



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 02-6, 96-45 and 97-21; FCC 23-56; FRS ID 160342]

Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on rule changes and clarifications suggested by commenters to further streamline and improve the application process for all E-Rate applicants, including Tribal and other small, rural entities. The Commission expects that these measures will provide a meaningful difference for Tribal communities, especially Tribal libraries that seek to participate in the E-Rate program.

DATES: Comments are due on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reply comments are due on or before [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments. You may submit comments, identified by CC Docket Nos. 02-6, 96-45, 97-21, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings at its headquarters. 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>.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).
- Availability of Documents: Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Roddy johnny.rodny@fcc.gov or Kate Dumouchel kate.dumouchel@fcc.gov in the Telecommunications Access Policy Division, Wireline Competition Bureau, 202-418-7400 or TTY: 202-418-0484. Requests for accommodations should be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service, and Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Further Notice of Proposed Rulemaking (*FNPRM*) in CC Docket Nos. 02-6, 96-45 and 97-21; FCC 23-56, adopted July 20, 2023 and released July 21, 2023. The Commission also released a companion Report and Order (*Order*) in CC

Docket Nos. 02-6, 96-45 and 97-21; FCC 23-56, adopted July 20, 2023 and released July 21, 2023. The full text of this document is available for public inspection during regular business hours at Commission's headquarters 45 L Street, NE, Washington, DC 20554 or at the following Internet address:
<https://docs.fcc.gov/public/attachments/FCC-23-56A1.pdf>.

I. Introduction

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

II. Further Notice of Proposed Rulemaking

2. Consistent with the changes adopted in the companion *Order*, in the *FNPRM*, the Commission seeks comment on the discrete issues that may further simplify the administration of the E-Rate program and reduce burdens for all applicants, including Tribal and other small, rural entities. Specifically, to continue meeting the program's performance goal of making the E-Rate application process and other E-Rate processes fast, simple, and efficient, the Commission seeks comment on a number of suggestions raised by commenters in response to the *Tribal E-Rate NPRM*, In the Matter of Schools and Libraries Universal Support Mechanism; Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 02-6, 96-45, 97-21, Notice of Proposed Rulemaking, rel. Feb. 17, 2023, FCC 23-10, which sought

comment on streamlining or simplifying the program.

3. The Commission remains committed to protecting the integrity of its programs. As the Commission considers proposals that look to further simplify the administration of the E-Rate program and reduce barriers that may inhibit Tribal and other small, rural applicants from participating in the program, the Commission notes its intention that reducing barriers does not mean reducing its commitment to maintaining the integrity of the E-Rate program. The Commission utilizes several different resources at its disposal to ensure that protections are in place prior to implementation of any rules regarding the oversight and administration of E-Rate, as well as investigating and rooting out bad actors from the program. The Commission intends for the Wireline Competition Bureau (Bureau) to continue coordinating with the Enforcement Bureau, the Office of Managing Director, the Office of General Counsel, the Office of Economics and Analytics and other Commission resources to ensure the E-Rate program is protected. Further, the Commission intends that the Bureau and other relevant Commission offices continue consultation with other entities, such as the Government Accountability Office (GAO) and the FCC Office of Inspector General, that have a shared interest in maintaining the integrity and improving the operations of the Commission's programs. Where possible, the Commission will strive to incorporate the recommendations of the various entities in the decisional documents in an effort to establish robust protections against waste, fraud, and abuse. The Commission seeks comment on these commitments and how best to ensure that any of the proposals herein maintain and enhance safeguards to protect the integrity of the E-Rate program. For example, do commenters believe it would be beneficial to compile and make available recommendations that were submitted as part of such consultations?

4. **Updating Eligible Services.** *License/Software Distinction.* The Commission first seeks comment on allowing all eligible multi-year software-based services that are purchased with category two equipment to be requested and reimbursed in the same manner. Currently, software-based services are eligible as Internal Connections service when they are necessary for the operation of a piece of eligible Internal Connections equipment, such as a client access license. However, bug fixes, security patches, and technical assistance-based software services are eligible as Basic Maintenance of Internal Connections (BMIC) services. As explained in the *Sixth Report and Order*, [75 FR 75393 \(12/03/2010\)](#),

“[r]equests for basic maintenance will continue to be funded . . . if, but for the maintenance at issue, the service would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such service.” Applicants are currently required to amortize the cost of BMIC-related services, including for example, software-based technical assistance services, across the length of the BMIC multi-year contract, and cannot receive full funding for the BMIC software-based technical assistance services in the first year of the contract, even if the applicant has prepaid for the multi-year BMIC software service with the purchase of the category two equipment. This means that the current E-Rate rules allow the applicant to receive full funding for an internal connections-related multi-year software service in the first funding year, but for other multi-year software-based services for technical assistance, like bug fixes, which are considered to be BMIC services, the applicant must split the cost of the multi-year software service evenly for each funding year, even if the applicant was required to prepay for the multi-year BMIC software-based services at the start of the contract period. This procedure stems from the Commission’s efforts in 2010 to only have the E-Rate program pay for basic maintenance services that are actually provided over the course of the funding year, and to prevent the E-Rate program from being used to prepay for BMIC services that were never used or needed by the applicant.

5. In their comments to the *Tribal E-Rate NPRM*, the State E-Rate Coordinators’ Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters) explain that this distinction in the treatment of multi-year software-based services causes confusion during the competitive bidding process, where applicants are concerned about funding denials if they select the incorrect service subcategory (i.e., use internal connections instead of BMIC) on FCC Form 470, and places a burden on applicants that requires them to divide the cost of a prepaid multi-year BMIC software-based service request across multiple funding years. The Commission therefore seeks comment on the proposal to treat these particular software-based services (e.g., bug fixes, security patches, and software-based technical assistance) in the same way it currently treats eligible Internal Connections software-based services, like client access licenses. The Commission also proposes to allow applicants that sought bids on their FCC Form 470 only for Internal Connections software services to be permitted to request funding for their

multi-year BMIC software-based services without being found to have violated its competitive bidding rules for failing to check the correct box for this software request, and to allow applicants requesting these types of software-based services to be funded based on how the software-based service is contracted and invoiced with the service provider (e.g., funding a multi-year software-based service for bug fixes in a single funding request during the first year of service if the service is paid for in that first year). The Commission seeks comment on these proposals.

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

7. One approach is to allow applicants to request twelve months of service from the higher-priced service offering, and then file a post-commitment request to change the service provider once the cutover dates are known. The Commission notes that this suggestion results in the service request being funded higher than the actual costs of the services, and may inflate the overall demand for E-Rate support for that year. However, the Commission seeks comment on whether this is still the best way to allow for mid-year service provider transitions, or whether it should consider alternative guidance or a rule change regarding these types of mid-year transitions. For instance, should the Commission consider amending its service substitution rules to allow applicants in this unique situation to request a service substitution that will result in an increase in the pre-discount price if the transition occurs at a different date than had been anticipated and requested? If so, should the Commission require applicants to include an explanation in their service substitution request documenting the reasons that the change resulted in an increase in the

pre-discount price? Should the Commission limit USAC's ability to grant such a service substitution request on the availability of funding for the applicable funding year under the funding cap? Based on prior years' data, the Commission does not expect this to be a large amount of funding, but it generally does not increase annual E-Rate demand post-commitment. Are there any other issues that the Commission should take into account by allowing applicants to potentially receive a commitment amount higher than the one originally approved for the services? How might such increases in funding impact the annual E-Rate cap adopted by the Commission? Are there budget control measures that the Commission should adopt to ensure this new proposal does not cause the Commission to exceed the cap? The Commission seeks comment on these questions and how mid-year service provider transitions should be handled in the E-Rate program.

8. *Duplicative Services.* The Commission next seeks comment on the Joint Commenters' request for additional clarification regarding cost-effective purchasing on services from two different providers. In the *Second Report and Order*, [68 FR 36931 \(06/20/2003\)](#), the Commission found that requests for duplicative services, or services that provide the same functionality for the same population in the same location during the same time, are ineligible and contravene the program requirements that discounts be provided based on the reasonable needs and resources of the applicant. It also found that requests for duplicative services are not cost-effective, but the Commission recognized that determining whether particular requests are functionally equivalent depends on the circumstances. In the *Macomb Order*, In the Matter of Requests for Review by Macomb Intermediate School District, Technology Consortium, Clinton Township, MI, Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, rel. May 8, 2007, FCC 07-64, USAC denied a funding request from the Macomb Intermediate School District Technology Consortium, which requested T-3 connections to provide Internet access to its school district from three separate service providers. The Commission agreed that the school district violated § 54.511 of the Commission's rules by not selecting the most cost-effective service offering among the bids considered, but provided the school district with funding for all three T-3 connections at the amount associated with the least expensive of the three providers.

9. The Joint Commenters request clarification that applicants may seek needed services from multiple providers as part of the same procurement, so long as the applicant is limited to E-Rate

funding based on the least expensive service when one provider could have met all the applicant's needs. The Commission seeks comment on this proposal and the desire by schools to purchase services from multiple providers in the same procurement. How often is the scenario in the *Macomb Order* present in current school network configurations? How can USAC best evaluate whether applicants need the services requested from multiple providers, or whether the services are actually duplicative, such as requests for redundant or failover connections? What kind of documentation can applicants and/or service providers use to demonstrate that the services are not duplicative services (i.e., redundant or failover connections)? What safeguards can the Commission use to only fund services that are needed and are being used by the applicant? The rules require that price must be the primary factor in considering which service offering is the most cost-effective, but should the Commission require price to be the only factor in order to ensure applicants select the least expensive service option in these scenarios when the applicants wishes to use multiple providers for the requested services? Are additional safeguards needed to ensure competitive bidding is still effective for ensuring cost-effective services when applicants seek to contract with multiple service providers for the requested services? What information or data may need to be collected on the funding application forms to demonstrate the requested services are needed and are not duplicative services? Are there other issues that the Commission should consider in allowing multiple service providers to be selected for the same procurement and requested services? Finally, the Commission also seeks comment on whether further guidance is needed for applicants seeking redundant or resilient circuits provided by a single carrier. While redundant circuits would be considered duplicative, are there any unique types of arrangements or network configurations being used that might be needed and how can applicants and/or service providers document the need?

10. *Other Simplification Opportunities.* The Commission seeks comment on other changes to the eligible services list and cost allocation requirements that could simplify the E-Rate program, particularly for new and smaller applicants. For example, should the Commission revise the eligible services list to use the same terms as used on FCC Form 470 or FCC Form 471? For instance, would it make more sense to use the terms from FCC Form 470 like fiber, cable, copper, wireless, and other in the eligible services list of data transmission and/or Internet access services, rather than listing out specific

types, like “Broadband Over Power Lines”? Are there terms in the eligible services list that should be updated or streamlined? Are there updates the Commission could make to the eligible services list process to make it easier to approve and release the list with sufficient time for review, before applicants must submit their funding applications? For cost allocation requirements, are there additional changes the Commission could make to clarify when applicants must cost allocate parts of their E-Rate funding requests? For example, are there other types of equipment similar to cabling, such as switches, for which cost allocation guidance is needed? Are there other examples of challenging cost-allocation calculations that the Commission could further streamline for Tribal applicants? Are there other examples of ancillary use unique to Tribal libraries or small entities that share buildings on which the Commission could consider providing further guidance? Are there particular challenges with cost allocation of category two services used in multipurpose buildings, that the Commission could simplify? The Commission seeks comment on these questions and other suggestions for simplifying the cost-allocation. Finally, should the Commission consider changes to the application process for certain eligible services? Specifically, the Commission seeks comment on whether a rolling category two application deadline or a second application filing window for category two services would simplify or complicate the E-Rate program. If the Commission were to consider changes to the deadline for filing for category two applications, what limits would be needed to ensure demand can be appropriately calculated?

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

12. *Competitive Bidding Exemptions.* In their comments to the *Tribal E-Rate NPRM*, the American Library Association (ALA) recommends that small libraries requesting less than \$10,000 in E-

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

13. *Mid-Year Bandwidth Increases.* The Commission next seeks comment on adopting a limited exception to its competitive bidding rules to allow applicants to seek bandwidth increases in between E-Rate funding cycles. The E-Rate program rules require applicants to competitively bid services using FCC Form 470. This process starts at least 28 days before the applicant files their E-Rate funding requests during the annual application filing window, but can occur six months before, or—in the

case or multi-year contracts—years before the funding request is submitted. Applicants are encouraged to seek bids for and sign contracts for a range of bandwidths in order to accommodate changes in bandwidth needs in the future, but applicants are not always able to anticipate changes in their bandwidth needs. In 2020, for example, the Bureau opened a second application filing window in September to address increased on-campus bandwidth needs as a result of remote learning challenges from the COVID-19 pandemic. However, in other instances, applicants may be unable to increase their bandwidth mid-funding year without potentially violating the E-Rate program competitive bidding rules.

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

15. *Providing Guidance to Applicants on When Competitive Bidding Must be Restarted.* The Commission next seeks comment on how to reduce confusion about when changes made to the information provided on FCC Form 470 or related requests for proposals (RFP) requires an applicant to restart the competitive bidding process and wait at least 28 days before selecting their service offering(s). Under the Commission's competitive bidding rules, applicants must conduct a fair and open competitive bidding process. This means that applicants must treat all potential bidders equally throughout the entire procurement process, provide all bidders access to the same information, and ensure that no bidder receives an unfair advantage. Furthermore, applicants must describe the requested services with

sufficient specificity to enable potential service providers to submit responsive bids for such services. Sometimes, the facts are clear that the requested E-Rate services were not fairly competitively bid and there was a violation of the competitive bidding rules. For example, applicants may not request E-Rate support for services that were not included on FCC Form 470. Similarly, applicants that fail to indicate the existence of a RFP have also been denied E-Rate support for suppressing fair and open competitive bidding. As such, in some instances, when applicants make a change to an FCC Form 470—such as by modifying the services being requested or by including an omitted RFP—that would change whether a service provider reviewing the original FCC Form 470 could submit responsive bids, the competitive bidding process should be restarted to allow all potential bidders the opportunity to bid based on the additional or modified information, and the applicant should wait at least 28 days after making these changes before selecting the most cost-effective service offering(s). In other cases, the Commission has granted requests for review where an applicant changed information on FCC Form 470 or associated RFP without finding a competitive bidding violation because the change did not impact potential bidders' ability to be able to submit responsive bids.

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

what type of guidance or clarifications would be helpful for the Commission to provide on when changes to FCC Form 470 and/or RFP would not result in an unfair competitive bid process and when the applicant would be required to restart their competitive bid process and wait a minimum of 28 days before selecting the most cost-effective service offering(s) after making the change or modification.

17. *Spam Bids and Bids Received After 28 Day Waiting Period.* Under the E-Rate competitive bidding rules, applicants are required to carefully consider all received bids, with price being the primary factor, and select the most cost-effective service offering. Applicants must also wait at least 28 days before selecting the most cost-effective service offerings. Applicants are permitted to set deadlines to close the competitive bid process (of at least four weeks after FCC Form 470 is filed) or establish other disqualification factors in FCC Form 470. The Joint Commenters explain that applicants are receiving more spam bids and other automated or “robo” responses to their FCC Form 470 that do not contain the information on the specific services requested by the applicant and seek guidance on whether these bid responses have to be considered and retained. They also seek guidance on whether and how long bids must be considered after the required four weeks have passed. Specifically, the Joint Commenters explain that service providers have set up automated responses to be sent, often within 24 hours, after an FCC Form 470 has been posted on USAC’s website. In addition, multiple automated bid responses may be sent to the applicant for a single FCC Form 470. However, the automated bid responses do not contain the pricing and other information requested in FCC Form 470 and require the applicant to reach out to the service provider for additional information. The Joint Commenters request that the Commission clarify that spam and other automated bid responses do not meet the definition of an authentic bid and that applicants may, but are not required to, consider spam or other automated bid responses or be required to retain copies of the spam and other automated bid responses pursuant to the document retention rule. The Joint Commenters further explain that requiring applicants to acknowledge and retain spam and other automated bid responses is an onerous burden, and that the Commission should impose some minimal responsibility on service providers to submit responsive bids to the applicants and the automated bid responses should not be used as a basis to deny funding because of a non-compliant competitive bid process.

18. For purposes of disqualifying spam or other automated bid responses or consideration of

bids received after a deadline set in FCC Form 470, the Joint Commenters request that the Commission clarify the requirements and confirm that spam and other automated bid responses do not need to be treated as bids and that applicants may rely on the 28 day allowable contract date (ACD) as the deadline for submitting bids when FCC Form 470 is silent on the bid submission deadline. In general, the Commission would expect applicants to carefully consider all bids received before the bid selection process has occurred, unless they provided a specific bid submission deadline and noted that bids received after the deadline would be disqualified on FCC Form 470. In light of the concerns raised by the Joint Commenters, the Commission first seeks comment on the types of spam and other automated bid responses that are being generated and sent to the applicant once or soon after their FCC Form 470 is posted. Please include examples of these types of bid automated bid response communications and other data regarding the frequency and number of automated responses that applicants receive after posting their FCC Form 470. The Commission seeks further comment on the Joint Commenters' request that the ACD be used as the bid response deadline when FCC Form 470 is silent on the bid submission deadline. The Commission notes that applicants are already allowed to state that bids that do not include all of the required information and/or are received after a specific deadline will be disqualified on their FCC Form 470 or in the accompanying RFP. The Commission requests further comment on why applicants are not able to add language to their FCC Form 470 that non-responsive bids will be disqualified or that bids received after the 28-day minimum waiting period will be considered late and will also be disqualified. Are changes to FCC Form 470 needed to include specific disqualification criteria that could be checked by the applicant? For example, should the Commission add a field to FCC Form 470 to allow applicants to indicate the deadline for submitting bids and any other requirement that will result in a bid being disqualified from consideration? The Commission also notes that it has an open proceeding related to a competitive bidding portal that could collect all bids that are received by the applicant and reduce confusion about these types of bids and deadlines. Procedurally, should the Commission delay taking action on the treatment of spam and other automated bid responses until after it takes action in that open proceeding, or should the Commission consider these proposals while that proceeding is still pending before the Commission? Would the proposed bidding portal be helpful as a competitive bid document repository to reduce the documentation retention related burdens on applicants? The Commission further

seeks comment on how to ensure applicants are complying with program rules to carefully consider all bids received and retain them for the appropriate ten-year document retention period, if spam or other automated bid responses are not treated as “bids.” If exceptions are made regarding the consideration and retention of certain types of bid responses, how does the Commission ensure the exception is not misused and responsive bids are not considered or retained as required by the Commission’s rules? The Commission seeks comment on all of these questions, as well as any other issues the Commission should consider to ensure the E-Rate competitive bidding process remains fair and open, and compliant with the Commission’s rules if changes or clarification is provided about what response is a bid.

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

20. *Ensuring Our Rules Recognize Tribal Law.* The Commission seeks comment on whether the E-Rate program rules should be updated to recognize that competitive bidding regulations are often imposed by Tribal as well as state and local governments. For example, the Commission’s competitive

bidding rules state that the program-specific rules “apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.” Recognizing that Tribal governments may also have procurement rules in place, should the Commission add Tribal to this list? Are there other areas of the Commission’s program rules that should be updated to recognize the Tribal government role?

21. Finally, the Commission seeks comment on other competitive bidding-related requirements the Commission should consider updating or otherwise modifying. For example, the Commission seeks comment on how product demonstrations are conducted for applicants in the E-Rate program. Should the Commission modify or provide guidance related to its gift rules to provide additional clarity around product demonstrations? What safeguards should the Commission adopt to ensure applicants are not ultimately receiving free equipment through a product demonstration that would impact conducting a fair and open competitive bidding process? In considering any such changes to the competitive bidding rules, the Commission is mindful of its commitment to protect E-Rate funds. As the Commission continues its efforts to safeguard the program and assess fraud risks to the E-Rate program, should the Commission consider how to sequence any potential modifications to its rules in light of its ongoing work to protect the program’s integrity?

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

23. *Creating an “EZ” Application Form.* In comments to the *Tribal E-Rate NPRM*, E-Rate participants explained that small library entities often require technical assistance to complete the FCC Form 471 application. ALA suggests that the Commission “create an ‘EZ’ form with simple to

understand language that also includes context-sensitive guidance and best practices to support applicants, such as including checklists and prompts to help users navigate and raise any flags for potentially incorrect entry of information.” The Commission seeks comment on this proposal and how to implement it effectively. Would such a form be available to all applicants, or would it be preferable to have a form targeted to Tribal entities or libraries? Is there any language on the FCC Form 471 application in particular that should be changed? Is any information collected on the form no longer needed? Is there additional information that should be collected to help streamline the application process? For example, should the Commission add the information currently collected on FCC Form 486 to FCC Form 471 instead? What questions are confusing to small entities, and what type of questions do small applicants require technical assistance with? Would additional system pop-ups and guidance within the online application form make a significant difference in encouraging new, small entities to apply and request funding through the E-Rate program?

24. *Simplifying the FCC Form 470 Drop-Down Menu Options.* In 2014, the Commission required all applicants and service providers to electronically file all E-Rate-related documents with USAC, adopted changes to the competitive bidding requirements for certain category one services, and amended the category two rules to fund additional services, such as managed internal broadband services (MIBS). As a result of those changes, FCC Form 470 currently has drop-down menu options that allow applicants to pick the services for which they are seeking bids in order to make it easier for service providers to search and locate relevant FCC Forms 470 to submit bids for. Despite efforts to improve the drop-down menu options, applicants and service providers continue to request changes to the drop-down menu options, and express concerns that selecting the wrong drop-down menu option(s) can result in a funding denial. Under the E-Rate program rules, applicants must conduct a fair and open competitive bidding process, seeking bids on FCC Form 470 with, at a minimum, a list of specified services for which the entity is requesting bids and sufficient information to enable bidders to reasonably determine the needs of the applicant. Under this rule, the Bureau has denied requests for review from petitioners denied funding for failing to seek competitive bids on their FCC Forms 470 for services requested on the FCC Forms 471. In addition, the Commission has established certain competitive bidding requirements for certain services, like managed internal broadband services and self-provisioned networks, in order to

ensure applicants select the most cost-effective service option. The Commission therefore seeks comment on proposals from the Joint Commenters for changes to the drop-down menu options.

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

26. Second, the Joint Commenters propose that the Commission again modify the FCC Form 470 drop-down menu options for category one services. Over the last several funding years, the Bureau and USAC have taken steps to improve the category one drop-down menu options to reduce applicant confusion. In funding year 2022, after seeking comment from E-Rate participants, the drop-down menu options specifically listing “Leased Lit Fiber” were modified as a result of continued confusion. The Joint Commenters now seek new drop-down menu options for “internet service over fiber facilities” and “data transmission over fiber facilities.” For instance, the Joint Commenters state that the USAC guidance on seeking bids for data transmission without Internet access over fiber is unclear. The Commission seeks comment on this proposal. Based on the continued confusion from changes to FCC

Form 470, the Commission is concerned that further changes to the drop-down menu options could result in greater applicant confusion. Are there ways to capture concerns about the drop-down options language without making additional changes? For example, can USAC add more guidance within the online FCC Form 470 or in trainings? Finally, are there any other ways the Commission could improve existing drop-down menu options for E-Rate applicants or participants?

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

28. FCC Form 486 has included a number of program certifications over the years, such as whether technology plans are in place, but currently only collects information related to the services' start dates and CIPA compliance. These certifications now occur in the middle of the application cycle and can result in funding reductions due to ministerial or clerical errors. The Commission seeks comment on moving the CIPA certifications to FCC Form 471 and removing the requirement to notify USAC that services have started. The Joint Commenters explain that this would be a "simple, yet effective way to streamline the program for all applicants and the Administrator, but particularly for small and new applicants." For the vast majority of applicants that are already in compliance with CIPA, the location of this CIPA certification should make no difference. While removing the requirement to notify USAC that services have started removes one possible check for USAC, the certifications on the requests for reimbursement forms already require services to have been delivered in order to seek funding, potentially making the additional notification about the start of services duplicative. If FCC Form 486 is removed for future funding years, how should the Commission modify the certifications on FCC Form 472 or FCC Form 474 to ensure services and/or equipment were delivered to and used by eligible entities? If the Commission makes changes to FCC Form 486, should it also make changes to the invoice filing deadline

to link the deadline to the date of the funding commitment decision letter? The rules currently reference the date of the FCC Form 486 Notification Letter. Alternatively, the Joint Commenters suggest that the CIPA certifications be moved to FCC Form 471 but allow FCC Form 486 to remain as an option. While the Commission may need to retain FCC Form 486 for prior funding years where the certifications were not included on that funding year's FCC Form 471, the Commission seeks more detailed comment about the benefits of keeping FCC Form 486 as an optional form for future funding years.

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

30. **Validating Discount Rate.** The Commission next seeks comment on potential ways to streamline the discount rate validation for E-Rate applicants. Eligible schools and libraries may receive discounts ranging from 20% to 90% of the pre-discount price of eligible equipment and services, based on indicators of need. Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for E-Rate eligible services and equipment than applicants with lower levels of eligibility for such programs. For example, the most disadvantaged schools, where at least 75% of students are eligible for free or reduced price school lunch, receive E-Rate support for 90% of the cost of their eligible category one purchases (that is referred to as a 90% discount). Libraries receive funding at the discount level of the school district in which they are located. Schools and libraries located in rural areas also may receive an additional 5% to 10% discount compared to entities located in urban areas. During the application review, USAC may seek data to validate an entity's discount rate, which is typically based on student enrollment and NSLP data as of October 1 prior to the filing of the application.

31. The Commission now seeks comment on how to streamline the discount rate validation process for E-Rate applicants. For the majority of applicants, their discounts do not change from funding year to funding year. Absent a request for an increase in an entity's discount rate, should the Commission adopt a presumption that discount rates do not require validation for a certain period of time (e.g., three or

five funding years)? Under such a presumption, the Commission would still need to occasionally check for certain aspects of the calculation, like when new rurality data becomes available from the U.S. Census. How does the Commission factor in such changes? Alternatively are there other changes to the discount rate the Commission should consider? The Commission also seeks comment on any relevant changes to the Community Eligibility Provision (CEP), how it may impact the E-Rate program discounts, and whether any procedures should be changed. Are there any changes the Commission should consider for states and schools in states with statewide CEP or statewide free lunch calculating their discount?

32. **Seeking Information on Other College Libraries Acting as Public Libraries.** The Commission also seeks comment on whether there are other college or university libraries, similar to the TCU libraries, that act as the public library in their community. While the Commission continues to monitor whether TCU libraries participate successfully in the E-Rate program, it seeks data and examples from stakeholders about whether this is common in other types of college or university libraries and whether it should consider further changes to its eligibility rules for libraries. One commenter suggested expanding eligibility to other college libraries that serve as public libraries in their communities. If the Commission does, what other additional restrictions or limitations should be considered? Are colleges that specifically serve communities that have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, such as Historically Black Colleges and Universities (HBCUs) or Hispanic-Serving institutions (HSIs), also serving as public libraries in any instances?

33. **Modifying E-Rate Invoice and Disbursement Standards.** *Modifying the Invoice Filing Deadline Rule.* Before 2014, invoice filing deadlines were procedural, and applicants or service providers could request and receive a 120-day invoice filing extension under certain conditions. USAC granted invoice filing extension requests that met the criteria, including requests made up to a year after the original invoice filing deadline. In the *First 2014 E-Rate Order*, 79 FR 49160 (8/19/2014), the Commission codified the invoice filing deadline, and adopted a strict standard for waiving the rule and granting extensions of the applicable invoice filing deadline. Specifically, the Commission's rules only permit USAC to grant a single 120-day extension of an invoice filing deadline, provided that the applicant or service provider submits the request on or before the invoice filing deadline for that request. USAC will automatically grant timely filed invoice filing deadline extension requests. In the interest of efficient

program administration, however, the Commission prohibited USAC from granting any additional invoice filing deadline extensions. As a result, if applicants and service providers require more time than the single 120-day extension to complete the invoicing process, they may only obtain it by seeking a waiver of the invoice filing deadline extension rule from the Commission. The Commission concluded, however, that “it is generally not in the public interest to waive [the] invoicing rules,” and the Bureau should grant waivers of the invoice filing deadline rules only under “extraordinary circumstances.”

34. As a result of this standard, applicants and service providers have filed large numbers of waivers related to invoicing errors. Under the extraordinary circumstances standard, the Bureau has denied many of those waiver requests. The Commission now seeks comment on the Joint Commenters’ proposal to slightly modify the invoice filing deadline extension rule. Specifically, they propose that applicants be allowed to seek an extension of the original invoice deadline from USAC when the request is made within 15 days of the original invoice filing deadline date. This change would allow applicants or service providers to request a one-time 120 day extension if they realize they just missed an invoice filing deadline, reducing the number of denied requests for reimbursements and waiver requests, while maintaining the codified invoice filing deadline, as the new invoice filing deadline would remain 120 days from the original invoice filing deadline, and not based on the date the extension request was filed with USAC. Because the Commission is revisiting its overall approach to the invoice filing deadline, the Commission also modifies, on an interim basis, the prior guidance provided to the Bureau regarding waivers of the existing deadline. In particular, the Bureau remains free to grant waivers that would have been granted under the prior Commission guidance as meeting the extraordinary circumstances standard. The Commission directs the Bureau to leave pending any waiver requests related to applicants or service providers that were filed within 15 days of the original invoice filing deadline for now, and it will provide further guidance regarding the disposition of those waiver requests at the resolution of this proceeding. While the Commission declines to waive the invoice deadline rule during the pendency of the rulemaking, it seeks comment on the extraordinary circumstances standard.

35. Consistent with this proposal, the Commission also seeks comment on other ways to simplify or streamline the E-Rate invoicing and disbursement process. Should the Commission consider a 30-day grace period for applicants or service providers to resubmit invoices that were timely filed

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

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

37. This practice by certain service providers of requiring the applicant to pay the full cost of the E-Rate services upfront when the applicant has elected SPI billing and is only required to pay the service the non-discounted share of costs is contrary to the clear intent of allowing SPI billing and the Commission's rules. As the Commission explained in the *Second Report and Order*, "requiring schools and libraries to pay in full could create serious cash flow problems for many schools and libraries and would disproportionately affect the most disadvantaged schools and libraries." The Commission explained that "many applicants cannot afford to make the upfront payments that the BEAR method

requires” and concluded “the potential harm to schools and libraries from being required to make full payment upfront, if they are not prepared to, justifies giving applicants the choice of payment method.” The Commission therefore seeks comment on amending its rules and certifications to make them consistent with the Commission’s intent that applicants who select the SPI invoicing method must only pay their service provider for the non-discounted share of the costs of the eligible equipment and services, and the service provider must seek the remaining discounted portion of costs from USAC and may not require full payment from the applicant as well when the SPI invoicing method is used.

38. **Seeking Comment on Program Recoveries.** In 2000, the Commission set up a framework for recovering funds committed or disbursed in violation of the Act and the Commission’s rules. USAC implemented a process for recovering funds disbursed in violation of statutory and rule violations and, in 2004, as part of the *Fifth Report and Order*, [69 FR 55097 \(09/13/2004\)](#), the Commission largely affirmed and further refined USAC’s approach when determining what amounts should be recovered by USAC and the Commission when funds have been disbursed in violation of the Commission’s E-Rate program rules. In particular, the Commission amended its rules to apply the red light rule to E-Rate applicants and service providers. Commenters note that the recovery process can be confusing, leading to untimely appeals and applications being dismissed. Specifically, commenters raised challenges with USAC dismissing pending “requests for funding commitments” if a delinquent debt is not paid within 30 days of the notice provided for in the commitment adjustment procedures.” The Commission therefore seeks comment on whether deferring action on pending E-Rate submissions without dismissing them would be appropriate while participants are on red light status. If so, what limits should be imposed to ensure timely action on the delinquent debt?

39. **Updating E-Rate Program Definitions.** Finally, the Commission seeks comment on changes to some of the program’s definitions that may be causing confusion or no longer be as relevant to the current program. The Commission also encourages E-Rate participants to provide other cleanup suggestions for the program rules.

40. **Wiring Between Buildings.** The Commission next seeks comment on amending the definition of “internal connections” and “wide area network” to allow applicants to seek funding for wiring between different schools in the same contiguous area as an internal connection. In funding year

2017, the Bureau modified the Eligibles Services List to provide guidance on the classifications of connections between buildings of a single school. In that guidance, the Bureau noted that “[c]onnections between different schools with campuses located at the same property (e.g., an elementary school and middle school located on the same property) are considered to be category one digital transmission services.” In funding year 2018, the Bureau further clarified that connections between two schools in a single building may be classified as a category two service, but rejected requests to allow the term “single school campus” in the definition of “internal connections” as allowing for a single campus containing multiple schools. Applicants remain frustrated that cabling between two schools (e.g., a high school and an elementary school) in the same location be considered category one services, which under current rules, has separate competitive bidding requirements.

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

42. *Definition of Consortium.* The Commission also seeks comment on amending the definition of “consortium” and whether to align it with the definition of “consortium” used in the Emergency Connectivity Fund program. The Commission’s E-Rate rules only allow ineligible private sector entities to join consortia if the pre-discount prices for interstate services are at tariffed rates. Given that many services have been de-tariffed over the years, the Commission seeks comment on whether this language should be removed from the E-Rate definition of consortium and the definition be aligned with the ECF definition of consortium. If so, should the Commission continue to allow private entities to be in

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

43. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

III. Procedural Matters

A. Paperwork Reductions Act Analysis

44. The Further Noticed of Proposed Rulemaking seeks comment on possible modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks

specific comment on how to further reduce the information collection burden for small business concerns with fewer than 25 employees.

45. *Ex Parte Rules – Permit but Disclose.* Pursuant to §1.1200(a) of the Commission’s rules, the Further Notice of Proposed Rulemaking shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b) of the Commission’s rules. In proceedings governed by the Commission’s rules § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g.,.doc,.xml,.ppt, searchable.pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

46. In light of the Commission’s trust relationship with Tribal Nations and its commitment to engage in government-to-government consultation with them, the Commission finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act.

However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, the Commission emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for the proceeding.

B. Initial Regulatory Flexibility Analysis

47. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the *FNPRM*. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the *Federal Register*.

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

49. In response to the *Tribal E-Rate NPRM*, the Commission received several comments suggesting ways to streamline or simplify aspects of the E-Rate program overall for all schools and libraries. In order to develop the record further on those comments, the Commission is now seeking further comment on a series of proposed ways to improve the program for schools and libraries. First, the

Commission seeks comment on updating the eligible services list by modifying the distinction between two types of eligible software, Internal Connections, such as the license to access software, and Basic Maintenance of Internal Connections (BMIC), which includes bug fixes, security patches, and technical assistance. The modification would allow applicants to receive full funding for BMIC services in the first year of the contract, instead of splitting it across multiple years. The Commission also seeks comment on the best method to aid applicants that are transitioning between two service providers during the same funding year. The Commission requests comment on ways applicants may seek services from multiple suppliers without being deemed duplicative services. The Commission also seeks information on other changes to help simplify the program, particularly for new and smaller applicants, such as revising the list of eligible services to the same terms used on FCC Forms 470 or 471. The Commission also seeks comment on changing or clarifying the competitive bidding requirements in order to streamline aspects of the application process.

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

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

52. The Commission seeks comment on streamlining how often it calculates and validates

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

53. The proposed action is authorized pursuant to sections 1 through 4, 201-202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151-154, 201-202, 254, 303(r), and 403.

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

55. The Commission’s actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes, at the outset, three broad groups of small entities that could be directly affected herein. 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. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.

56. 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.” 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. Nationwide, for tax year 2020, there were

approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

57. 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.” U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

58. Small entities potentially affected by the rules herein include Schools, Libraries, Wired Telecommunications Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Telephony, Wired Broadband Internet Access Service Providers (Wired ISPs), Wireless Broadband Internet Access Service Providers (Wireless ISPs or WISPs), Internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, and Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.

59. The potential rule changes discussed in the *FNPRM* if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since the purpose of the *FNPRM* is to streamline and simplify procedures, and improve the E-Rate program processes, the Commission anticipates that the rule modifications that may result from the matters upon which the Commission is seeking comment should reduce the economic impact of current compliance obligations on small entities. For example, modifications to funding for BMIC services would allow applicants that are small entities to receive full funding for these services during the first year of the contract, instead of splitting funding across multiple years, reducing operational costs. Revising the list of eligible services to the same terms used on FCC Forms 470 or 471 could simplify the application

process for new and small applicants. Exempting small libraries from the competitive bidding process when requested funding is less than \$10,000 would ease compliance burdens for these small entities. The Commission also seeks comment on eliminating the need to file a form before beginning to invoice the program.

60. In the *FNPRM* the Commission inquires whether there are other rule changes to the application, invoicing, or other administrative processes in the E-Rate program that could be made to specifically help new and smaller schools and libraries. For example, creating an “EZ” application form in plain language and navigation prompts that alert for potential entry errors, as well as updating drop down menu options on FCC Form 470, may reduce operational and implementation costs for small applicants. Moving CIPA certifications to FCC Form 471 and removing USAC notification through FCC Form 486 would reduce reporting obligations for small entities. In response to comments to the *FNPRM* or this IRFA, the Commission may simplify and change the forms that applicants use to apply for the E-Rate program as well as modify filing and other administrative requirements, which should ease reporting, recordkeeping, and other compliance requirements for small entities.

61. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Additionally, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the Commission seeks comment in the *FNPRM* will require small entities to hire professionals to comply. However, consistent with the Commission’s objectives to streamline and simplify the E-Rate program processes and procedures, the Commission does not anticipate that small entities will be required to hire professionals to comply with any rule modifications it adopts. The Commission expects the information it receives in comments including where requested, cost information, will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the *FNPRM*.

62. 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.”

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

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

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

66. None.

IV. Ordering Clauses

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

effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

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

List of Subjects in 47 CFR Part 54

Communications common carriers, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rules

For the reasons discussed above, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601-1609, and 1752, unless otherwise noted.

2. Section 54.500 is amended by revising the definitions of “Consortium,” “Internal Connections,” and “Wide Area Network” to read as follows:

§ 54.500 Terms and definitions.

* * * * *

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

* * * * *

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

* * * * *

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

between or among non-administrative buildings of a single library branch.

3. Section 54.503 is amended by revising paragraph (b) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

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

* * * * *

4. Section 54.504 is amended by revising paragraphs (d)(1)(iv) and (d)(2) to read as follows:

§ 54.504 Requests for services.

* * * * *

(d) * * *

(1) * * *

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

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

* * * * *

5. Section 54.514 is amended by revising paragraphs (a)(2), (b), and (c) to read as follows:

§ 54.514 Payment for discounted services.

(a) * * *

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

* * * * *

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

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

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