deadline when FCC Form 470 is silent on the bid submission deadline. We note that applicants are already allowed to state that bids that do not include all of the required information and/or are received after a specific deadline will be disqualified on their FCC Form 470 or in the accompanying RFP. We request further comment on why applicants are not able to add language to their FCC Form 470 that non-responsive bids will be disqualified or that bids received after the 28-day minimum waiting period will be considered late and will also be disqualified. Are changes to FCC Form 470 needed to include specific disqualification criteria that could be checked by the applicant? For example, should we add a field to FCC Form 470 to allow applicants to indicate the deadline for submitting bids and any other requirement that will result in a bid being disqualified from consideration? We also note that we have an open proceeding related to a

---

<sup>172</sup> See Joint Commenters Comments at 29.

<sup>173</sup> *Id.* at 30-31.

<sup>174</sup> *Id.* at 28.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> *Id.* at 29.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 29-31.

competitive bidding portal that could collect all bids that are received by the applicant and reduce confusion about these types of bids and deadlines.<sup>180</sup> Would the proposed bidding portal be helpful as a competitive bid document repository to reduce the documentation retention related burdens on applicants? We further seek comment on how to ensure applicants are complying with program rules to carefully consider all bids received and retain them for the appropriate ten-year document retention period, if spam or other automated bid responses are not treated as “bids.”<sup>181</sup> If exceptions are made regarding the consideration and retention of certain types of bid responses, how do we ensure the exception is not misused and responsive bids are not considered or retained as required by the Commission’s rules? We seek comment on all of these questions, as well as any other issues the Commission should consider to ensure the E-Rate competitive bidding process remains fair and open, and compliant with the Commission’s rules if changes or clarification is provided about what response is a bid.

57. *Evidence of a Legally Binding Agreement.* Our E-Rate rules also require that the applicant have a signed contract or legally binding agreement before requesting E-Rate funding.<sup>182</sup> When modifying this rule in 2014 to allow for legally binding agreements rather than requiring only signed contracts, the Commission explained that USAC would consider the existence of a written offer from the service provider containing all the material terms and conditions and a written acceptance of that offer as evidence of a legally binding agreement.<sup>183</sup> The Joint Commenters now suggest that board minutes approving a contract offer should be evidence of an applicant’s acceptance, demonstrating a legally binding agreement. We seek comment on this proposal and whether there are additional examples that USAC should consider as evidence of a legally binding agreement. Conversely, ALA suggests removing the legally binding agreement requirement and suggests that E-Rate applicants be allowed to rely on a price quotation before submitting their E-Rate applications.<sup>184</sup> In the Emergency Connectivity Fund program, applicants were allowed to rely on price quotations due to the emergency nature of the program and the lack of significant advance notice before the first application filing window opened.<sup>185</sup> We also seek comment on this request and how accepting a price quotation would streamline the application process. We also seek comment on whether modifying this requirement, and allowing a price quotation to be used, may lead to greater potential of waste, fraud, and abuse, and we invite comments on how to minimize that risk.

58. *Ensuring Our Rules Recognize Tribal Law.* We seek comment on whether the E-Rate program rules should be updated to recognize that competitive bidding regulations are often imposed by Tribal as well as state and local governments. For example, our competitive bidding rules state that the program-specific rules “apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.”<sup>186</sup> Recognizing that Tribal governments may also have procurement rules in place, should we add Tribal to this list? Are there other areas of our program rules that should be updated to recognize the Tribal government role?

---

<sup>180</sup> *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455, Notice of Proposed Rulemaking, 36 FCC Rcd 17892 (2021) (*E-Rate Bidding Portal Notice*).

<sup>181</sup> 47 CFR §§ 54.511(a); 54.516(a).

<sup>182</sup> 47 CFR § 54.504(a).

<sup>183</sup> *2014 First E-Rate Order*, 29 FCC Rcd at 8951, para. 204.

<sup>184</sup> See ALA Comments at 8.

<sup>185</sup> See 47 CFR § 54.1710(a)(1)(x); *Wireline Competition Bureau Sets Service Delivery Date for Emergency Connectivity Fund Program Initial Application Filing Window and Modifies Funding Application Certification Language*, WC Docket No. 21-93, Public Notice, 36 FCC Rcd 11450 (WCB 2021) (modifying the certification to account for requests for equipment or services that have not yet been ordered when the requests are made).

<sup>186</sup> See 47 CFR § 54.503(b).

59. Finally, we seek comment on other competitive bidding-related requirements the Commission should consider updating or otherwise modifying. For example, we seek comment on how product demonstrations are conducted for applicants in the E-Rate program. Should the Commission modify or provide guidance related to its gift rules to provide additional clarity around product demonstrations? What safeguards should we adopt to ensure applicants are not ultimately receiving free equipment through a product demonstration that would impact conducting a fair and open competitive bidding process?

### C. Streamlining the E-Rate Program Forms

60. We seek comment on a number of proposals to modify the E-Rate program forms to streamline the application process. First, we seek comment on what modifications to FCC Form 470 (Description of Services Requested and Certification Form),<sup>187</sup> which opens the competitive bidding process for E-Rate applicants, would reduce confusion for both applicants and service providers. Second, we seek comment on reducing the number of E-Rate forms by moving the information currently collected on FCC Form 486 (Receipt of Service Confirmation and Children’s Internet Protection Act Certification (CIPA) Form), which notifies USAC that services have started and that the applicant is in compliance with CIPA requirements, to other E-Rate forms.

61. *Creating an “EZ” Application Form.* In comments to the *Tribal E-Rate NPRM*, E-Rate participants explained that small library entities often require technical assistance to complete the FCC Form 471 application. ALA suggests that the Commission “create an ‘EZ’ form with simple to understand language that also includes context-sensitive guidance and best practices to support applicants, such as including checklists and prompts to help users navigate and raise any flags for potentially incorrect entry of information.”<sup>188</sup> We seek comment on this proposal and how to implement it effectively. Would such a form be available to all applicants, or would it be preferable to have a form targeted to Tribal entities or libraries? Is there any language on the FCC Form 471 application in particular that should be changed? Is any information collected on the form no longer needed? Is there additional information that should be collected to help streamline the application process? For example, should we add the information currently collected on FCC Form 486 to FCC Form 471 instead? What questions are confusing to small entities, and what type of questions do small applicants require technical assistance with? Would additional system pop-ups and guidance within the online application form make a significant difference in encouraging new, small entities to apply and request funding through the E-Rate program?

62. *Simplifying the FCC Form 470 Drop-Down Menu Options.* In 2014, the Commission required all applicants and service providers to electronically file all E-Rate-related documents with USAC, adopted changes to the competitive bidding requirements for certain category one services, and amended the category two rules to fund additional services, such as managed internal broadband services (MIBS).<sup>189</sup> As a result of those changes, FCC Form 470 currently has drop-down menu options that allow applicants to pick the services for which they are seeking bids in order to make it easier for service providers to search and locate relevant FCC Forms 470 to submit bids for. Despite efforts to improve the drop-down menu options,<sup>190</sup> applicants and service providers continue to request changes to the drop-down menu options, and express concerns that selecting the wrong drop-down menu option(s) can result in a funding denial.<sup>191</sup> Under the E-Rate program rules, applicants must conduct a fair and open

---

<sup>187</sup> See Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (FCC Form 470).

<sup>188</sup> ALA Comments at 9.

<sup>189</sup> 2014 First E-Rate Order, 29 FCC Rcd at 8951, para. 205.

<sup>190</sup> See, e.g., *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, Public Notice, 34 FCC Rcd 8719 (WCB 2019).

<sup>191</sup> Joint Commenters Comments at 19-20.

competitive bidding process, seeking bids on FCC Form 470 with, at a minimum, a list of specified services for which the entity is requesting bids and sufficient information to enable bidders to reasonably determine the needs of the applicant.<sup>192</sup> Under this rule, the Bureau has denied requests for review from petitioners denied funding for failing to seek competitive bids on their FCC Forms 470 for services requested on the FCC Forms 471.<sup>193</sup> In addition, the Commission has established certain competitive bidding requirements for certain services, like managed internal broadband services and self-provisioned networks, in order to ensure applicants select the most cost-effective service option.<sup>194</sup> We therefore seek comment on proposals from the Joint Commenters for changes to the drop-down menu options.<sup>195</sup>

63. First, for category two services, the Joint Commenters propose that the three separate Service Types: (1) Internal Connections; (2) Managed Internal Broadband Services (MIBS); and (3) Basic Maintenance of Internal Connections (BMIC) be combined or revised in order to reduce the likelihood that applicants select the wrong Service Type by accident. We seek comment on this approach from both applicants and service providers. Are the category two services subcategories useful in determining the needs of the applicant? Or would a category two services narrative section be sufficient to ensure that applicants are providing sufficient information regarding the specified equipment and services requested? For software-based services and licenses, as explained above, we understand that it is sometimes challenging for new applicants to determine which subcategory to use for the software or licenses needed for the category two internal connections equipment. However, if an applicant is seeking bids for specific pieces of equipment or for basic maintenance in the form of physical repair of the equipment, is information included in a narrative box sufficient for service providers to find and understand precisely what service(s) are being requested? Should we consider a method for applicants to tag requests as potentially one particular type of service to assist service providers in finding the relevant requests for bids? How do we weigh the benefits of a drop-down menu to service providers in finding and responding to FCC Forms 470 against the burden on applicants to determine the correct menu option(s) to use for the requested equipment and services?

64. Second, the Joint Commenters propose that the Commission again modify the FCC Form 470 drop-down menu options for category one services.<sup>196</sup> Over the last several funding years, the Bureau and USAC have taken steps to improve the category one drop-down menu options to reduce applicant confusion.<sup>197</sup> In funding year 2022, after seeking comment from E-Rate participants, the drop-down

---

<sup>192</sup> 47 CFR § 54.503(c)(1).

<sup>193</sup> See, e.g., *Albert Lea Order*, 24 FCC Rcd at 4541-42, paras. 14-15 (finding that petitioners violated the Commission's competitive bidding rules by not including the type of service on the FCC Form 470 the applicant requested on its FCC Form 471).

<sup>194</sup> See, e.g., 47 CFR § 54.503(c)(1)(iv).

<sup>195</sup> See Joint Commenters Comments at 19-21.

<sup>196</sup> *Id.* at 20-21.

<sup>197</sup> See, e.g., *Wireline Competition Bureau and Office of the Managing Director Seek Comment on Improving FCC Form 470 Drop-Down Menu*, WC Docket No. 13-184, Public Notice, 34 FCC Rcd 8719 (WCB 2019) (seeking comment on whether and how the FCC Form 470 drop-down menu options, including the way in which applicants are guided to the appropriate menu option, may be improved); Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau and Mark Stephens, Director, Office of the Managing Director, to Radha Sekar, Chief Executive Officer, USAC, 35 FCC Rcd 5763 (WCB & OMD 2020) (directing USAC not to deny or issue a commitment adjustment solely because the funding year 2020 applicant selected the "Internet Access: ISP Service Only (No Transport Circuit Included)" drop-down menu option and subsequently requested funding for a service with data transmission); Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, and Mark Stephens, Director, Office of the Managing Director, to Radha Sekar, Chief Executive Officer, USAC, 34 FCC Rcd 8716 (WCB & OMD 2019) (providing same guidance to USAC for funding year 2019).

menu options specifically listing “Leased Lit Fiber” were modified as a result of continued confusion.<sup>198</sup> The Joint Commenters now seek new drop-down menu options for “internet service over fiber facilities” and “data transmission over fiber facilities.”<sup>199</sup> For instance, the Joint Commenters state that the USAC guidance on seeking bids for data transmission without Internet access over fiber is unclear.<sup>200</sup> We seek comment on this proposal. Based on the continued confusion from changes to FCC Form 470, we are concerned that further changes to the drop-down menu options could result in greater applicant confusion. Are there ways to capture concerns about the drop-down options language without making additional changes? For example, can USAC add more guidance within the online FCC Form 470 or in trainings? Finally, are there any other ways we could improve existing drop-down menu options for E-Rate applicants or participants?

65. *Modifying or Eliminating FCC Form 486.* We seek comment on whether to eliminate FCC Form 486 and move the information collected on that form to FCC Form 471 or remove some of the information collected on the form. FCC Form 486 notifies USAC that services have started for the recipients of service included on an approved funding request and the status of compliance with CIPA for the recipients of service for the funding requests.<sup>201</sup> It must be filed after USAC issues a funding commitment decision letter, but no later than 120 days after the service start date or 120 days after the funding commitment decision letter, whichever date is later.<sup>202</sup> Invoicing cannot begin until FCC Form 486 is filed by the applicant.<sup>203</sup>

66. FCC Form 486 has included a number of program certifications over the years, such as whether technology plans are in place, but currently only collects information related to the services’ start dates and CIPA compliance. These certifications now occur in the middle of the application cycle and can result in funding reductions due to ministerial or clerical errors.<sup>204</sup> We seek comment on moving the CIPA certifications to FCC Form 471 and removing the requirement to notify USAC that services have started. The Joint Commenters explain that this would be a “simple, yet effective way to streamline the program for all applicants and the Administrator, but particularly for small and new applicants.”<sup>205</sup> For the vast majority of applicants that are already in compliance with CIPA, the location of this CIPA certification should make no difference. While removing the requirement to notify USAC that services have started removes one possible check for USAC, the certifications on the requests for reimbursement forms already require services to have been delivered in order to seek funding, potentially making the

---

<sup>198</sup> See, e.g., USAC, FY2022-FY2023 FCC Form 470 Services Guiding Statements Table, [https://www.usac.org/wp-content/uploads/e-rate/documents/Webinars/2023/FCC\\_Form\\_470\\_Guiding\\_Statements\\_Table\\_FY22-FY23.pdf](https://www.usac.org/wp-content/uploads/e-rate/documents/Webinars/2023/FCC_Form_470_Guiding_Statements_Table_FY22-FY23.pdf) (last visited June 28, 2023).

<sup>199</sup> Joint Commenters Comments at 21-22.

<sup>200</sup> In this case, applicants are encouraged to use “I seek data transmission service without internet access service.”. The other option is available for applicants that wish to consider bids for Leased Dark Fiber and therefore under our rules must also seek bids for Leased Lit Fiber. 47 CFR § 54.503(c)(1)(v). [https://www.usac.org/wp-content/uploads/e-rate/documents/Forms/FCC\\_Form\\_470\\_Guiding\\_Statements\\_Table\\_FY22.pdf](https://www.usac.org/wp-content/uploads/e-rate/documents/Forms/FCC_Form_470_Guiding_Statements_Table_FY22.pdf) (last visited June 28, 2023).

<sup>201</sup> See Schools and Libraries Universal Service, Receipt of Service Confirmation and Children’s Internet Protection Act Certification Form, OMB 3060-0853 (FCC Form 486).

<sup>202</sup> USAC, FCC Form 486 Filing, <https://www.usac.org/e-rate/applicant-process/starting-services/fcc-form-486-filing/> (last visited June 28, 2023).

<sup>203</sup> *Id.*

<sup>204</sup> See, e.g., *Requests for Review of the Decision of the Universal Service Administrator by Alaska Gateway School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, 21 FCC Rcd 10182 (WCB 2006) (*Alaska Gateway Order*) (describing the procedures surrounding the FCC Form 486 filing, along with the potential penalties for violation).

<sup>205</sup> Joint Commenters Comments at 35-36.



additional notification about the start of services duplicative. If FCC Form 486 is removed for future funding years, how should we modify the certifications on FCC Form 472 or FCC Form 474 to ensure services and/or equipment were delivered to and used by eligible entities? If we make changes to FCC Form 486, should we also make changes to the invoice filing deadline to link the deadline to the date of the funding commitment decision letter? The rules currently reference the date of the FCC Form 486 Notification Letter.<sup>206</sup> Alternatively, the Joint Commenters suggest that the CIPA certifications be moved to FCC Form 471 but allow FCC Form 486 to remain as an option. While we may need to retain FCC Form 486 for prior funding years where the certifications were not included on that funding year's FCC Form 471, we seek more detailed comment about the benefits of keeping FCC Form 486 as an optional form for future funding years.

67. Are there other E-Rate form changes that could help streamline application and reimbursement processes for the program? We seek comment on other E-Rate form modifications, particularly those that would help a new entity or a small or Tribal entity to apply for and receive E-Rate support. We encourage commenters to provide sufficient detail for us to adopt changes to the E-Rate forms in upcoming funding years.

#### **D. Seeking Information on Other College Libraries Acting as Public Libraries**

68. We also seek comment on whether there are other college or university libraries, similar to the TCU libraries, that act as the public library in their community. While we continue to monitor whether TCU libraries participate successfully in the E-Rate program, we seek data and examples from stakeholders about whether this is common in other types of college or university libraries and whether we should consider further changes to our eligibility rules for libraries. One commenter suggested expanding eligibility to other college libraries that serve as public libraries in their communities.<sup>207</sup> If we do, what other additional restrictions or limitations should be considered? Are colleges that specifically serve communities that have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, such as Historically Black Colleges and Universities (HBCUs)<sup>208</sup> or Hispanic-Serving institutions (HSIs),<sup>209</sup> also serving as public libraries in any instances?

#### **E. Modifying E-Rate Invoice and Disbursement Standards**

69. *Modifying the Invoice Filing Deadline Rule.* Before 2014, invoice filing deadlines were procedural, and applicants or service providers could request and receive a 120-day invoice filing extension under certain conditions.<sup>210</sup> USAC granted invoice filing extension requests that met the criteria, including requests made up to a year after the original invoice filing deadline.<sup>211</sup> In the *First 2014 E-Rate Order*, the Commission codified the invoice filing deadline,<sup>212</sup> and adopted a strict standard

<sup>206</sup> See 47 CFR § 54.514(a)(2).

<sup>207</sup> See ADS Comments at 1 (suggesting small or rural college libraries also be made eligible); ADS Reply at 1 (reiterating their suggestion from their initial comments).

<sup>208</sup> US Department of Education, *What is an HBCU?*, <https://sites.ed.gov/whhbcu/one-hundred-and-five-historically-black-colleges-and-universities/> (last visited June 28, 2023).

<sup>209</sup> US Department of Education, *Hispanic-Serving Institutions*, <https://sites.ed.gov/hispanic-initiative/hispanic-serving-institutions-hsis/> (last visited June 28, 2023).

<sup>210</sup> See, e.g., *Third Report and Order*, 18 FCC Rcd at 26950, para. 93.

<sup>211</sup> See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Ada School District; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 31 FCC Rcd 3834, 3835, para. 3 (WCB 2016).

<sup>212</sup> See *First 2014 E-Rate Order*, 29 FCC Rcd at 8965-66, para. 238-39. The Commission's E-Rate rules now require applicants and service providers to submit invoicing forms for reimbursement to USAC no later than 120 days after the last day to receive service or 120 days after the date of the FCC Form 486 Notification Letter, whichever is later. 47 CFR § 54.514(a).

for waiving the rule and granting extensions of the applicable invoice filing deadline.<sup>213</sup> Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoice filing deadline, provided that the applicant or service provider submits the request on or before the invoice filing deadline for that request.<sup>214</sup> USAC will automatically grant timely filed invoice filing deadline extension requests.<sup>215</sup> In the interest of efficient program administration, however, the Commission has prohibited USAC from granting any additional invoice filing deadline extensions.<sup>216</sup> As a result, if applicants and service providers require more time than the single 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice filing deadline extension rule from the Commission.<sup>217</sup> The Commission has concluded, however, that "it is generally not in the public interest to waive [the] invoicing rules,"<sup>218</sup> and the Bureau should grant waivers of the invoice filing deadline rules only under "extraordinary circumstances."<sup>219</sup>

70. As a result of this standard, applicants and service providers have filed large numbers of waivers related to invoicing errors.<sup>220</sup> Under the extraordinary circumstances standard, the Bureau has denied many of those waiver requests.<sup>221</sup> We now seek comment on the Joint Commenters' proposal to slightly modify the invoice filing deadline extension rule. Specifically, they propose that applicants be allowed to seek an extension of the original invoice deadline from USAC when the request is made within 15 days of the original invoice filing deadline date. This change would allow applicants or service providers to request a one-time 120 day extension if they realize they just missed an invoice filing deadline, reducing the number of denied requests for reimbursements and waiver requests, while maintaining the codified invoice filing deadline, as the new invoice filing deadline would remain 120 days from the original invoice filing deadline, and not based on the date the extension request was filed with USAC. Because we are revisiting our overall approach to the invoice filing deadline, we also modify, on an interim basis, the prior guidance provided to the Bureau regarding waivers of the existing deadline.<sup>222</sup> In particular, the Bureau remains free to grant waivers that would have been granted under the prior Commission guidance. We direct the Bureau to leave the remaining waiver requests pending for now, and we will provide further guidance regarding the disposition of those waiver requests at the resolution of this proceeding.

71. Consistent with this proposal, we also seek comment on other ways to simplify or streamline the E-Rate invoicing and disbursement process. Should the Commission consider a 30-day

---

<sup>213</sup> See *First 2014 E-Rate Order*, 29 FCC Rcd at 8965-66, paras. 238-40.

<sup>214</sup> 47 CFR § 54.514(b).

<sup>215</sup> *Id.*

<sup>216</sup> *First 2014 E-Rate Order*, 29 FCC Rcd at 8966, para. 240.

<sup>217</sup> *Id.*

<sup>218</sup> The Commission has concluded that its invoice deadline rules are necessary to ensure the efficient operation of the program, provide certainty for program participants, and allow USAC and the Commission to identify unused E-Rate funds that may be carried forward to future funding years. *Id.* at 8965-66, paras. 238-39.

<sup>219</sup> *Id.* at 8966, para. 240.

<sup>220</sup> See *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Accomack County Public School et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, DA 23-48, paras. 7-9 (WCB Jan. 19, 2023) (*Accomack County Public School Order*) (granting a waiver where the E-Rate invoice filer entered the wrong application and funding request number on the request for reimbursement form).

<sup>221</sup> See, e.g., *Requests for Waiver or Review of Decisions of the Universal Service Administrator by Hancock County Library System et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 30 FCC Rcd 4723, 4726, para. 9 (WCB 2015) (*Hancock County Library Order*).

<sup>222</sup> *First 2014 E-Rate Order*, 30 FCC Rcd at 8966, para. 240.

grace period for applicants or service providers to resubmit invoices that were timely filed before the invoice filing deadline, but rejected in whole or part after the deadline has passed?<sup>223</sup> Currently, applicants and service providers may appeal a rejected or denied invoice, but cannot resubmit the invoice filing if the deadline has passed. Applicants and service providers are encouraged to provide examples of why filing an appeal after the invoice filing deadline is not the most straightforward approach. Are there processes and requirements in the program that we should consider changing in order to reduce the amount of work required by small applicants regarding the E-Rate reimbursement process? Are there particular situations where one extension is insufficient for requesting reimbursement from the E-Rate program?

72. We also seek comment on a billing issue that could complicate service provider invoicing for some applicants. E-Rate applicants may select one of two ways to seek reimbursement of the costs of eligible E-Rate equipment and services.<sup>224</sup> If an applicant pays the full cost of the equipment and services upfront, then the applicant must submit an FCC Form 472, the Billed Entity Applicant Reimbursement (BEAR) form, to request reimbursement for the discounted share of the costs from USAC.<sup>225</sup> If an applicant only pays its service provider the non-discounted share of the cost of the eligible equipment and services, then the service provider must file an FCC Form 474, the Service Provider Invoice (SPI) form, to receive reimbursement of the discounted share of the costs directly from USAC. Although the BEAR invoicing rules were modified in the *First 2014 E-Rate Order*, to allow applicants to receive direct reimbursement from USAC,<sup>226</sup> service providers have continued invoicing applicants for the full cost of the E-Rate services and then provide a credit to the applicant after receiving reimbursement of the discounted share of costs for the equipment and services through SPI invoicing from USAC.

73. This practice by certain service providers of requiring the applicant to pay the full cost of the E-Rate services upfront when the applicant has elected SPI billing and is only required to pay the service the non-discounted share of costs is contrary to the clear intent of allowing SPI billing and our rules. As the Commission explained in the *Second Report and Order*, “requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries.”<sup>227</sup> The Commission explained that “many applicants cannot afford to make the upfront payments that the BEAR method requires” and concluded “the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.”<sup>228</sup> We therefore seek comment on amending our rules and certifications to make them consistent with the Commission’s intent that applicants who select the SPI invoicing method must only pay their service provider for the non-discounted share of the costs of the eligible equipment and services, and the service provider must seek the remaining discounted portion of costs from USAC and may not require full payment from the applicant as well when the SPI invoicing method is used.

---

<sup>223</sup> Joint Commenters Comments at 39-40.

<sup>224</sup> 47 CFR § 54.514(c).

<sup>225</sup> USAC, Invoicing: FCC Form 472 Filing, <https://www.usac.org/e-rate/applicant-process/invoicing/fcc-form-472-filing/> (last visited June 28, 2023).

<sup>226</sup> See *First 2014 E-Rate Order*, 29 FCC Rcd at 8963-65, paras. 233-35 (modifying the reimbursement rules to allow applicants to receive funding directly from USAC instead of being passed through the service provider).

<sup>227</sup> See *Second Report and Order*, 18 FCC Rcd at 9217, para. 47 (*Second Report and Order*) (citing the *Universal Service First Report and Order*, 12 FCC Rcd at 9083, para. 586).

<sup>228</sup> See *Second Report and Order*, 18 FCC Rcd at 9217 at para. 47.

## F. Updating E-Rate Program Definitions

74. Finally, we seek comment on changes to some of the program's definitions that may be causing confusion or no longer be as relevant to the current program. We also encourage E-Rate participants to provide other cleanup suggestions for the program rules.

75. *Wiring Between Buildings.* We next seek comment on amending the definition of "internal connections" and "wide area network" to allow applicants to seek funding for wiring between different schools in the same contiguous area as an internal connection.<sup>229</sup> In funding year 2017, the Bureau modified the Eligibles Services List to provide guidance on the classifications of connections between buildings of a single school.<sup>230</sup> In that guidance, the Bureau noted that "[c]onnections between different schools with campuses located at the same property (e.g., an elementary school and middle school located on the same property) are considered to be category one digital transmission services."<sup>231</sup> In funding year 2018, the Bureau further clarified that connections between two schools in a single building may be classified as a category two service, but rejected requests to allow the term "single school campus" in the definition of "internal connections" as allowing for a single campus containing multiple schools.<sup>232</sup> Applicants remain frustrated that cabling between two schools (e.g., a high school and an elementary school) in the same location be considered category one services, which under current rules, has separate competitive bidding requirements.

76. The Joint Commenters suggest that applicants should be permitted to use their category two funding to pay for cabling between two different schools located in the same contiguous area, if desired. We therefore propose to modify the definitions of "internal connections" and "wide area network" to allow multiple schools (e.g., a high school and a middle school) to share a campus by removed the word "single" from each definition.<sup>233</sup> We seek comment on this proposal or on alternative ways to modify the rules governing which category of service wiring should be considered. Would this raise new issues for these types of connections? Are there simpler ways to handle this issue? For instance, would it be more straightforward to draw the line between Internal Connections and WANs at the building? The issue identified by the Joint Commenters would remain, but the overall policy determination would be simpler. We also seek comment on removing references to "voice" in the definition of "wide area network."

77. *Definition of Consortium.* We also seek comment on amending the definition of "consortium" and whether to align it with the definition of "consortium" used in the Emergency Connectivity Fund program.<sup>234</sup> Our E-Rate rules only allow ineligible private sector entities to join

---

<sup>229</sup> 47 CFR § 54.500 (defining services to be eligible as "internal connections" "if such service is necessary to transport or distribute broadband within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch" and defining "wide area network" as "a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.").

<sup>230</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 31 FCC Rcd 9767, 9780 (WCB 2016) (*FY2017 Eligible Services List*) (describing the classifications of connections between buildings).

<sup>231</sup> *Id.*

<sup>232</sup> See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 32 FCC Rcd 7414, 7416, paras. 6-7 (WCB 2017) (*FY2018 Eligible Services List Order*).

<sup>233</sup> 47 CFR § 54.500.

<sup>234</sup> 47 CFR § 54.1700(d) (defining "consortium" as any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for Emergency Connectivity Fund support that seeks funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers

(continued....)

consortia if the pre-discount prices for interstate services are at tariffed rates.<sup>235</sup> Given that many services have been de-tariffed over the years, we seek comment on whether this language should be removed from the E-Rate definition of consortium and the definition be aligned with the ECF definition of consortium. If so, should we continue to allow private entities to be in an E-Rate consortium? If we were to allow ineligible entities to remain in E-Rate consortia should the limitation of “pre-discount prices for interstate services are at tariffed rates” be changed to another limitation as many services continue to be de-tariffed? We also seek comment on the potential advantages and disadvantages of permitting private sector entities to join E-Rate consortia. Is there any data or other information showing the impact on connectivity or pricing by allowing private sector entities to be in E-Rate consortia? What safeguards would we have to put in place to ensure that the E-Rate program does not support services used by ineligible entities and to ensure ineligible entities are paying for their share of the consortium’s costs? We seek comment on our proposal to remove this language and align the E-Rate definition of consortium with the ECF definition of consortium. If we are to continue to include ineligible entities as member of E-Rate consortia, what limitations and restrictions should be adopted to ensure E-Rate funding is not being used to pay for the services of the ineligible consortia members? We seek comment on these questions.

78. The Commission, as part of its continuing effort to advance digital equity for all,<sup>236</sup> including 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 considerations<sup>237</sup> 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.

## V. PROCEDURAL MATTERS

79. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>238</sup> requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”<sup>239</sup> Accordingly, we have prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in this *Report and Order* on small entities. The FRFA is set forth in Appendix C.

(Continued from previous page) \_\_\_\_\_

eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.”).

<sup>235</sup> 47 CFR § 54.500.

<sup>236</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

<sup>237</sup> 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 (January 20, 2021).

<sup>238</sup> 5 U.S.C. §§ 601–612. The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>239</sup> 5 U.S.C. § 605(b).

80. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of the rule and policy changes contained in the *E-Rate FNPRM*. The IRFA is set forth in Appendix D. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *E-Rate FNPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

81. *Paperwork Reduction Act*. This Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>240</sup> the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees. The Further Noticed of Proposed Rulemaking seeks comment on 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.

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

83. *Ex Parte Rules – Permit but Disclose*. Pursuant to section 1.1200(a) of the Commission’s rules,<sup>241</sup> this Further Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>242</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed 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.

---

<sup>240</sup> *See* 44 U.S.C. § 3506(c)(4).

<sup>241</sup> 47 CFR § 1.1200(a).

<sup>242</sup> 47 CFR §§ 1.1200 *et seq.*

84. In light of the Commission's trust relationship with Tribal Nations and our commitment to engage in government-to-government consultation with them, we find the public interest requires a limited modification of the *ex parte* rules in this proceeding.<sup>243</sup> Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.<sup>244</sup> However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings<sup>245</sup> and exempt from the prohibitions during the Sunshine Agenda period.<sup>246</sup> To be clear, while the Commission recognizes consultation is critically important, we emphasize that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

85. *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.

- Electronic filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): <https://www.fcc.gov/ecfs>.<sup>247</sup>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, N.E., Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>248</sup>

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

87. *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.<sup>249</sup>

---

<sup>243</sup> See *id.* § 1.1200(a).

<sup>244</sup> 5 U.S.C. §§ 551 *et seq.*

<sup>245</sup> See generally 47 CFR § 1.1206.

<sup>246</sup> See *id.* § 1.1203.

<sup>247</sup> See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

<sup>248</sup> See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (Mar. 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

88. For additional information on this proceeding, contact Johnny Roddy at (202) 418-2539 or Kate Dumouchel at (202) 418-1839 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

## VI. ORDERING CLAUSES

89. ACCORDINGLY, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, this Report and Order and Further Notice of Proposed Rulemaking IS ADOPTED effective thirty (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register.

90. IT IS FURTHER ORDERED, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-202, 254, 303(r), and 403, Part 54 of the Commission's rules, 47 CFR Part 54, is AMENDED as set forth in Appendix A, and such rule amendments shall be effective (30) days after the publication of this Report and Order and Further Notice of Proposed Rulemaking in the Federal Register, except for sections 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the Federal Register announcing the effective date for those sections.

91. IT IS FURTHER ORDERED, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.429 of the Commission's rules, 47 CFR § 1.429, that the Petition for Reconsideration filed by the State E-Rate Coordinators' Alliance on January 21, 2020, IS DISMISSED.

92. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

(Continued from previous page) \_\_\_\_\_

<sup>249</sup> Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.



## APPENDIX A

## Final 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 citation 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. Section 54.500 is amended by adding the following definition for Tribal:

**§ 54.500 Terms and definitions.**

\*\*\*\*\*

*Tribal.* An entity is “Tribal” for purposes of E-Rate funding if it is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if it is a school or library operated by any Tribe, Band, Nation, or other organized group or community, including any Alaska native village, regional corporation, or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.)) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

\*\*\*\*\*

3. Section 54.501 is amended 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 serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community shall be eligible for discounts under this subpart.

4. Section 54.502 is amended by revising paragraph (d)(4) and (d)(6) to read as follows:

**§ 54.502 Eligible Services.**

\*\*\*\*\*

(d) ***Funding Year 2021 and beyond.*** Schools, school districts, libraries, and library systems shall be eligible for support for category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

\*\*\*\*\*

(4) Funding floor. Each eligible school 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. Tribal libraries shall be eligible for support for category two services of at least a pre-discount price of \$55,000 over five funding years.

\*\*\*\*\*

(6) *Non-instructional buildings.* Support is not available for category two services provided to or within non-instructional school buildings or separate library administrative buildings unless those category two services are essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose, as defined in § 54.500. When applying for category two support for eligible services within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

5. Section 54.503 is amended by revising paragraph (c)(2)(i)(B) and revising paragraph (e) to add paragraph (e)(2) as follows:

**§ 54.503 Competitive bidding requirements.**

\*\*\*\*\*

(c) \*\*\*\*\*

(2) \*\*\*\*\*

(i)\*\*\*\*\*

(B) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal colleges or universities, have budgets that are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

\*\*\*\*\*

**(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 library applicant that seeks support for category two services for a total pre-discount price of \$3,600 or less per library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section. Applicants must select a cost-effective service offering, based on the price of the equipment or services.

6. Section 54.504 is amended to revise paragraph (a)(1)(ii) as follows:

**§ 54.504 Requests for services.**

(a)\*\*\*\*\*

(1) \*\*\*\*\*

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or universities, their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

\*\*\*\*\*

7. Section 54.505 is amended 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 Library Category Two Discount Level.* For the costs of category two services, Tribal libraries at the highest discount level shall receive a 90 percent discount.

8. Section 54.703 is amended by revising paragraph (b) and paragraph (b)(12), 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.

9. Section 54.705 is amended by moving paragraph (a)(2)(iv) to paragraph (a)(2)(v) and paragraph (a)(2)(v) to (a)(2)(vi), and adding new paragraph (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**  
**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 citation 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. Section 54.500 is amended by revising the definitions of consortium, internal connections, and wide area network:

\*\*\*\*\*

Consortium. A “consortium” is any local, statewide, regional, or interstate cooperative association of schools and/or libraries eligible for E-rate support that seeks competitive bids for eligible services or funding for eligible services on behalf of some or all of its members. A consortium may also include health care providers eligible under subpart G of this part, and public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, although such entities are not eligible for support.

\*\*\*\*\*

Internal Connections. A service is eligible for support as a component of an institution’s “internal connections” if such service is necessary to transport or distribute broadband within one or more instructional buildings of a school campus or within one or more non-administrative buildings that comprise a single library branch.

\*\*\*\*\*

Wide Area Network. For purposes of this subpart, a “wide area network” is a data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a data network that provides connections between or among instructional buildings of a school campus or between or among non-administrative buildings of a single library branch.

3. Section § 54.503(b) is amended to read as follows:

\*\*\*\*\*

(b) Competitive bid requirements. Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state, local, and Tribal competitive bid requirements and are not intended to preempt such state, local, or Tribal requirements.

\*\*\*\*\*

4. Section 54.504(d)(1)(iv) and (d)(2) are revised as follows:

(d) \*\*\*

(1) \*\*\*

(i) \*\*\*

(ii) \*\*\*

(iii) \*\*\*

(iv) The applicant certifies that the requested change is either within the scope of the controlling FCC Form 470, including any associated Requests for Proposal, for the original services, or is the result of an unanticipated need for additional bandwidth and the applicant will seek competitive bids prior to the next funding year.

(2) Except for documented cases of transitioning from one service provider to another service provider, in the event that a service substitution results in a change in the pre-discount price for the supported service, support shall be based on the lower of either the pre-discount price of the service for which support was originally requested or the pre-discount price of the new, substituted service.

\*\*\*\*\*

5. Section 54.514(a)(2), (b), and (c) is revised to read as follows:

(a) Invoice filing deadline. Invoices must be submitted to the Administrator:

(1) 120 days after the last day to receive service;

(2) 120 days after the date of the Funding Commitment Decision Letter; or

(3) 120 days after the date of the Revised Funding Commitment Decision Letter approving a post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request, whichever is latest.

(b) Invoice deadline extension. Service providers or billed entities may request a one-time extension of the invoicing filing deadline if such request is filed within 15 days after the deadline calculated pursuant to paragraph (a) of this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.

(c) Choice of payment method. Service providers providing discounted services under this subpart in any funding year shall, prior to the submission of the FCC Form 471, permit the billed entity to choose the method of payment for the discounted services from those methods approved by the Administrator, including by making a full, undiscounted payment and receiving subsequent reimbursement of the discount amount from the Administrator or by making a discounted payment and the service provider receiving subsequent reimbursement of the remaining amount from the Administrator.

## APPENDIX C

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Schools and Libraries Universal Service Support Mechanism, et al., Notice of Proposed Rulemaking (Tribal E-Rate NPRM)*.<sup>2</sup> The Commission sought written public comment on the proposals in the *Tribal E-Rate NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>3</sup>

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

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

3. Taking steps to close the digital divide is a top priority for the Commission. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides vital 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 *Report and Order*, we enhance Tribal access to E-Rate funding by making both Tribal library specific rule changes and program wide changes that will help all applicants, including Tribal libraries. We modify our rules to allow Tribal college and university (TCU) libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community. We simplify the program by eliminating competitive bidding requirements for Tribal libraries seeking funding for \$3,600 total or less of category two funding, increasing the category two maximum discount rate from 85% to 90%, and increasing the category two funding floor from \$25,000 to \$55,000 for Tribal libraries. We also provide guidance related to cost allocation by establishing a presumption that if at least 90% of an applicant's Internet usage is for an eligible use the remaining ineligible portion is presumed to be ancillary and, therefore, does not need to be cost allocated. We clarify that cabling that is a part of a local area network is eligible for funding and does not need to be cost allocated. We also modify our rules to no longer require applicants to cost allocate the costs associated with a non-instructional facility's (NIF) use of shared equipment in NIFs and related library administrative buildings. We direct the Universal Service Administrative Company (USAC) to increase training and outreach to Tribal libraries and to provide additional support to applicants and registered users of the E-Rate Productivity Center. Lastly, we amend our rules to adopt a

---

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

<sup>2</sup> *Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Notice of Proposed Rulemaking, FCC 23-10, 2023 WL 2124459 (2023) (*Tribal E-Rate NPRM*).

<sup>3</sup> 5 U.S.C. § 604.

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

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

<sup>6</sup> 47 CFR § 54.502.

definition for “Tribal” and modify our rules to add an additional Director to the USAC Board to represent Tribal communities.

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

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

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

5. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.<sup>7</sup>

6. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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

7. 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.<sup>8</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>9</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>10</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>11</sup>

8. *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.<sup>12</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>13</sup> These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.<sup>14</sup>

---

<sup>7</sup> 5 U.S.C. § 604(a)(3)..

<sup>8</sup> *Id.* § 604 (a)(4).

<sup>9</sup> *Id.* § 601(6).

<sup>10</sup> *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).

<sup>11</sup> Small Business Act, 15 U.S.C. § 632.

<sup>12</sup> 5 U.S.C. § 601(3)-(6).

<sup>13</sup> SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

<sup>14</sup> *Id.*

9. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>15</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>16</sup> 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.<sup>17</sup>

10. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>18</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>19</sup> indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>20</sup> Of this number, there were 36,931 general purpose governments (county,<sup>21</sup> municipal, and town or township<sup>22</sup>) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts<sup>23</sup> with enrollment

---

<sup>15</sup> 5 U.S.C. § 601(4).

<sup>16</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>17</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for 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.

<sup>18</sup> 5 U.S.C. § 601(5).

<sup>19</sup> 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>20</sup> 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.

<sup>21</sup> *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.

<sup>22</sup> *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.

<sup>23</sup> *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.



populations of less than 50,000.<sup>24</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>25</sup>

### 1. Schools and Libraries

11. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.<sup>26</sup> This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.<sup>27</sup> A basic preparatory education ordinarily constitutes kindergarten through 12th grade.<sup>28</sup> The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.<sup>29</sup> 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.

12. 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.”<sup>30</sup> A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>31</sup> For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.<sup>32</sup> In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.<sup>33</sup> 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.

13. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.<sup>34</sup> This industry comprises establishments primarily engaged in providing library

---

<sup>24</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>25</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

<sup>26</sup> U.S. Census Bureau, *2017 NAICS Definition*, “611110 Elementary and Secondary Schools,” <https://www.census.gov/naics/?input=611110&year=2017&details=611110>.

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

<sup>28</sup> *Id.*

<sup>29</sup> 13 CFR § 121.201, NAICS Code 611110.

<sup>30</sup> 47 CFR § 54.500.

<sup>31</sup> *Id.*

<sup>32</sup> 47 CFR § 54.501.

<sup>33</sup> 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>.

<sup>34</sup> See U.S. Census Bureau, *2017 NAICS Definition*, “519120 Libraries and Archives,” <https://www.census.gov/naics/?input=519120&year=2017&details=519120>.

or archive services.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> All or portions of these collections may be accessible electronically.<sup>38</sup> The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.<sup>39</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.<sup>40</sup> Of this number, 1,228 firms had revenues of less than \$10 million.<sup>41</sup> Based on this data, the majority of firms in this industry can be considered small.

14. 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."<sup>42</sup> For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>43</sup> In calendar year 2017, the E-Rate program provided funding to approximately 11,475 libraries throughout the U.S. and its territories.<sup>44</sup> 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.

---

<sup>35</sup> *Id.*

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

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 13 CFR § 121.201, NAICS Code 519120 (as of 10/1/22 NAICS Code 519210).

<sup>40</sup> 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>.

<sup>41</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>42</sup> 47 CFR § 54.500.

<sup>43</sup> *Id.* § 54.501.

<sup>44</sup> 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>.

## 2. Telecommunications Service Providers

15. *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.<sup>45</sup> 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.<sup>46</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>47</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>48</sup>

16. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>49</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>50</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>51</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.<sup>52</sup> Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.<sup>53</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *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.<sup>54</sup> 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,

---

<sup>45</sup> U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

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

<sup>47</sup> *Id.*

<sup>48</sup> 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.

<sup>49</sup> 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>50</sup> 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>.

<sup>51</sup> *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.

<sup>52</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

<sup>53</sup> *Id.*

<sup>54</sup> See U.S. Census Bureau, *2017 NAICS Definition, "517919 All Other Telecommunications,"* <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

satellite systems.<sup>55</sup> 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.<sup>56</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>57</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>58</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>59</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

18. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>60</sup> 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.<sup>61</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>62</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>63</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>64</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.<sup>65</sup> Of these providers, the Commission estimates that 511 providers have 1,500 or fewer employees.<sup>66</sup> Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

19. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA

---

<sup>55</sup> *Id.*

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

<sup>57</sup> 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

<sup>58</sup> 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>.

<sup>59</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>60</sup> 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>.

<sup>61</sup> *Id.*

<sup>62</sup> 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>63</sup> 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 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFIRM&hidePreview=false>.

<sup>64</sup> *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.

<sup>65</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>66</sup> *Id.*

small business size standard is Wireless Telecommunications Carriers (except Satellite).<sup>67</sup> The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.<sup>68</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.<sup>69</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>70</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.<sup>71</sup> Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.<sup>72</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

### 3. Internet Service Providers (ISPs)

20. *Wired Broadband Internet Access Service Providers (Wired ISPs).*<sup>73</sup> 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.<sup>74</sup> Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.<sup>75</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>76</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>77</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>78</sup>

21. 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

---

<sup>67</sup> 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>.

<sup>68</sup> 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>69</sup> 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>.

<sup>70</sup> *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.

<sup>71</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report* at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>72</sup> *Id.*

<sup>73</sup> Formerly included in the scope of the Internet Service Providers (Broadband), Wired Telecommunications Carriers and All Other Telecommunications small entity industry descriptions.

<sup>74</sup> 47 CFR § 1.7001(a)(1).

<sup>75</sup> See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

<sup>76</sup> 13 CFR § 121.201, NAICS Code 517311 (as of 10/1/22, NAICS Code 517111).

<sup>77</sup> 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>.

<sup>78</sup> *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.



one direction using various wireline technologies.<sup>79</sup> 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 *2022 Communications Marketplace Report*,<sup>80</sup> we believe that the majority of wireline Internet access service providers can be considered small entities.

22. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs).*<sup>81</sup> 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[.]”<sup>82</sup> 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.<sup>83</sup> 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).<sup>84</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>85</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>86</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>87</sup>

23. 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.<sup>88</sup> 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 *2022 Communications Marketplace Report* on the small number of

---

<sup>79</sup> See Federal Communications Commission, Internet Access Services: Status as of December 31, 2018, Fig. 30, Industry Analysis Division, Office of Economics & Analytics (September 2020) (*IAS Status 2018*). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. 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.

<sup>80</sup> *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7 (2022) (*2022 Communications Marketplace Report*).

<sup>81</sup> Formerly included in the scope of the Internet Service Providers (Broadband), Wireless Telecommunications Carriers (except Satellite) and All Other Telecommunications small entity industry descriptions.

<sup>82</sup> See *IAS Status 2018* at 61.

<sup>83</sup> See 47 CFR § 1.7001(a)(1).

<sup>84</sup> 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>.

<sup>85</sup> See 13 CFR § 121.201, NAICS Code 517312 (as of 10/1/22, NAICS Code 517112).

<sup>86</sup> 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>.

<sup>87</sup> *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.

<sup>88</sup> See *IAS Status 2018*, Fig. 30.

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,<sup>89</sup> as well as on terrestrial fixed wireless broadband providers in general,<sup>90</sup> we believe that the majority of wireless Internet access service providers can be considered small entities.

24. *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.<sup>91</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>92</sup> 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.<sup>93</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>94</sup> Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

#### 4. Vendors of Internal Connections

25. *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”<sup>95</sup> with a SBA small business size standard of 1,250 employees or less,<sup>96</sup> and “Other Communications Equipment Manufacturing”<sup>97</sup> with a SBA small business size standard of 750 employees or less.<sup>98</sup> 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.<sup>99</sup> Of this number, 624 firms had fewer than 250

---

<sup>89</sup> 2022 *Communications Marketplace Report* at 27, paras. 64-68.

<sup>90</sup> *Id.* at 8, para. 22.

<sup>91</sup> See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

<sup>92</sup> 13 CFR § 121.201, NAICS Code 517919 (as of 10/1/22, NAICS Code 517810).

<sup>93</sup> 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>.

<sup>94</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>95</sup> 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>.

<sup>96</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>97</sup> See U.S. Census Bureau, 2017 NAICS Definition, “334290 Other Communications Equipment Manufacturing,” <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

<sup>98</sup> 13 CFR § 121.201, NAICS Code 334290.

<sup>99</sup> 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 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

employees.<sup>100</sup> 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.<sup>101</sup> Of that number, 310 firms operated with fewer than 250 employees.<sup>102</sup> Based on this data, we conclude that the majority of firms in this industry are small.

26. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.<sup>103</sup> These products may be stand-alone or board-level components of a larger system.<sup>104</sup> 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.<sup>105</sup> The SBA small business size standard for Telephone Apparatus Manufacturing classifies businesses having 1,250 or fewer employees as small.<sup>106</sup> U.S. Census Bureau data for 2017 show that there were 189 firms in this industry that operated for the entire year.<sup>107</sup> Of this number, 177 firms operated with fewer than 250 employees.<sup>108</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

27. *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.<sup>109</sup> Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>110</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>111</sup> U.S. Census Bureau data for 2017 show that there were 656

---

<sup>100</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>101</sup> 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>.

<sup>102</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>103</sup> See U.S. Census Bureau, *2017 NAICS Definition, "334210 Telephone Apparatus Manufacturing,"* <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> 13 CFR § 121.201, NAICS Code 334210.

<sup>107</sup> 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>.

<sup>108</sup> *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.

<sup>109</sup> 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>.

<sup>110</sup> *Id.*

<sup>111</sup> 13 CFR § 121.201, NAICS Code 334220.



firms in this industry that operated for the entire year.<sup>112</sup> Of this number, 624 firms had fewer than 250 employees.<sup>113</sup> Thus, under the SBA size standard, the majority of firms in this industry can be considered small.

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

28. The purpose of the *Report and Order* is to streamline and simplify procedures, and improve the E-Rate program processes. As such, the Commission's rule modifications will reduce the economic impact of current compliance obligations on small entities. For example, TCU libraries will not have to perform cost-allocation calculations of the college student usage at the library versus public usage of bandwidth, reducing compliance obligations. The changes we make will also reduce current compliance obligations by exempting certain small entity library applicants seeking E-Rate support for category two equipment or services of \$3,600 or less in a single funding year from the competitive bidding process.

29. New procedures direct USAC to provide specific support for TCU libraries, outreach to first-time applicants, and invoice reminders for funding requests, which will ease operations and implementation costs for applicants and participants that are small entities. Additionally, the Wireline Competition Bureau will continue to provide leniency to Tribal library applicants that file waiver requests of the FCC Form 471 application filing deadline, easing the compliance burden for these small entities. We are requesting additional information for Tribal affiliation as part of the application process, and this information request is simple enough that it will not increase the burden of applying for relevant applicants that are small entities. Small entities will not be required to hire professionals to comply with any rule modifications. Although the Commission cannot quantify the cost of compliance for small entities, we anticipate the approaches we have taken in the *Report and Order* to streamline and simplify procedures, and improve the E-Rate program processes will have minimal or *de minimis* cost implications and should significantly reduce compliance requirements for small entities that may have smaller staff and fewer resources.

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

30. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities...including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected."<sup>114</sup>

31. In the *Report and Order*, we take steps to minimize the economic impact on small entities with the rule changes that we have adopted. We made rule changes that will lower the burden for applicants to the E-Rate program. By granting Tribal libraries an exemption from the competitive bidding process for category two purchases totaling under \$3,600, we greatly simplify the process of receiving funding for these small purchases, making it easier for Tribal libraries with a small staff to apply for E-Rate. We also made changes to category two funding for Tribal libraries, increasing the maximum discount they can be eligible for from 85% to 90%, and increasing the minimum funding budget,

---

<sup>112</sup> 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 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>113</sup> *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.

<sup>114</sup> 5 U.S.C. § 604(a)(6).

increasing the funding floor from \$25,000 to \$55,000 for Tribal libraries. This will reduce the share that they must pay for Wi-Fi networks, increase the amount of support that is eligible for reimbursement, and allow small libraries to have greater access to funding at a lower cost to themselves.

32. We also clarify our cost allocation rules to limit the burden on all applicants, including small entities, adopting a presumption that if at least 90% of an applicant's requested Internet service is being used for eligible purposes, the remaining ineligible portion is presumed to be ancillary and, therefore, cost allocation is not required. We considered but rejected alternatives for removing cost allocation requirements for Tribal libraries in multipurpose rooms because of concerns that this would lead to funding ineligible services. Finally, we have directed USAC to provide enhanced support to all applicants, with particular attention being paid to small entities such as small libraries who work with their small, local governments to secure funding.

#### **G. Report to Congress**

33. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.<sup>115</sup> In addition, the Commission will send a copy of the *Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>116</sup>

---

<sup>115</sup> *Id.* § 801(a)(1)(A).

<sup>116</sup> *Id.* § 604(b).

## APPENDIX D

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Schools and Libraries Universal Service Support Mechanism, et al., Further Notice of Proposed Rulemaking (E-Rate FNPRM)*. 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 *E-Rate FNPRM*. The Commission will send a copy of the *E-Rate FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *E-Rate FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.<sup>3</sup>

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

2. The Commission'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 *Tribal E-Rate NPRM*, the Commission's primary objectives were to address the underrepresentation of Tribal applicants and increase participation of Tribal libraries. To achieve these objectives, the *Tribal E-Rate NPRM* explored ways to further simplify the E-Rate program rules, reduce program barriers and burdens, and encourage greater Tribal participation and community representation.

3. In response to the *Tribal E-Rate NPRM*, the Commission received several comments suggesting ways to streamline or simplify aspects of the E-Rate program overall for all schools and libraries. In order to develop the record further on those comments, we are now seeking further comment on a series of proposed ways to improve the program for schools and libraries. First, we seek comment on updating the eligible services list by modifying the distinction between two types of eligible software, Internal Connections, such as the license to access software, and Basic Maintenance of Internal Connections (BMIC), which includes bug fixes, security patches, and technical assistance. The modification would allow applicants to receive full funding for BMIC services in the first year of the contract, instead of splitting it across multiple years. We also seek comment on the best method to aid applicants that are transitioning between two service providers during the same funding year. We request comment on ways applicants may seek services from multiple suppliers without being deemed duplicative services. We also seek information on other changes to help simplify the program, particularly for new and smaller applicants, such as revising the list of eligible services to the same terms used on FCC Forms 470 or 471. We also seek comment on changing or clarifying the competitive bidding requirements in order to streamline aspects of the application process.

4. In addition, we request comment on creating a competitive bidding exemption for E-Rate funding requests under \$10,000. In an effort to allow applicants flexibility in anticipating changes in bandwidth needs, we seek comment on how to increase bandwidth during the school year without requiring competitive bidding for the service. We also seek comment on when an applicant's change to FCC Form 470 or a related request for proposals (RFP) will require it to restart the competitive bidding process. We request information on automated bid and spam bid responses, and bid deadlines, and whether to expand evidence of a legally binding agreement to include board minutes approving a contract.

---

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

<sup>2</sup> 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

5. To streamline the E-Rate program forms, we request comment on modifications such as creating an “EZ” application form in plain language, adding navigation prompts that alert for potential entry errors, and updating drop down menu options on FCC Form 470, which is used to seek competitive bids, to reduce applicant confusion. We also seek comment on modifying FCC Form 470, or eliminating FCC Form 486, which is used to notify the Universal Service Administrative Company (USAC) that services have started and collect a certification of compliance with the Children’s Internet Protection Act Certification (CIPA).

6. We seek comment on streamlining how often we calculate and validate discount rates for applicants, and on modifying the deadline for requesting an invoice deadline extension, in order to reduce the number of applicants that are unable to get a program disbursement due to small errors near the invoice deadline. We also request information on amending our rules to address billing issues that would change requiring applicants to make full, up-front payments under certain billing methods. Finally, we seek comment on updating E-Rate program definitions to make it easier to build local networks in areas where two schools share a location, and reflect Tribal procurement rules.

## **B. Legal Basis**

7. 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. §§ 151-154, 201-202, 254, 303(r), and 403.

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

8. 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.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>6</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>7</sup>

9. *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.<sup>8</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>9</sup> These types of small

---

<sup>4</sup> *Id.* § 603(b)(3).

<sup>5</sup> *Id.* § 601(6).

<sup>6</sup> *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).

<sup>7</sup> Small Business Act, 15 U.S.C. § 632.

<sup>8</sup> 5 U.S.C. § 601(3)-(6).

<sup>9</sup> SBA, Office of Advocacy, “What’s New With Small Business?,” <https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf> (Mar. 2023).

businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.<sup>10</sup>

10. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>11</sup> The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.<sup>12</sup> 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.<sup>13</sup>

11. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>14</sup> U.S. Census Bureau data from the 2017 Census of Governments<sup>15</sup> indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>16</sup> Of this number, there were 36,931 general purpose governments (county,<sup>17</sup> municipal, and town or township<sup>18</sup>) with populations of

---

<sup>10</sup> *Id.*

<sup>11</sup> 5 U.S.C. § 601(4).

<sup>12</sup> The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

<sup>13</sup> See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for 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.

<sup>14</sup> 5 U.S.C. § 601(5).

<sup>15</sup> 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

<sup>16</sup> 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.

<sup>17</sup> *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.

<sup>18</sup> *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.

less than 50,000 and 12,040 special purpose governments—independent school districts<sup>19</sup> with enrollment populations of less than 50,000.<sup>20</sup> Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”<sup>21</sup>

### 1. Schools and Libraries

12. *Schools.* The closest applicable industry with a SBA small business size standard is Elementary and Secondary Schools.<sup>22</sup> This industry comprises establishments primarily engaged in furnishing academic courses and associated course work that comprise a basic preparatory education.<sup>23</sup> A basic preparatory education ordinarily constitutes kindergarten through 12th grade.<sup>24</sup> The SBA small business size standard for Elementary and Secondary Schools classifies firms with annual receipts of \$17.5 million or less as small.<sup>25</sup> 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.

13. 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.”<sup>26</sup> A secondary school is generally defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>27</sup> For-profit schools, and schools with endowments in excess of \$50,000,000, are not eligible to receive discounts under the E-Rate program.<sup>28</sup> In calendar year 2017, the E-Rate program provided funding to approximately 104,722 schools throughout the U.S. and its territories.<sup>29</sup> While we do not have financial information that would allow us to estimate the number of schools that would qualify as small entities

---

<sup>19</sup> *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.

<sup>20</sup> While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

<sup>21</sup> This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls.5, 6 & 10.

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

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> 13 CFR § 121.201, NAICS Code 611110.

<sup>26</sup> 47 CFR § 54.500.

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

<sup>28</sup> *Id.* § 54.501.

<sup>29</sup> *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>.

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.

14. *Libraries.* The closest applicable industry with a SBA small business size standard is Libraries and Archives.<sup>30</sup> This industry comprises establishments primarily engaged in providing library or archive services.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> All or portions of these collections may be accessible electronically.<sup>34</sup> The SBA small business size standard for Libraries and Archives classifies firms with annual receipts of \$18.5 million or less as small.<sup>35</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 1,864 firms that operated for the entire year.<sup>36</sup> Of this number, 1,228 firms had revenues of less than \$10 million.<sup>37</sup> Based on this data, the majority of firms in this industry can be considered small.

15. 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."<sup>38</sup> For-profit libraries, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>39</sup> In calendar year 2017, the E-Rate program provided funding to approximately 11,475

---

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

<sup>31</sup> *Id.*

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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

<sup>36</sup> 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>.

<sup>37</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>38</sup> 47 CFR § 54.500.

<sup>39</sup> *Id.* § 54.501.



libraries throughout the U.S. and its territories.<sup>40</sup> 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

16. *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.<sup>41</sup> 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.<sup>42</sup> By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.<sup>43</sup> Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.<sup>44</sup>

17. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small.<sup>45</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>46</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>47</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 4,590 providers that reported they were engaged in the provision of fixed local services.<sup>48</sup> Of these providers, the Commission estimates that 4,146 providers have 1,500 or fewer employees.<sup>49</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

---

<sup>40</sup> 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>.

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

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> 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.

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

<sup>46</sup> 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>.

<sup>47</sup> *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.

<sup>48</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>. <https://docs.fcc.gov/public/attachments/DOC-379181A1.pdf>

<sup>49</sup> *Id.*



18. *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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>53</sup> U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year.<sup>54</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>55</sup> Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

19. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves.<sup>56</sup> 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.<sup>57</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>58</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>59</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>60</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 594 providers that reported they were engaged in the provision of wireless services.<sup>61</sup> Of these providers, the Commission estimates that 511 providers have 1,500 or fewer

---

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

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

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

<sup>54</sup> 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>.

<sup>55</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>56</sup> 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>.

<sup>57</sup> *Id.*

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

<sup>59</sup> 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 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>60</sup> *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.

<sup>61</sup> Federal-State Joint Board on Universal Service, Universal Service Monitoring Report at 26, Table 1.12 (2022), <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

employees.<sup>62</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

20. *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).<sup>63</sup> The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees.<sup>64</sup> For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year.<sup>65</sup> Of this number, 2,837 firms employed fewer than 250 employees.<sup>66</sup> Additionally, based on Commission data in the 2022 Universal Service Monitoring Report, as of December 31, 2021, there were 331 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services.<sup>67</sup> Of these providers, the Commission estimates that 255 providers have 1,500 or fewer employees.<sup>68</sup> Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

### 3. Internet Service Providers (ISPs)

21. *Wired Broadband Internet Access Service Providers (Wired ISPs).*<sup>69</sup> 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.<sup>70</sup> Wired broadband Internet services fall in the Wired Telecommunications Carriers industry.<sup>71</sup> The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small.<sup>72</sup> U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year.<sup>73</sup> Of this number, 2,964 firms operated with fewer than 250 employees.<sup>74</sup>

---

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

<sup>63</sup> 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>.

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

<sup>65</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPFI&hidePrevious=false>.

<sup>66</sup> *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.

<sup>67</sup> Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report at 26, Table 1.12 (2022)*, <https://docs.fcc.gov/public/attachments/DOC-391070A1.pdf>.

<sup>68</sup> *Id.*

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

<sup>70</sup> 47 CFR § 1.7001(a)(1).

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

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

<sup>73</sup> U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Employment Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEEMPFI, NAICS Code 517311,

(continued....)

22. 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.<sup>75</sup> 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 *2022 Communications Marketplace Report*,<sup>76</sup> we believe that the majority of wireline Internet access service providers can be considered small entities.

23. *Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs)*.<sup>77</sup> 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[.]"<sup>78</sup> 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.<sup>79</sup> 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).<sup>80</sup> The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees.<sup>81</sup> U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year.<sup>82</sup> Of that number, 2,837 firms employed fewer than 250 employees.<sup>83</sup>

(Continued from previous page) \_\_\_\_\_

<https://data.census.gov/cedsci/table?y=2017&n=517311&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>74</sup> *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.

<sup>75</sup> Federal Communications Commission, Internet Access Services: Status as of December 31, 2018, Fig. 30, Industry Analysis Division, Office of Economics & Analytics (September 2020) (*IAS Status 2018*). The report can be accessed at <https://www.fcc.gov/economics-analytics/industry-analysis-division/iad-data-statistical-reports>. (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.

<sup>76</sup> *Communications Marketplace Report*, GN Docket No. 22-203, 2022 WL 18110553 at 10, paras. 26-27, Figs. II.A.5-7. (2022) (*2022 Communications Marketplace Report*).

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

<sup>78</sup> See *IAS Status 2018*.

<sup>79</sup> 47 CFR § 1.7001(a)(1).

<sup>80</sup> 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>.

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

<sup>82</sup> 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 517312, <https://data.census.gov/cedsci/table?y=2017&n=517312&tid=ECNSIZE2017.EC1700SIZEEMPfirm&hidePreview=false>.

<sup>83</sup> *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.

24. 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.<sup>84</sup> 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 *2022 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,<sup>85</sup> as well as on terrestrial fixed wireless broadband providers in general,<sup>86</sup> we believe that the majority of wireless Internet access service providers can be considered small entities.

25. *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.<sup>87</sup> The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small.<sup>88</sup> 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.<sup>89</sup> Of those firms, 1,039 had revenue of less than \$25 million.<sup>90</sup> Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

#### 4. Vendors of Internal Connections

26. *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"<sup>91</sup> with a SBA small business size standard of 1,250 employees or less,<sup>92</sup> and "Other Communications Equipment Manufacturing"<sup>93</sup> with a SBA small business size standard of 750 employees or less.<sup>94</sup> U.S. Census Bureau data for 2017 show

<sup>84</sup> See *IAS Status 2018*, Fig. 30.

<sup>85</sup> *2022 Communications Marketplace Report*, 2022 WL 18110553 at 27, paras. 64-68.

<sup>86</sup> *Id.* at 8, para. 22.

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

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

<sup>89</sup> 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>.

<sup>90</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>91</sup> 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>.

<sup>92</sup> 13 CFR § 121.201, NAICS Code 334220.

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

<sup>94</sup> 13 CFR § 121.201, NAICS Code 334290.

that for Radio and Television Broadcasting and Wireless Communications Equipment there were 656 firms in this industry that operated for the entire year.<sup>95</sup> Of this number, 624 firms had fewer than 250 employees.<sup>96</sup> 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.<sup>97</sup> Of that number, 310 firms operated with fewer than 250 employees.<sup>98</sup> Based on this data, we conclude that the majority of firms in this industry are small.

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

28. *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.<sup>105</sup> Examples of products made by these

---

<sup>95</sup> 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>.

<sup>96</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

<sup>97</sup> 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>.

<sup>98</sup> *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](https://www.census.gov/glossary/#term_ReceiptsRevenueServices).

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

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> 13 CFR § 121.201, NAICS Code 334210.

<sup>103</sup> 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>.

<sup>104</sup> *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.

<sup>105</sup> 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>.



establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.<sup>106</sup> The SBA small business size standard for this industry classifies businesses having 1,250 employees or less as small.<sup>107</sup> U.S. Census Bureau data for 2017 show that there were 656 firms in this industry that operated for the entire year.<sup>108</sup> Of this number, 624 firms had fewer than 250 employees.<sup>109</sup> 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**

29. The potential rule changes discussed in the *E-Rate FNPRM* if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since the purpose of the *E-Rate FNPRM* 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, modifications to funding for BMIC services would allow applicants that are small entities to receive full funding for these services during the first year of the contract, instead of splitting funding across multiple years, reducing operational costs. Revising the list of eligible services to the same terms used on FCC Forms 470 or 471 could simplify the application process for new and small applicants. Exempting small libraries from the competitive bidding process when requested funding is less than \$10,000 would ease compliance burdens for these small entities. We also seek comment on eliminating the need to file a form before beginning to invoice the program.

30. In the *E-Rate FNPRM* 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 new and smaller schools and libraries. For example, creating an “EZ” application form in plain language and navigation prompts that alert for potential entry errors, as well as updating drop down menu options on FCC Form 470, may reduce operational and implementation costs for small applicants. Moving CIPA certifications to FCC Form 471 and removing USAC notification through FCC Form 486 would reduce reporting obligations for small entities. In response to comments to the *E-Rate FNPRM* or this IRFA, 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.

31. 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. Additionally, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which we seek comment in the *E-Rate FNPRM* will require small entities to hire professionals to comply. However, consistent with our objectives to streamline and simplify the E-Rate program processes and procedures, 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 receive in comments including where requested, cost information, will help the Commission identify and evaluate relevant compliance matters

---

<sup>106</sup> *Id.*

<sup>107</sup> 13 CFR § 121.201, NAICS Code 334220.

<sup>108</sup> 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 334220, <https://data.census.gov/cedsci/table?y=2017&n=334220&tid=ECNSIZE2017.EC1700SIZEEMPFIEM&hidePreview=false>.

<sup>109</sup> *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.

for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *E-Rate FNPRM*.

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

32. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>110</sup>

33. In the *E-Rate FNPRM*, the Commission takes steps to minimize the economic impact on small entities from the changes to the E-Rate program on which we seek comment. Specifically, each of the subjects on which we seek comment was identified by an E-Rate participant as a potential way to simplify the program in large or small ways and should lessen the economic impact on small entities. The Commission expects the comments received in response will allow us to consider ways to minimize the economic impact and explore alternatives to improve and simplify how small entities participate in the E-Rate program.

34. For example, in the *E-Rate FNPRM*, we explore ways to improve the process for applicants that have struggled with distinguishing how to apply for two different types of eligible software in the program, Internal Connections and BMIC, which is administratively more burdensome to request. If the applicant fails to file the competitive bidding forms for the right type of software, it can be denied funding even if the applicant otherwise applies correctly. If adopted some of the competitive bidding changes, such as exempting certain funding requests below \$10,000, could result in less paperwork for small entities making low-cost purchases, and some of the form changes, such as creating the “EZ” application and adding plain-language to FCC Forms 470 and 471, while eliminating filing FCC Form 486, could reduce the number of forms that must be filed for all applicants, as well as reduce the number of applicants penalized for filing such forms past their deadline.

35. We considered and seek comment to the invoice deadline extension rule, beyond the single 120-day extension, in order to reduce the number of applicants and service providers that have invoices denied because they missed the deadline by a short period of time. All of these, and the other proposals on which we seek comment, would reduce costs for small entities.

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

36. None.

---

<sup>110</sup> 5 U.S.C. § 603(c)(1) – (c)(4).