

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

In the Matter of)

Promoting Fair and Open Competitive Bidding in) WC Docket No. 21-455
the E-Rate Program)
)
)
)

NOTICE OF PROPOSED RULEMAKING

Adopted: December 14, 2021

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By the Commission: Chairwoman Rosenworcel issuing a statement.

I. INTRODUCTION

1. For over two decades, schools and libraries have relied on the Federal Communications Commission's E-Rate program¹ to secure affordable telecommunications and broadband services to provide connectivity for schools and libraries and connections for students and library patrons. In recent years, the Commission has kept pace with a changing digital landscape and adapted the E-Rate program to meet program participants' growing demand for broadband and more equitable access to funding for Wi-Fi networks and other internal connections.² And, to address the daunting challenges that schools and libraries have faced in enabling and facilitating remote learning for students and virtual library services for library patrons during the coronavirus (COVID-19) pandemic, Congress and the Commission have provided flexibility and funding to support remote learning.³

2. At the same time as the Commission has provided enhanced access to funding and flexibility in meeting evolving public needs, it has been mindful of the need to protect E-Rate funds, requiring them to be committed for eligible services and equipment provided to eligible entities, for eligible purposes, and in accordance with program rules.⁴ Inherent in maintaining good stewardship of

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

² See, e.g., *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219 (2019) (adopting district-wide budgets for category two services, which are those services needed for connectivity within the building, like Wi-Fi).

³ See *Establishing Emergency Connectivity Fund to Close the Homework Gap*, WC Docket No. 21-93, Report and Order, FCC 21-58, (rel. May 11, 2021); Press Release, FCC, FCC Commits Over \$1.2 Billion in First Funding Wave of Emergency Connectivity Fund Program to Connect Over 3.6 Million Students; Second Filing Window Set for September 28 to October 13 Providing Funding for Eligible Equipment and Services between July 1, 2021 and June 30, 2022 (Sept. 24, 2021), <https://docs.fcc.gov/public/attachments/DOC-376028A1.pdf>; Press Release, FCC, FCC Opens Second E-Rate Application Window for Funding Year 2020; Will Address Schools' Additional On-Campus Bandwidth Needs Due to COVID-19 (Sept. 16, 2020), <https://docs.fcc.gov/public/attachments/DOC-366939A1.pdf>.

⁴ See 47 U.S.C. §§ 254(h)(1)(B), (h)(2) (E-Rate-funded services must be used for "educational purposes" and the Commission's rules must "enhance, to the extent technically feasible and economically reasonable, access to

(continued....)

program funds is the Commission’s commitment to protect against waste, fraud, and abuse and ensure that funds are properly disbursed and used for appropriate purposes.⁵ Last year, an audit completed by the Government Accountability Office (GAO) identified opportunities to misrepresent compliance with competitive bidding requirements as an underlying fraud risk for the E-Rate program.⁶ Similarly, the Commission’s Office of Inspector General (OIG) has recommended safeguards to protect the E-Rate program, including establishing a central repository for the submission of competitive bidding documents and a holding period, so that bids are not released to applicants until after the closing of a 28-day bidding window.⁷

3. Taking into account these recommendations, we propose a change to the E-Rate program targeted at several goals: streamlining program requirements for applicants and service providers, strengthening program integrity, preventing improper payments, and decreasing the risk of fraud, waste, and abuse. Specifically, we seek comment on a proposal to implement a central document repository (i.e., bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, the Universal Service Administrative Company (USAC), instead of directly to applicants. We seek comment on requiring USAC to temporarily withhold submitted bids from applicants for a stated minimum period of time. In addition, we seek comment on whether to revise our rules to require applicants to submit competitive bidding documentation that is not captured in the bidding portal. Finally, we seek comment on any potential benefits and burdens that the adoption and implementation of a bidding portal and these associated changes would have on E-Rate program participants and the public as well as any required rule modifications needed to effectuate these changes.

II. BACKGROUND

4. Under the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible services and/or equipment (collectively, eligible services).⁸ To obtain E-Rate support, an applicant must first conduct a competitive bidding process and comply with the Commission’s competitive bidding rules.⁹ Applicants begin the competitive bidding process by filing a completed FCC Form 470 with USAC.¹⁰ USAC, in turn, posts the FCC Form 470 on its website for all potential competing service providers to review.¹¹ The FCC Form 470 must specify and provide a description of the eligible services with sufficient detail to enable potential service providers to submit responsive bids for such requested eligible services.¹²

(Continued from previous page) _____ advanced telecommunications and information services for . . . school classrooms . . . and libraries.”); 47 CFR §§ 54.500-54.523.

⁵ See, e.g., *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15808 (2004) (*Schools and Libraries Fifth Report and Order*).

⁶ GAO, *Telecommunications: FCC Should Take Action to Better Manage Persistent Fraud Risks in the E-rate Program*, GAO-20-606, 19 (Sept. 16, 2020) (2020 GAO E-Rate Report).

⁷ Federal Communications Commission, Office of Inspector General, *Semiannual Report to Congress*, October 1, 2016 – March 31, 2017 (Washington, D.C.: May 2017).

⁸ 47 CFR §§ 54.501-54.505.

⁹ 47 CFR § 54.503.

¹⁰ The FCC Form 470 is the form used by applicants to seek competitive bids. See 47 CFR § 54.503(c)(1). After the competitive bidding process, applicants must use the FCC Form 471 to request funding for requested eligible services. See 47 CFR § 54.504(a).

¹¹ 47 CFR § 54.503(b)-(c).

¹² 47 CFR § 54.503(c)(1)(i)-(ii); see also *Federal-State Board on Universal Service*, CC Docket 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). A failure to completely and accurately identify the services for which an applicant is seeking bids in an (continued....)

5. An applicant must wait at least 28 days from the date on which its FCC Form 470 is posted on USAC's website before entering into a signed contract or other legally binding agreement with a service provider and submitting an FCC Form 471 to seek funding for selected services.¹³ Service providers may view FCC Forms 470 through public tools on USAC's website to determine whether they will submit proposals, which are then submitted directly to the applicant.¹⁴ The Commission has not delineated specific requirements or protocols for how or in what format service providers must respond to requests for bids, except that service providers and applicants are expected to follow E-Rate program rules, and all applicable state and local procurement rules and regulations.¹⁵ Service providers must also carefully review for any specific requirements when responding to the requests for bids in a particular FCC Form 470 or Request for Proposal (RFP).¹⁶ Before entering into agreements with service providers, applicants are required to carefully consider all bids submitted and must select the most cost-effective service offering, with the price of E-Rate eligible services being the single most heavily weighted factor in determining cost-effectiveness.¹⁷ Other relevant factors, such as prior experience, personnel qualifications, management capability, and environmental objectives may also be considered, but price must be the primary factor considered.¹⁸ Moreover, the competitive bidding process must be fair and open and not have been compromised because of improper conduct by the applicant, service provider, or

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FCC Form 470 undermines the competitive bidding process and may result in denial of a funding request. See *Petition for Reconsideration by Chicago Public Schools, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 29 FCC Rcd 9289, 9291-9292, paras. 7-8 (WCB 2014). See also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26419-21, paras. 27-31 (2003) (*Ysleta Order*) (clarifying how “an applicant’s FCC Form 470 must be based upon its technology plan and must detail specific services sought in a manner that allows bidders to understand the specific technologies that the applicant is seeking”).

¹³ 47 CFR § 54.503(c)(4). The rule states that USAC must send confirmation of the posting to the entity requesting service, which includes the date after which the requestor may sign a contract with its chosen provider(s), and that the entity must 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. *Id.* USAC’s website calls this the “28-Day Waiting Period” and reminds applicants that state or local procurement regulations may require a longer waiting period or impose additional requirements. See Universal Service Administrative Company, *28-Day Waiting Period*, <https://www.usac.org/e-rate/applicant-process/competitive-bidding/28-day-waiting-period/> (last visited Dec. 14, 2021).

¹⁴ There are three tools service providers may use to review E-Rate applicants’ FCC Forms 470: (1) “View an FCC Form 470” at <https://data.usac.org/publicreports/Forms/Form470Rfp/Index>; (2) “Download FCC Form 470” at <https://data.usac.org/publicreports/Forms/Form470Detail/Index>; and (3) USAC’s FCC Form 470 Dataset on its Open Data platform at: <https://opendata.usac.org/>.

¹⁵ *Universal Service First Report and Order*, 12 FCC Rcd at 9030, para. 482 (“[A]lthough we do not impose bidding requirements, neither do we exempt eligible schools or libraries from compliance with any state or local procurement rules.”); see also *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan for our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 18762, 18798-99, para. 85 (2010) (codifying the requirement that the competitive bidding process be fair and open) (*Schools and Libraries Sixth Report and Order*).

¹⁶ Universal Service Administrative Company, Step 2: Responding to Bids, <https://www.usac.org/e-rate/service-providers/step-2-responding-to-bids/> (last visited Dec. 14, 2021) (stating that “[s]ervice providers must be compliant with all E-rate Program rules and all applicable state and local procurement rules and regulations, including any competitive bidding requirements [and] should also review the FCC Form 470 and RFP for specific requirements related to the competitive bidding process and make sure to follow them”).

¹⁷ 47 CFR § 54.511(a).

¹⁸ 47 CFR §§ 54.504(a)(1)(ix), 54.511(a) (requiring price to be the primary factor considered). See also *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 481 (stating that price must be the primary factor in selecting the winning bid); *Ysleta Order*, 18 FCC Rcd at 26429, para. 50 (stating that when evaluating bids, the “cost category” must be given more weight than any other single factor).

both parties.¹⁹ All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.²⁰

6. In the *2013 E-Rate NPRM*, the Commission sought comment on “[t]ransparency of prices being bid for E-rate supported services” and whether the Commission should “consider making bid responses public or at least accessible to other E-rate applicants.”²¹ The Commission also asked whether it should require E-Rate applicants to submit competitive bidding documents with their FCC Forms 471.²² It noted that in the *Healthcare Connect Fund Order*, the Commission required applicants in the Rural Health Care (RHC) program to submit to USAC evaluation criteria, bid sheets, a list of people who evaluated bids, memos, board minutes, or similar documents, and any correspondence with vendors during the bidding, evaluation, and award phase of the process and that “[h]aving such documents from E-rate recipients would allow USAC to evaluate more fully the competitive bidding process conducted by E-rate applicants and ensure that documentation of the competitive bidding process was retained in the event of an audit.”²³

7. In the *2014 First E-Rate Order*, the Commission required publication of prices for goods and services purchased by applicants, but declined to require public disclosure of other pricing information, including available pricing from service providers or bid responses.²⁴ It noted that the “current burden to applicants of submitting comprehensive bid information to USAC outweighs any incremental benefit to the public from the publication of prices for non-winning bids, which, by definition, were not the most cost-effective choice.”²⁵ Later that year, in the *2014 Second E-Rate Order*, the Commission directed USAC to work with the Office of Managing Director and the Wireline Competition Bureau “to determine the feasibility and effectiveness of online tools to assist applicants with the competitive bidding process, including online bid and review tools to assist applicants in obtaining multiple bids and selecting the most cost-effective services, and to reduce administrative costs and burdens associated with competitive bidding.”²⁶

8. In its 2017 Semiannual Report to Congress, the OIG noted that the Commission’s ability to deter and detect alleged E-Rate program fraud during the competitive bidding process has been limited since the program’s inception by the lack of upfront collection of competitive bids, and recommended the implementation of a bidding repository and changes in the competitive bidding process to help prevent

¹⁹ 47 CFR § 54.503(a).

²⁰ See 47 CFR § 54.503(a); *Schools and Libraries Sixth Report and Order*, 25 FCC Rcd at 18799, para. 86 (explaining that “all potential bidders and service providers must have access to the same information and be treated in the same manner throughout the procurement process”).

²¹ See *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304, 11355, paras. 194-95 (2013) (*2013 E-Rate NPRM*).

²² *Id.* at 11388-89, para. 298.

²³ *Id.* See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16786, para. 248 (2012) (*Healthcare Connect Fund Order*).

²⁴ See *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, 8938, para. 165 (2014) (*2014 First E-Rate Order*).

²⁵ *Id.*

²⁶ See *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, 15589-90, para. 124 (2014) (*2014 Second E-Rate Order*). A bidding portal was not proposed per se, but with the intent of assisting applicants in maximizing the cost-effectiveness of spending for E-Rate-supported services, as part of its performance management system, USAC was directed to “explore the possibility of providing online tools to improve the competitive bidding process.” *See id.*

circumvention of the E-Rate rules.²⁷ The Commission has also identified competitive bidding compliance issues in the E-Rate program and, in particular, lack of sufficient documentation demonstrating compliance, as one of the most common root causes of E-Rate program improper payments.²⁸

9. Most recently, in September 2020, the GAO released a report on its review of fraud risk management in the E-Rate program, which addressed, among other things, what the GAO considers to be the E-Rate program's key fraud risks.²⁹ The report highlights the reliance on self-certifications as an overarching key fraud risk for the E-Rate program and identified opportunities for E-Rate applicants to misrepresent compliance with competitive bidding requirements, such as competitive bidding rules and processes, as a related and key underlying fraud risk for the E-Rate program.³⁰ Specifically, the GAO reports that E-Rate participants could misrepresent self-certification statements regarding competitive bidding by circumventing or violating competitive-bidding rules or processes, and that this could occur without the Commission's or USAC's knowledge because they lack direct access to the bidding information.³¹ Noting the OIG's recommendation for a bidding repository, the GAO concurred that a portal "could strengthen program controls by allowing USAC direct access to obtain and monitor bidding information submitted by bidders without having to request such information from the applicants or service providers."³²

III. DISCUSSION

10. We propose changes to the competitive bidding process for the E-Rate program to enhance program integrity and administrative efficiency. Specifically, we propose to require prospective service providers to respond to applicant requests for services and equipment by uploading bids into a bidding portal managed by USAC, rather than by submitting bids directly to applicants. We also seek comment on establishing timeframes on when applicants should be able to review the bids that service providers submit in the portal. Further, we seek comment on requiring applicants to submit bidding selection documentation, such as bid comparison matrices and related contract documents, at the time applicants request funding for eligible services. We seek comment on these program changes to guide and assist E-Rate program participants in complying with the Commission's competitive bidding rules,

²⁷ See Federal Communications Commission, Office of Inspector General, Semiannual Report to Congress, October 1, 2016-March 31, 2017, https://transition.fcc.gov/oig/FCC_OIG_SAR_03312017.pdf, at 13-15 (2017 OIG Report); 2020 GAO E-Rate Report at 20-21. In 2020, the OIG updated its recommendation, directing the Commission "to include additional specifics learned since [OIG] made its recommendation to WCB" regarding the implementation of a bidding portal. See Federal Communications Commission, Office of Inspector General, Semiannual Report to Congress, April 1, 2020-September 30, 2020, https://www.fcc.gov/sites/default/files/fcc_oig_sar_09302020.pdf, at 12.

²⁸ Federal Communications Commission, *Agency Financial Report: Fiscal Year 2019* (Nov. 19, 2019) (2019 FCC AFR), <https://docs.fcc.gov/public/attachments/DOC-360844A1.pdf>. The Commission incorporated improper payment analysis and testing into its processes in Fiscal Year 2019 in compliance with Federal statutes and guidance detailed in the Office of Management and Budget Circular A-123, Appendix C, Requirements for Payment Integrity Improvement. Of the total \$114.54 million in reported improper payments for 2019 associated with the categories under "Other Reason", Competitive Bidding/Invalid Contract accounted for \$21.59 million and Competitive Bidding/Incomplete Documentation accounted for \$67.23 million. 2019 FCC AFR, <https://docs.fcc.gov/public/attachments/DOC-360844A1.pdf>, at 91, Table 2.2. Table 1 in the 2019 FCC AFR depicts the improper payment rates for the four universal service programs. See *id.* at 89, Table 1.

²⁹ 2020 GAO E-Rate Report at 14-26.

³⁰ *Id.* at 19-21.

³¹ *Id.* at 19-20. In its report, the GAO states "USAC does not have direct access, through a repository or otherwise, to obtain and monitor bidding information submitted by bidders without requesting such information from the applicants or service providers." *Id.* at 20.

³² *Id.* at 20-21.

provide transparency and promote fair and open competitive bidding processes, and minimize potential fraud risk for the E-Rate program.

A. A New Competitive Bidding Portal

11. The 2020 GAO E-Rate Report highlights that USAC does not have a proactive way to monitor the bidding information submitted by bidders and must rely on requesting such information from applicants or service providers after the culmination of the bidding process.³³ The Report identifies opportunities to misrepresent compliance with the competitive bidding rules and processes as an underlying key fraud risk and notes that such an opportunity exists because of the lack of visibility into the competitive bids that applicants receive.³⁴ The GAO also references the OIG's previous recommendation that the Commission direct USAC to implement an online competitive-bidding repository.³⁵ The OIG had asserted that “[s]ubmission of service provider bids prior to bid selection . . . [would] prevent[] a service provider or applicant from submitting an altered bid or contract to USAC during its Program Integrity Assurance (PIA) review to create the appearance of compliance with [p]rogram rules.”³⁶ In response to these concerns, we recognize that a bidding portal could provide better insights for USAC in an effort to strengthen the integrity of the E-Rate program.

12. We propose to require service providers to submit bids responsive to FCC Forms 470 through a bid portal managed by USAC, rather than by sending bids directly to the applicant. We anticipate that requiring service providers to submit bids for requested E-Rate services and equipment through a bidding portal will improve USAC’s and the Commission’s ability to ensure that all entities participating in the E-Rate program conduct a fair and open competitive bidding process.³⁷ We expect that, in addition to other benefits, a portal that stores E-Rate service providers’ bids could prevent certain improper payments and compliance findings related to applicants’ failures to produce bid documentation when such documentation is requested by USAC in the pre-commitment and post-commitment stages of application review. Moreover, because the bidding portal will track and store bids and related communications, the portal could save time and increase efficiencies for both applicants and USAC with regard to competitive bidding reviews and audits. We seek comment on whether a bidding portal would help to promote fair and open competitive bidding and reduce fraud. We also seek comment on how great the risk is that applicants or service providers may alter or ignore qualified bids to affect the bidding process. Would a bidding portal complement or supplement existing rules and procedures to reduce bid collusion and the risk of fraud in the competitive bidding process? Are there solutions other than a bidding portal or changes to the competitive bidding rules that could likewise reduce bid collusion and the risk of fraud?³⁸ Commenters are invited to address the feasibility, necessity, and cost effectiveness of implementing a nationwide bidding portal. Are there any other benefits or burdens we should consider, either to stakeholders or the broader public, in deciding whether to implement our competitive bidding proposal?

13. We recognize that requiring bid responses to be submitted to USAC through a bidding portal would change how service providers submit and share bids with applicants. While these changes

³³ 2020 GAO E-Rate Report at 20.

³⁴ *Id.* at 19.

³⁵ *Id.* at 20. The GAO Report summarizes the OIG’s position stating that “an open competitive-bidding process lies at the heart of the E-rate program and is key to ensuring that USAC does not pay more than it should for supported E-rate program services or products and helps deter fraud, waste, and abuse during the competitive-bidding process and during pre-commitment phase.” *Id.*; see also 2017 OIG Report at 13.

³⁶ 2017 OIG Report at 14.

³⁷ See 47 CFR § 54.503(a).

³⁸ See, e.g., Letter from Debra M. Kriete, Chair, State E-Rate Coordinators’ Alliance, *et al.*, to Jessica Rosenworcel, Chairwoman, FCC, *et al.*, WC Docket No. 21-455, at 3 (filed Dec. 6, 2021) (SECA December *Ex Parte*).

may streamline documentation submission and the competitive bidding procedures for applicants and service providers,³⁹ as well as increase transparency for USAC and the Commission into the bidding process, they also may present obstacles for applicants and service providers. Therefore, we seek comment on the impact of this proposed requirement on E-Rate program participants, particularly smaller schools and libraries. Should service providers submit their bids directly through the bidding portal or by some other method? Would the requirement to use a central bidding portal discourage participation by applicants and service providers in the E-Rate program?⁴⁰ Would applicants be more inclined to hire consultants if a bidding portal is imposed? How would these changes benefit or burden E-Rate program participants?⁴¹ For example, would requiring bids to be uploaded to a central repository managed by USAC help applicants comply with the Commission requirement to retain documentation demonstrating compliance with E-Rate program requirements?⁴² Commenters are requested to quantify benefits and burdens, both in terms of time and money. Do these changes promote any cost and resource efficiencies for E-Rate program participants because they provide “automated” assistance with USAC’s efforts to seek competitive bidding compliance documentation during Program Integrity Assurance and program audit reviews? Are there any other alternatives the Commission should consider to ensure that applicants and service providers comply with competitive bidding rules?

14. We also seek comment on whether service providers should be required to submit information in a manner that enables applicants to compare competing bids. Do applicants face difficulty in comparing bids because service providers have submitted their bid responses in a variety of formats? Are there other changes we should consider that could reduce burdens related to competitive bidding for applicants and service providers in using a bidding portal? In some cases, applicants do not receive any bids or receive bids that are not responsive to their requests for service during the specified bidding period. We propose that the portal allow applicants in these situations to extend their competitive bidding periods as needed and seek comment on this proposal. Alternatively, could we treat the bidding portal as a repository for bids, that would permit applicants to upload bids received after the fact, but would not require service providers to submit bids through the portal? We seek comment on the potential benefits and drawbacks of using the bidding portal in this manner.

15. *Bid Holding Period.* E-Rate program rules currently require applicants wait at least 28 days from the posting of their FCC Form 470 before entering into an agreement with a service provider.⁴³ Actual deadlines for bids to be submitted vary by applicant and are not set by Commission rules or E-Rate program requirements.⁴⁴ Applicants are permitted to post FCC Forms 470 as soon as USAC releases

³⁹ The E-Rate rules require applicants and service providers to retain program documents and to produce them upon request. See 47 CFR § 54.516. This includes competitive bidding documentation. See *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15824, para. 48 (concluding that program participants must retain all documents relating to the competitive bidding process, including all winning and losing bids).

⁴⁰ See, e.g., Letter from Debra M. Kriete, Chair, State E-Rate Coordinators’ Alliance to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184, et al., at 2 (filed Feb. 2, 2021) (SECA February *Ex Parte*) (providing comment on the GAO’s Report and the FCC OIG’s semi-annual report discussing the competitive bidding portal).

⁴¹ See, e.g., Letter from K-12 High Speed Network (“K12HSN”) to Jessica Rosenworcel, Chairwoman, FCC, et al., WC Docket No. 21-455, at 2 (filed Dec. 7, 2021) (K12HSN *ex parte*) (stating that the bidding portal “would create inefficiencies and serious scheduling delays that would create an undue burden on applicants wishing to participate in the E-Rate program”).

⁴² See 47 CFR § 54.516(a).

⁴³ 47 CFR § 54.503(c)(4).

⁴⁴ The bidding period for each applicant may be shorter or longer than 28 days and may be a deadline set by the applicant in its FCC Form 470 or RFP, state or local procurement requirements or some other factor.

the form.⁴⁵ Currently, applicants are able to review submitted bids from service providers as they are received which may introduce risk into a fair and open competitive bidding process.⁴⁶ In the 2017 OIG Report, the OIG recommended that USAC hold service provider bids in a bid repository for a “28-day bidding window” to ensure that service providers were competing on a “level playing field.”⁴⁷

16. We seek comment on requiring applicants to wait a specified amount of time before they can access bids submitted in response to their FCC Form 470 service requests.⁴⁸ Is 28 days an appropriate length of time to withhold bids? Is a shorter or longer period appropriate in general or for specific circumstances? Should the withholding period be tied to a specific event such as the posting of an applicant’s FCC Form 470? If applicants are required to wait before they can access bids submitted in response to their FCC Form 470 service requests, how would the timing variability of their procurements be impacted by such a proposal? Would a minimum bid holding period assist an applicant in complying with section 54.503(c)(4) because it would not be able to view bids for at least four weeks and would presumably be prevented from entering into agreements until that time? If we require applicants to wait a specified amount of time before accessing bids, should we also preclude service providers from sharing bids directly with applicants during this time period? We seek comment on these questions.

17. In some cases, for a variety of reasons, applicants file their FCC Forms 470 toward the end of E-Rate application filing window closing date, leaving little time remaining to wait a minimum of 28 days, select service providers, and seek funding.⁴⁹ If we are to require applicants to wait a specified length of time before accessing bids, are there safeguards we can implement to help applicants better align their timelines? For example, should the ability to file an FCC Form 470 be closed for a certain period of time before the FCC Form 471 window closes to allow for both a minimum number of days (e.g., a 28-day waiting period) plus additional time (e.g., two weeks) for applicants to review bids and make service provider selections? Are there processes that would be disrupted by withholding bid responses from applicants for a minimum period of time? We seek comment on this or other proposals that would allow any waiting period we may adopt to align with applicants’ need for time for bid analysis

⁴⁵ USAC typically makes the FCC Form 470 available at least six months prior to the opening of the FCC Form 471 funding window (or a year in advance of the applicable funding year).

⁴⁶ In its 2017 OIG Report, the OIG explained that submitting bids to USAC instead of to applicants “prevents an applicant from informing a favored service provider about the pricing and terms contained within a competitor’s bid prior to the close of the 28-day bidding window” and suggested that this would help preserve one of the strengths of competitive bidding which is to have all service providers “operate on a level playing field.” 2017 OIG Report at 13-14. The OIG explained that if a favored service provider were to gain access to information on its competitor’s bids, the favored service provider can submit a bid that may beat the competitor’s bid but may not serve to provide the applicant with the favored provider’s best bid. *See id.* at 14. The OIG states that this can result “in the Fund paying more for services and equipment than it would have if a true competitive bidding process had occurred.” *Id.*

⁴⁷ *Id.* at 13.

⁴⁸ This may be similar to the sealed bidding process used by some E-Rate program participants in which the pricing offered by each service provider is not known by any of the other service providers or the applicant during bidding, and on a pre-established date, all of the providers’ bids are opened by an applicant at the same time.

⁴⁹ Applicants seek funding by filing an FCC Form 471. In recent years, USAC has typically opened the FCC Form 471 application filing window in mid-January and closed it in late March. *See, e.g.*, USAC, News Brief, *E-rate Funding Year 2021 Application Window Opens January 15, 2021* (Dec. 22, 2020), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=987> (announcing the opening of the funding year 2021 FCC Form 471 application filing window on January 15, 2021 and the close of the window on March 25, 2021); USAC, News Brief, *E-rate Funding Year 2019 Application Filing Window Opens January 16, 2019* (Dec. 21, 2018), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=870> (announcing the opening of the funding year 2019 FCC Form 471 application filing window on January 16, 2019 and the close of the window on March 27, 2019). USAC usually releases the FCC Form 470 on July 1 of the previous year, but there is no deadline or window for filing the FCC Form 470 other than applicants must file one in time to allow four weeks to expire before entering into service agreements and filing FCC Forms 471 before the close of the FCC Form 471 application filing window.

and provider selection. To better understand the potential impact on applicants, we also seek information on the reasons why some applicants post FCC Forms 470 to initiate the competitive bidding process near the end of the FCC Form 471 filing window.

18. We seek comment on any overall program benefits these proposals may offer to applicants, including the prevention of inadvertent errors that lead them to run afoul of the E-Rate competitive bidding requirements.⁵⁰ What other compliance issues with our competitive bidding requirements might our proposals help applicants and service providers avoid? Should the Commission consider changes to the training and outreach that USAC offers to applicants and service providers to address issues relating to competitive bidding and document retention, as SECA suggests?⁵¹ Are there other aspects of the competitive bidding rules that are confusing, burdensome, or vague that may lead to inadvertent, but not necessarily fraudulent, competitive bidding violations? If so, what are they and what modifications might the Commission make to resolve any confusion and provide clarity around these rules?⁵²

19. *System Issues.* We seek comment on how best to leverage the existing web-based account and application management portal, known as the E-Rate Productivity Center or EPC in implementing a bidding portal. Are there specific administrative burdens or benefits that the Commission should consider if the bidding portal is integrated with EPC? Conversely, what administrative burdens or benefits are associated with using a separate system for this purpose? Is there a risk of applicant confusion and technical difficulty if applicants are asked to use two systems to store documentation for the E-Rate program? Or does it matter to applicants, so long as the user experience is not compromised? Can any obstacles be overcome with user testing and outreach?

20. *Interaction with State and Local Procurement Rules.* E-Rate applicants are required to comply with all applicable state and local procurement rules, in addition to the E-Rate competitive bidding rules.⁵³ What are the existing state procurement laws, local procedures and best practices that promote fair and open competition?⁵⁴ Would the creation of a bidding portal conflict with these state and local procurement requirements? Would adopting an E-Rate bidding portal require service providers submitting bids in certain jurisdictions to submit bids in more than one way because of existing state or local requirements? If so, we seek more information on the specific circumstances in which service providers are required to submit their bids for eligible services through other mechanisms. If, for example, certain state or local requirements mandate that service providers submit bids directly to applicants such as through e-mail, or through another online platform that would allow applicants to view bids before they would be permitted to under any new E-Rate requirements, how might that impact the usefulness of a USAC-administered portal? Other state law requirements may include a mini-bid process when selecting vendors from a multiple award state master contract. Would the bidding portal interfere with applicants who use a state master contract that requires a mini-bid process? In addition, some states may have requirements relating to public disclosure of bids, prequalification of bidders and treatment of proprietary or confidential information. How should the Commission take those requirements into account in establishing a bidding portal? Although the current E-Rate competitive bidding requirements

⁵⁰ See 47 CFR § 54.503.

⁵¹ SECA February *Ex Parte*; see also K12HSN *Ex Parte*, at 10-11 (stating that changes to training and outreach can help improve the competitive bidding process and reduce confusion).

⁵² See, e.g., SECA December *Ex Parte*, at 3.

⁵³ See, e.g., Letter from John D. Harrington, Chief Executive Officer, Funds for Learning, LLC (FFL), to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 13-184, 21-455, 21-93, CC Docket No. 02-6 (filed Nov. 29, 2021) (FFL *Ex Parte*), at 2 (explaining that schools and libraries are very experienced at awarding contracts for services and equipment that are already subject to state and local competitive bidding rules and that no concerns have been raised about the E-Rate competitive bidding process in its survey).

⁵⁴ See *id.*; see also K12HSN *Ex Parte*, at 4 (detailing procurement requirements in California).

apply in addition to state and local competitive bidding requirements and are not intended to preempt such state or local requirements,⁵⁵ we seek comment on how to address any apparent conflicts with the goals the Commission is attempting to achieve through the proposals stated herein. Additionally, we are aware that certain state, local or other requirements, as well as other factors, may dictate varying procurement timeframes and processes for different applicants in the E-Rate program. We seek comment on how the use of the proposed E-Rate competitive bidding portal or an imposed waiting period could impact procurement timing for these applicants.

21. *Other Bidding Portal Considerations.* Are there potential obstacles the Commission should examine? For example, or pose technical challenges?⁵⁶ We also seek comment on the impact of these proposals on applicants' bidding processes, including their timing for review and selection of providers.

22. The use of the bidding portal would not be required for the procurement of services that have been granted a competitive bidding exemption per the Commission's rules.⁵⁷ Are there any other scenarios in which E-Rate participants should not be required to use the bidding portal? Are there any functions of the bidding portal that should be used by applicants with exemptions to help USAC review and ascertain compliance with competitive bidding rules? For example, for those applicants using state master contracts, is there documentation that applicants should be required to upload into the portal to demonstrate compliance with the E-Rate rules? We seek comment on any additional considerations that may impact applicants' and service providers' use of the bidding portal.

B. Document Submission Requirements for E-Rate Applicants

23. E-Rate program applicants and RHC program applicants currently submit different information to USAC at different points in their respective application processes. E-Rate applicants routinely submit bidding and contract documentation⁵⁸ if requested by USAC or auditors as part of pre-commitment reviews (e.g., standard PIA questions concerning bidding or special compliance competitive bidding reviews); during post-commitment comprehensive audits; and, during payment quality assurance reviews for computing the percentage of improper payments that must be reported annually to Congress.⁵⁹ By contrast, in the RHC program, applicants are required to "submit documentation to support their certifications that they have selected the most cost-effective option" at the time a funding request is

⁵⁵ See 47 CFR § 54.503(b).

⁵⁶ For example, the Utah Education and Telehealth Network (UETN) stated that using the proposed bidding portal to conduct a procurement and collect bids likely conflicts with Utah state law and the University of Utah's procurement policy. *See Letter from Ray Timothy, CEO/Executive Director, UETN, to Jessica Rosenworcel, Chairwoman, FCC, et al.*, WC Docket No. 21-455, at 2 (filed Dec. 3, 2021); *see also K12HSN Ex Parte*, at 4-8 (detailing potential conflicts between California procurement law and procedure and the proposed bidding portal).

⁵⁷ *See, e.g.*, 47 CFR § 54.503(e) ("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.").

⁵⁸ Once a service provider has been selected, applicants enter into a contract or other legally binding agreement with the selected service provider. 47 CFR § 54.504(a); *see* USAC, News Brief, *Filing Window Tips for First-time Filers* (Apr. 17, 2020), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=945> (noting that applicants have the option to upload a copy of their contract in EPC and encouraging applicants to do so).

⁵⁹ 47 CFR § 516(b)-(c) (providing that documentation must be provided to the Commission or USAC upon request and E-Rate participants are subject to audits); *see also* 47 CFR § 54.707(a) (requiring USAC "to establish procedures to verify discounts, off-sets and support amounts provided by the universal service programs and may suspend or delay discounts, off-sets, and support amounts provided to a carrier if the carrier fails to provide adequate verification of discounts, off-sets or support amounts provided upon reasonable request, or if directed by the Commission to do so"). *See also* SECA December *Ex Parte*, at 3.

submitted to USAC.⁶⁰ RHC program applicants must also submit contract documentation with their funding requests.⁶¹

24. We propose to align the competitive bidding documentation requirements of the E-Rate program with RHC program rules. Under this proposal, E-Rate applicants would similarly be required to submit documentation demonstrating compliance with the competitive bidding rules and requirements at the time they submit their FCC Forms 471 to seek funding in the E-Rate program.⁶² We seek comment on this proposal. Should applicants in the E-Rate program be required to submit the same competitive bidding documentation with their funding requests as required in the RHC program? Is such a requirement appropriate and necessary? Is more or less information needed from E-Rate applicants to demonstrate program compliance? For example, are the bidding materials the portal would already capture, such as the bids and related communications, plus the applicant submission of its bid comparison documentation, sufficient for compliance review? Or, should we consider requiring the submission of additional documentation? For example, if applicants do not receive any bids in response to their posted requests, should applicants be required to provide other documentation explaining how they selected their selected service provider? Would requiring applicants to provide contracting documents help applicants demonstrate compliance and help protect the program from fraud, waste and abuse? Are there other factors to take into consideration, such as the size of the applicant or the amount of their new contracts?⁶³

25. We also seek comment on whether there could or should be controls in the process to prevent applicants from proceeding with filing their FCC Forms 471 before submitting required competitive bidding and contract documentation. For example, should there be a system-implemented control put in place and should applicants not have access to file FCC Forms 471 in EPC until required documents are uploaded into the portal? Or, would it be less burdensome on both applicants and USAC to direct USAC to not process FCC Forms 471 until the required documentation has been filed?

26. We seek to facilitate greater transparency for USAC and the Commission into the bidding process to help minimize fraud risk. The lack of transparency in the bidding process makes it more challenging for USAC and the Commission to ascertain compliance with E-Rate program rules. When applicants are not able to provide bidding documentation to show compliance with the Commission's rules upon request, USAC must render the request as non-compliant and deny funds, or if findings

⁶⁰ The RHC program competitive bidding documentation rule requires applicants to: "submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with service providers prior to and during the bidding, evaluation, and award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption." 47 CFR § 54.623(a)(3).

⁶¹ All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected and the health care provider(s) who will receive the services; costs for which support is being requested; and the term of the service agreement(s) if applicable (i.e., if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the services are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information. 47 CFR § 54.623(a)(2).

⁶² Although the Commission had previously determined to not require E-Rate applicants to submit competitive bidding documentation, we view the proposals regarding documentation in this Notice as different from the 2013 proposal which largely focused on public disclosure of competitive bids and pricing transparency. *2013 E-Rate NPRM*, 28 FCC Rcd at 11355-56, para. 195.

⁶³ See SECA December *Ex Parte*, at 4.

regarding lack of competitive bidding documentation are made pursuant to audit, and funds have been disbursed, these are deemed improper payments and funding must be returned. Similarly, when applicants submit bidding documentation after the fact, there is less certainty about the validity of the bidding process.⁶⁴ We seek comment on our proposal to align E-Rate rules with RHC obligations by requiring applicants to submit competitive bidding documentation to demonstrate compliance with the Commission's rules.

C. Document Storage and Recordkeeping Requirements

27. Section 54.516 requires applicants to retain bids and other documentation related to E-Rate-supported services for at least 10 years after the later of the last day of the applicable funding year or the service delivery deadline, and to produce that documentation at the request of USAC, the Commission, or state or other federal agencies.⁶⁵

28. After the competitive bidding process is complete, we anticipate that all documentation associated with the FCC Form 470 Service Request (e.g., bids, bidder questions and related correspondence, selection documentation, contract documentation) could be securely stored in the bidding portal. Using the portal as a repository of these documents could serve to minimize the need for outreach and improve process efficiencies for USAC and E-Rate program participants. We seek comment on the use of the portal as a repository of documents and how this might serve the public interest by placing fewer burdens on participants in the program. Are there any alternatives the Commission should consider?

29. We seek comment on how the use of the bidding portal for document storage relates to the Commission's E-Rate recordkeeping requirements, codified at section 54.516 of the Commission's rules.⁶⁶ Should E-Rate participants be exempt from certain recordkeeping requirements if participants properly submitted the documents into the portal? Should applicants and service providers be permitted access to their stored competitive bidding documents for a period long enough to be able to comply with recordkeeping requirements? Also, if E-Rate program participants retain access to their records, should this access be afforded to them in a way to permit them to produce the records at the request of any representative (including any auditor) appointed by a state education department, USAC, the Commission, or any local, state or federal agency with jurisdiction over the entity, as is required by section 54.516(b)? We seek comment on whether there are any legal or other barriers to having E-Rate program participants comply with documentation and recordkeeping requirements by operation of using the bidding portal to store their competitive bidding records.

D. Use of the Portal for Procurement-Related Activities and Multi-Stage Bidding

30. Recognizing that E-Rate competitive bidding can be an iterative process, we seek comment on how we can best use the portal to accommodate related steps of the process. How can the portal replicate or enhance the typical activities that can and do occur during the competitive bidding process and are necessary for successful bidding outcomes for applicants? For example, during procurement periods service providers are typically able to submit questions about requests for service in FCC Forms 470 and RFPs and receive answers from the applicants. All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process as required by the Commission's rules.⁶⁷ Likewise, applicants may have

⁶⁴ See, e.g., 2017 OIG Report at 14-15; 2020 GAO E-Rate Report at 20-21.

⁶⁵ 47 CFR § 54.516.

⁶⁶ *Id.*

⁶⁷ Additionally, any additions or modifications to the FCC Form 470, RFP, or other requirements or specifications must be available to all potential providers at the same time and in a uniform manner. *Schools and Libraries Sixth Report and Order*, 25 FCC Rd at 18799, para. 86.

questions about bid responses for service providers that lead to clarifications about bids. We seek comment on whether these activities should be required to occur in the portal. If so, we propose that questions and answers about service requests and RFPs be anonymously made available and viewable to the applicants and all interested bidders for the requested services, and the portal should be used to track and store this correspondence. We seek comment on this proposal. Also, we seek comment on how the portal should handle clarifications sought by applicants about bids that have been submitted and made available for review.

31. We seek comment on what other types of communications between service providers and applicants and procurement activities should be captured in the portal, and how to implement this in a way that is streamlined and easy to use for E-Rate program participants. Are there other types of functionality that should be considered for the bidding portal, and how should these functions be implemented in a way that will help support fair and open competitive bidding?

32. We also seek comment on those procurement processes that facilitate bidding in stages, potentially including initial and subsequent rounds of bidding (e.g., requests for best and final offers). Because these are procurement steps that effectively extend the competitive bidding period, how should they be captured in the bidding portal and how would this impact the proposal above to implement a time period when bids are withheld from applicants? How could these processes be replicated and captured in the bid portal in a way that maintains anonymity and refrains from bid disclosure yet promotes transparency? Would the use of a bidding portal interfere with a multi-stage procurement process and if so, how?

E. Proposals for Implementation and Rule Changes

33. Implementation of a competitive bidding portal would require significant development and implementation resources, from the Commission, USAC, and E-Rate stakeholders. If adopted, we propose that USAC, working with the Wireline Competition Bureau (Bureau) and the Office of Managing Director, initiate technical development of a competitive bidding portal as soon as possible, with a goal of making it available for funding year 2024. We further propose E-Rate stakeholder outreach and engagement to ensure that the bidding portal meets the needs of applicants and service providers and facilitates a smooth transition. To the extent necessary, we propose delegating authority to the Bureau and Office of Managing Director to address implementation details that may arise, consistent with any rules that are ultimately adopted. By engaging stakeholders and empowering the Bureau and Office of Managing Director to resolve technical and logistical implementation issues, we anticipate that a competitive bidding portal could be completed efficiently and effectively. We seek comment on these proposals, including the proposed implementation timeframe. Would launching the portal so that it would be operational for the start of the funding year 2024 competitive bidding period be feasible in light of the technical and logistical challenges involved? We note that the bidding portal would need to be completed and live by July 1, 2023, the first day to initiate competitive bidding processes for funding year 2024. Is there sufficient time to design, develop, and implement a bidding portal by July 1, 2023? If the portal opens on July 1, 2023, will this allow enough time for applicants and service providers to receive training on how to use the portal to be able to successfully submit and receive bids for funding year 2024? Are there any other issues that may arise if we shift from the current approach to a centralized competitive bidding portal? Commenters are invited to raise any operational, legal, logistical, or administrative concerns that we have not already identified.

34. We propose amending section 54.503 of the Commission's rules to require service providers to submit bids responsive to FCC Forms 470 in a bidding portal. We seek comment on other related rule changes, including the proposal for USAC to withhold bids from applicants for a minimum period and to require applicants to submit competitive bidding compliance documentation at the time they seek E-Rate funding by submitting FCC Forms 471. We seek comment on the Draft Proposed Rules listed in Appendix A, and whether there are other conforming rule changes that the Commission should consider. Relatedly, we seek comment on any impacts these changes, if adopted, would or should have on existing E-Rate program forms and the certifications to those forms.

35. Finally, we propose to make an additional minor amendment to section 54.503(b) of the Commission’s rules which incorrectly indicated that the exemption to the E-Rate competitive bidding requirements is in section 54.511(c) when instead it is referenced in 54.503(e). Are there other rule changes that may be needed as a result of our proposals?

36. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁶⁸ 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 considerations⁶⁹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

IV. PROCEDURAL MATTERS

37. *Initial Paperwork Reduction Act of 1995 Analysis.* This Notice of Proposed Rulemaking may contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995.⁷⁰ If the Commission adopts any new or modified information collection requirements, they 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 new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,⁷¹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁷²

38. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980 (RFA),⁷³ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Notice of Proposed Rulemaking. The IRFA is contained in Appendix B.

39. *Ex Parte Presentations—Permit-But-Disclose.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.⁷⁴ 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* was made, and (2) summarize all data presented and arguments made during the

⁶⁸ 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.

⁶⁹ 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).

⁷⁰ Public Law 104-13.

⁷¹ Public Law 107-198.

⁷² 44 U.S.C. § 3506(c)(4).

⁷³ 5 U.S.C. § 603.

⁷⁴ 47 CFR §§ 1.1200 *et seq.*

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 filing 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 section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the Commission's rules 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.

40. *Comment Filing Instructions.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document in WC Docket No. 21-455. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).⁷⁵

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- 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 Federal Communications Commission, 45 L Street NE, 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. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

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

42. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Washington, D.C., 20554.

⁷⁵ *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

43. *Additional Information.* For additional information on this proceeding, contact Cara Voth, Cara.Voth@fcc.gov or (202) 418-0025, of the Office of Managing Director, or Joseph Schlingbaum, Joseph.Schlingbaum@fcc.gov or (202) 418-0829, of the Wireline Competition Bureau.

V. ORDERING CLAUSES

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

45. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Notice of Proposed Rulemaking on or before 60 days from publication of this item in the Federal Register, and reply comments on or before 90 days from publication of this item in the Federal Register.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**Draft Proposed Rules for Public Comment**

The Federal Communications Commission proposes to amend Part 54 of Title 47 of the Code of Federal Regulations as follows:

PART 54 — UNIVERSAL SERVICE**Subpart F — Universal Service Support for Schools and Libraries**

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

§ 54.503 Competitive Bidding Requirements.

* * * * *

(b) Competitive bid requirements. Except as provided in § 54.503(e), 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 and local competitive bid requirements and are not intended to preempt such state or local requirements.

* * * * *

2. Section 54.503(c)(4) is amended to read as follows:

(4) After posting on the Administrator's Web site an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. Providers of services shall not respond to a request for services directly to the requesting entity and shall not reveal responses to other parties, including other providers of services, but shall submit responses through a secured Web site portal ("bidding portal" or "bid portal") managed by the Administrator. The requesting entity shall then wait at least 28 days from the date on which its description of services is posted on the Administrator's Web site before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

* * * * *

3. Section 54.503(c)(5) is added as follows:

(c) * * *

(5) Service providers shall respond to requests for services through a secured Web site portal ("bidding portal" or "bid portal") managed by the Administrator, by uploading bids into the portal. Service providers will not have access to the bids of other service providers. Service providers may anonymously submit questions or other inquiries to applicants through the bidding portal, to which applicants must respond during the competitive bidding process. No communication between service providers and applicants related to the competitive bid or the competitive bidding process is permitted outside of the bidding portal during the competitive bidding process. All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.

(6) After making commitments with the selected providers of services, and prior to submitting an FCC Form 471 seeking to receive discounts on eligible services, eligible schools, libraries, or consortia shall upload the following to the bidding portal:

(A) Competitive bidding documents. Applicants must submit documentation to support their certifications that they have carefully considered and selected the most cost-effective bid with price being the primary factor considered, including the bid evaluation criteria, and the following documents (as applicable, and to the extent not already captured and stored as part of competitive bidding process): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated the bids (along with their title/role/relationship to the applicant), memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with the service providers prior to and during the competitive bidding, evaluation, and award phase of the process.

(B) Contracts or other documentation. All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected; costs for which support is being requested; and the term of the service agreement(s) if applicable (i.e., if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated after the Allowable Contract Date (ACD) by the applicant. If the services are provided by another legally binding agreement or on a month-to-month basis, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

* * * * *

APPENDIX B**Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA)⁷⁶ 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 this Modernizing the E-Rate Program for Schools and Libraries Program, et al, Notice of Proposed Rulemaking (Notice). Written comments are requested on this IRFA. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁷⁷ In addition, the Notice and IRFA (or summaries thereof) will be published in the *Federal Register*.⁷⁸ Responsive comments must be identified as responses to the IRFA and must be filed on or before 30 days from publication of this item in the Federal Register. Reply comments to the IRFA must be filed on or before 60 days from publication of this item in the Federal Register.

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

2. The rules we propose in this Notice are directed at improving the competitive bidding process for the E-Rate program. The new requirements, if adopted, would require service providers to submit bids in response to requests for services into a bidding portal managed by the Universal Service Administrative Company. The requirements, if adopted, may also require an applicant to wait for a period of time before it can review service providers' responsive bids. The proposed rules would also require E-Rate applicants to submit competitive bidding documentation into the bidding portal to help demonstrate compliance with the rules, e.g., bid comparison documentation. One of the objectives of the proposed rule changes and implementation bidding portal is to assist applicants in complying with the competitive bidding requirements and related documentation requirements.

B. Legal Basis

3. The legal basis for the Notice is contained in sections 1 through 4, 201, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201, 254, 303(r), and 403.

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

4. 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.⁷⁹ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸⁰ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁸¹ A small business

⁷⁶ 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).

⁷⁷ See 5 U.S.C. § 603(a).

⁷⁸ See *id.*

⁷⁹ 5 U.S.C. § 603(b)(3).

⁸⁰ 5 U.S.C. § 601(6).

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

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).⁸²

5. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.⁸³ 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.⁸⁴ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.⁸⁵

6. 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.”⁸⁶ 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.⁸⁷ Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.⁸⁸

7. 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.”⁸⁹ U.S. Census Bureau data from the 2017 Census of Governments⁹⁰ indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.⁹¹ Of this number, there were

⁸² Small Business Act, 15 U.S.C. § 632.

⁸³ See 5 U.S.C. § 601(3)-(6).

⁸⁴ See SBA, Office of Advocacy, “What’s New With Small Business?”, <https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf> (Sept. 2019).

⁸⁵ *Id.*

⁸⁶ 5 U.S.C. § 601(4).

⁸⁷ The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C. § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. See Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

⁸⁸ See Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

⁸⁹ 5 U.S.C. § 601(5).

⁹⁰ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

⁹¹ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local

(continued....)

36,931 general purpose governments (county,⁹² municipal and town or township⁹³) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts⁹⁴ with enrollment populations of less than 50,000.⁹⁵ 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.”⁹⁶

1. Schools and Libraries

8. As noted, a “small entity” includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”⁹⁷ 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 12.⁹⁸ A library includes “(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.”⁹⁹ For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.¹⁰⁰ Certain other statutory definitions apply as well.¹⁰¹ The SBA has defined for-profit, elementary and secondary schools having \$12 million or less and libraries having \$16.5 million

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governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). *See also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

⁹² See *id.* at Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

⁹³ See *id.* at Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

⁹⁴ See *id.* at Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10]. <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. *See also* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

⁹⁵ 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.

⁹⁶ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

⁹⁷ 47 CFR § 54.500.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

or less in annual receipts as small entities.¹⁰² In funding year 2017, approximately 103,699 schools and 11,810 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 103,699 schools and 11,810 libraries might be affected annually by our action, under current operation of the program.

2. Telecommunications Service Providers

9. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."¹⁰³ The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.¹⁰⁴ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.¹⁰⁵ Of this total, 3,083 operated with fewer than 1,000 employees.¹⁰⁶ Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *All Other Telecommunications.* The "All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.¹⁰⁷ 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.¹⁰⁸ Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.¹⁰⁹ The SBA has developed a small business size standard for "All Other Telecommunications", which consists of all such firms with annual receipts of \$35 million or less.¹¹⁰ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the

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

¹⁰³ See U.S. Census Bureau, *2017 NAICS Definition*, "517311 Wired Telecommunications Carriers," <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹⁰⁴ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

¹⁰⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSS2, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, [https://data.census.gov/cedsci/table?text=EC1251SSS2&n=517110&tid=ECNSIZE2012\(EC1251SSS2&hidePrevious=true&view=false](https://data.census.gov/cedsci/table?text=EC1251SSS2&n=517110&tid=ECNSIZE2012(EC1251SSS2&hidePrevious=true&view=false).

¹⁰⁶ *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.

¹⁰⁷ See U.S. Census Bureau, *2017 NAICS Definition*, "517919 All Other Telecommunications," <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See 13 CFR § 121.201, NAICS Code 517919.

entire year.¹¹¹ Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999.¹¹² Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

11. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.¹¹³ The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.¹¹⁴ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.¹¹⁵ Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed of 1000 employees or more.¹¹⁶ Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities.

12. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite).¹¹⁷ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹¹⁸ For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year.¹¹⁹ Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more.¹²⁰ Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless

¹¹¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePreview=false>.

¹¹² *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.

¹¹³ 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>.

¹¹⁴ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

¹¹⁵ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

¹¹⁶ *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.

¹¹⁷ 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>.

¹¹⁸ See 13 CFR § 121.201, NAICS Code 517312 (previously 517210).

¹¹⁹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517210, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517210&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false&vintage=2012>.

¹²⁰ *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.

telephony.¹²¹ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.¹²² Therefore, more than half of these entities can be considered small.

3. Internet Service Providers (ISPs)

13. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.¹²³ Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.¹²⁴ The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.¹²⁵ U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.¹²⁶ Of this total, 3,083 operated with fewer than 1,000 employees.¹²⁷ Consequently, under this size standard the majority of firms in this industry can be considered small.

14. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications.¹²⁸ The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of \$35 million or less.¹²⁹ For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.¹³⁰ Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.¹³¹ Consequently, under this size standard a majority of firms in this industry can be considered small.

¹²¹ See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

¹²² *Id.*

¹²³ See U.S. Census Bureau, 2017 NAICS Definition, “517311 Wired Telecommunications Carriers”, <https://www.census.gov/naics/?input=517311&year=2017&details=517311>.

¹²⁴ *Id.*

¹²⁵ See 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

¹²⁶ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, <https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePrevious=false>.

¹²⁷ *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.

¹²⁸ See U.S. Census Bureau, 2017 NAICS Definition, “517919 All Other Telecommunications,” <https://www.census.gov/naics/?input=517919&year=2017&details=517919>.

¹²⁹ See 13 CFR § 121.201, NAICS Code 517919.

¹³⁰ See U.S. Census Bureau, 2012 Economic Census of the United States, Table ID: EC1251SSSZ4, *Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the U.S.: 2012*, NAICS Code 517919, <https://data.census.gov/cedsci/table?text=EC1251SSSZ4&n=517919&tid=ECNSIZE2012.EC1251SSSZ4&hidePrevious=false>.

¹³¹ *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.

4. Vendors of Internal Connections

15. *Vendors of Infrastructure Development or Network Buildout.* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are “Radio and Television Broadcasting and Wireless Communications Equipment” with a size standard of 1,250 employees or less¹³² and “Other Communications Equipment Manufacturing” with a size standard of 750 employees or less.¹³³ U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.¹³⁴ Of that number, 828 establishments operated with fewer than 1,000 employees, and 7 establishments operated with between 1,000 and 2,499 employees.¹³⁵ For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012, show that 383 establishments operated for the year.¹³⁶ Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees.¹³⁷ Based on this data, we conclude that the majority of Vendors of Infrastructure Development or “Network Buildout” are small.

16. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.¹³⁸ These products may be stand-alone or board-level components of a larger system. Examples of products made by these

¹³² See 13 CFR § 121.201, NAICS Code 334220. See also U.S. Census Bureau, *2017 NAICS Definition, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334220&year=2017&details=334220>.

¹³³ See 13 CFR § 121.201, NAICS Code 334290. See also U.S. Census Bureau, *2017 NAICS Definition, NAICS Code “334290 Other Communications Equipment Manufacturing”*, <https://www.census.gov/naics/?input=334290&year=2017&details=334290>.

¹³⁴ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334220&vintage=2012&hidePreview=false>.

¹³⁵ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

¹³⁶ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334290, <https://data.census.gov/cedsci/table?tid=ECNSIZE2012.EC1231SG2&y=2012&n=334290&vintage=2012&hidePreview=false>.

¹³⁷ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

¹³⁸ See U.S. Census Bureau, *2017 NAICS Definition, “334210 Telephone Apparatus Manufacturing”*, <https://www.census.gov/naics/?input=334210&year=2017&details=334210>.

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.¹³⁹ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which consists of all such companies having 1,250 or fewer employees.¹⁴⁰ U.S. Census Bureau data for 2012 show that there were 266 establishments that operated that year.¹⁴¹ Of this total, 262 operated with fewer than 1,000 employees.¹⁴² Thus, under this size standard, the majority of firms in this industry can be considered small.

17. *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.¹⁴³ 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.¹⁴⁴ The SBA has established a small business size standard for this industry of 1,250 employees or less.¹⁴⁵ U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year.¹⁴⁶ Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.¹⁴⁷ Based on this data, we conclude that a majority of manufacturers in this industry are small.

¹³⁹ *Id.*

¹⁴⁰ See 13 CFR § 121.201, NAICS Code 334210.

¹⁴¹ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334210,

<https://data.census.gov/cedsci/table?n=334210&tid=ECNSIZE2012.EC1231SG2&hidePreview=false&vintage=2012>

¹⁴² The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies.” An establishment is a single physical location at which business is conducted and/or services are provided. It is not necessarily identical with a single firm, company or enterprise, which may consist of one or more establishments. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the number of small businesses. U.S. Census Bureau data does not provide information on the number of firms for this industry.

¹⁴³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of establishments that meet the SBA size standard of employment of 1,250 or fewer employees.

¹⁴⁴ 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>.

¹⁴⁵ *Id.*

¹⁴⁶ See 13 CFR § 121.201, NAICS Code 334220.

¹⁴⁷ See U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1231SG2, *Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012*, NAICS Code 334220,

<https://data.census.gov/cedsci/table?text=EC1231SG2&n=334220&tid=ECNSIZE2012.EC1231SG2&hidePreview=false>.

¹⁴⁸ *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.

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

18. The proposal under consideration in the Notice would require service providers that seek to bid on requests for services in the E-Rate program, bid in a portal. An additional proposal would require E-Rate program applicants to submit bidding documentation into the bidding portal before they seek funding for eligible services to demonstrate compliance with program rules for competitive bidding. The records that would be requested for submission into the portal are the same records that program participants must retain and must produce upon request to the Commission, USAC, and other entities with authority over the participants.¹⁴⁸

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

19. 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.”¹⁴⁹

20. In this Notice, we seek comment on a reform to the E-Rate program. We seek to update program rules and administration for applicants and service providers that participate in the E-Rate program and therefore must follow the E-Rate competitive bidding requirements. We recognize that our proposed rules would impact small entities. The rules we propose may decrease recordkeeping burdens on small entities and may increase reporting burdens on small entities.

1. Proposed rules that lessen reporting burdens

21. *Service providers required to submit bids on services in bidding portal.* By requiring bidding to take place in the portal, the portal would capture and save the bids, as well as any related applicant and service provider correspondence. While this may not eliminate recordkeeping requirements, it should serve to make compliance with these requirements less burdensome.

2. Proposed rules that increase reporting burdens

22. *Compliance burdens.* Service providers currently bid to provide services in the E-Rate program in a variety of ways, and the bidding portal requirement may be in addition to bidding requirements that may exist outside of universal service program rules. Implementing our proposed rules may also impose some burden on small applicant entities by requiring them to submit competitive bidding compliance documentation in the portal before seeking funding for requested services.

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

23. None.

¹⁴⁸ See, e.g., 47 CFR § 54.515.

¹⁴⁹ 5 U.S.C. § 603(c)(1) – (c)(4).

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Promoting Fair and Open Competitive Bidding in the E-Rate Program*, WC Docket No. 21-455, Notice of Proposed Rulemaking (December 14, 2021).

For more than two decades, E-Rate has been a powerhouse. It is our nation's largest education technology program, and it has been the force behind making sure that schools and libraries in every corner of this country have access to high-speed broadband. But great programs do not thrive without continuous review and care. Today's effort is part of that care. We begin a rulemaking to improve E-Rate by establishing a central document repository to support competitive bidding in the program. We take this step in response to a review from the Government Accountability Office and the agency's own Inspector General recommending that we do so. I look forward to the record that develops. I also look forward to continuing to take steps to strengthen this program—and expanding the good it can do.

For their work to strengthen E-Rate for schools and libraries across the country, I want to thank Allison Baker, Philip Bonomo, Bryan Boyle, Adam Copeland, Justin Faulb, Gabriela Gross, Jesse Jachman, Sue McNeil, Kris Monteith, Ryan Palmer, Joseph Schlingbaum, Johnnay Schrieber, and Hayley Steffen of the Wireline Competition Bureau; Dan Daly, Mark Stephens, and Cara Voth of the Office of Managing Director; Valerie Hill, Richard Mallen, Linda Oliver, and Chin Yoo of the Office of General Counsel; Mark Azic, Jonathan Campbell, Octavian Carare, Alex Espinoza, Eric Ralph, Michelle Schaefer, Emily Talaga, Shane Taylor, and Margaret Wiener of the Office of Economics and Analytics; and Maura McGowan of the Office of Communications Business Opportunities.