6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 13-184; FCC 19-58]

Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to make permanent the category two budget approach adopted in 2014 (the "category two" budget approach consists of five-year budgets for schools and libraries that provide a maximum amount of funding to support internal connections needed for Wi-Fi within school and library buildings). The Commission also seeks comment on potential modifications that could simplify the category two budget approach and decrease the administrative burden on schools and libraries, as well as how to transition to a permanent extension of the budget approach.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 45 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: You may submit comments, identified by WC Docket No. 13-184, by any of the following methods:

- Federal Communications Commission's Web Site: http://apps.fcc.gov/ecfs/. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

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: Kate Dumouchel, Wireline Competition Bureau, (202) 418-1839 or TTY: (202) 418-0484**.**

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WC Docket No. 13-184; FCC 19-58, adopted on June 28, 2019 and released on July 9, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street S.W., Washington, DC 20554 or at the following Internet address: https://www.fcc.gov/document/fcc-aims-speed-deployment-wi-fi-schools-and-libraries.

I. INTRODUCTION

1. The Commission's E-Rate program is a vital source of support for connectivity to—and within—schools and libraries. In particular, the E-Rate program provides funding for internal connections, which are primarily used for Wi-Fi, a technology that has enabled schools and libraries to transition from computer labs to one-to-one digital learning. Today, we propose to make permanent the approach adopted by the Commission in 2014 to fund these internal connections. In so doing, we seek to ensure that our nation's students and library patrons have access to high-speed broadband and further the Commission's goal of bridging the digital divide.

2. The 2014 approach, known as the "category two" budget approach, consists of five-year budgets for schools and libraries that provide a set amount of funding to support internal connections. The Commission also established a five-year test period (from funding year 2015 to funding year 2019) to consider whether the category two budget approach is effective in ensuring greater access to E-Rate discounts for internal connections.

3. Our experience over the past few years suggests that these budgets have resulted in a broader distribution of funding that is more equitable and more predictable for schools and libraries. We also see clear improvements in the way in which funding for internal connections has been administered in the five-year period since adoption of the category two budget approach. Therefore, we now propose

to make the category two budget approach permanent and seek comment on potential modifications that could simplify the budgets, decrease the administrative burden of applying for category two services, and thereby speed the deployment of Wi-Fi in schools and libraries across the country.

II. DISCUSSION

4. With the category two budget rules set to begin to expire for some applicants at the end of funding year 2019 and for all applicants at the end of funding year 2023, we are faced with a choice between continuing with the category two budget approach or returning to the two-in-five rules. Given our experience during the five-year test period and the Bureau's findings in the *Category Two Budget Report*, we (1) propose amending our rules to make permanent the category two budget approach for all applicants; (2) propose and seek comment on ways to improve the category two budget approach; and (3) seek comment on how best to transition from the five-year test period to a permanent extension of this approach.

5. First and foremost, we propose to permanently extend the category two budget approach and avoid reverting back to the two-in-five rules for all applicants. Doing so is consistent with the *Category Two Budget Report*, which generally found that the category two budget approach has provided schools and libraries with more certain and equitable funding for internal connections than under the two-in-five rules. In addition, making permanent the category two budget approach is also supported by the record received in response to the September *2017 Public Notice*. We, therefore, seek comment on our proposal to make permanent the category two budget approach and on the Bureau's overall findings in the *Category Two Budget Report*.

6. In particular, the *Category Two Budget Report* found that, under the category two budget approach, applicants have had access to category two funding every year, and no requests have been denied due to insufficient funding. By contrast, under the two-in-five rules approach, a small number of applicants exhausted available funding, with most applicants receiving no funding. Additionally, 43% of schools and 23% of libraries each year now receive category two funding as compared to 10% of applicants under the two-in-five rules. Moreover, the category two budget approach has generally resulted in a more equitable distribution of funding that better approximates the makeup of E-Rate

applicants, in comparison to the distribution under the two-in-five rules approach where funding disproportionately went to urban schools. Category two support has been disbursed in all fifty states and five territories and to applicants at all discount levels. We seek comment on these and other findings in the *Category Two Budget Report* and on the proposal to permanently extend the category two budget approach.

7. We also seek comment on the costs and benefits associated with making permanent the category two budget rules. Do the benefits of the category two budget approach outweigh the burdens associated with administering them? We also seek comment more generally on the costs associated with the budgets overall and the appropriate path forward.

8. We propose extending several aspects of the current category two budget approach, including maintaining the eligibility of existing category two services and keeping the existing budget multipliers for schools and libraries. We also seek comment on other potential ways to improve the budget approach, including moving to district-wide budgets and simplifying the budget calculations. Finally, we seek general comment on ways to decrease the burden of applying for category two services and improve administration of category two budgets for both applicants and USAC.

9. *Eligible Services*. In 2014, the Commission made managed internal broadband services, caching, and basic maintenance of internal connections eligible for category two support under the category two budget approach through funding year 2019. For each service, the Commission found that the budgets allayed concerns about wasteful spending and provided applicants with greater flexibility to determine their own needs. Consistent with the Commission's determination in 2014 to make certain services eligible for category two support given the budgets' ability to prevent excessive spending, we propose extending the eligibility of managed internal broadband services, caching, and basic maintenance of internal connections under the permanent category two budget approach we propose today. We seek comment on this proposal. Further, are there additional services that we should make eligible for category two funding or any other issues regarding category two eligible services we should consider?

10. *Budget Levels*. In the *Category Two Budget Report*, the Bureau found that the category two budget approach appears to be sufficient for most schools and libraries with approximately half of

schools and most libraries having used less than half of their allocated five-year budget and a supermajority of schools and libraries having used less than 90% of their budgets. Based on this finding, we propose maintaining the existing budget multipliers for the category two budget approach. Specifically, over a five-year funding cycle, schools would be eligible to receive up to $150 (pre-discount) per student and libraries are eligible to receive up to $2.30 or $5.00 (pre-discount) per square foot (depending on their Institute for Museum and Library Services (IMLS) locale codes). Entities with low student population or small square footage would receive a budget floor of $9,200 over five funding years. We recognize that student count, building age, geography and other factors vary from entity to entity, and as such, no budget multiplier will perfectly fit the category two budget needs for every school and library in the country. Nevertheless, we expect that, on balance, maintaining the existing multipliers will fit the needs of the majority of applicants.

11. We seek comment on this proposal or, in the alternative, whether to change these per-student or per-square foot budget multipliers, particularly for entities that may have participated at a lower rate or that may face higher costs for internal connections. For instance, we seek comment on whether the minimum budget floor should be increased and, if so, what the appropriate budget floor level should be to address the needs of smaller entities and increase their participation in the program. Would, for example, increasing the budget floor to $25,000 as some commenters suggested in response to the *2017 Public Notice* be a more appropriate budget floor? Based on requests from funding years 2015 to 2018, schools with an enrollment of 190 students or more participate at an 80% rate, which corresponds to a pre-discount budget of approximately $30,000, roughly three times the current funding floor, compared with those at the funding floor, which participate at a 48% rate. Would raising the budget floor to correspond with schools that participate at a higher rate be an appropriate budget floor level?

12. Similarly, we seek comment on whether to adjust the budget multipliers for entities that may experience higher costs due to their geographic location. For example, the current budget multipliers appear to disadvantage rural libraries, leaving them with less than half the category two budget support per square foot than their urban counterparts despite often smaller square footage. Should we maintain the increased budget multiplier for libraries in urban areas (i.e., $5.00 per square foot), or should we set a

higher budget multiplier for rural libraries, which is currently $2.30 per square foot? Commenters should submit specific data and models to support their arguments that additional funding is necessary, including the relative importance of any particular factors such as rural or remote geography, building age, or low student population. For example, to the extent that entities in remote or Tribal areas or communities face higher category two costs, we seek data to assist the Commission in determining the appropriate budget multipliers.

13. *District-Wide or Library System-Wide Budget Calculations.* We seek comment on moving from a per-school or per-library budget to a per-district or per-system budget for category two services. In 2014, the Commission adopted per-entity budgets, requiring districts to calculate budgets for each school in the district based on the number of students in the school, and for library systems to calculate budgets for each of its library outlets based on the square footage of that outlet. Stakeholders have consistently commented on the administrative difficulties associated with managing these per-entity budgets. For instance, many school districts have buildings of different ages or construction materials, and therefore some entities end up with too large of a budget, while others end up with an insufficient budget. As such, stakeholders have recommended moving to a district-wide or library system-wide budget that is calculated using the total number of students in the district or all of the buildings in the library system. Under this approach, a district would calculate its category two budget and then decide how and where category two E-Rate support should be directed.

14. There are several potential benefits to this approach. First, as commenters contended in response to the *2017 Public Notice*, moving to a district-wide calculation would streamline the application process for category two services from start to finish, simplifying the budget calculations, the FCC Form 471 application, the PIA reviews of those applications, and the FCC Form 500 cancellation process. Such a calculation could also simplify some of the more complicated issues that applicants face when seeking E-Rate support. For example, a district-wide budget calculation could largely eliminate the number of applicants that estimate student counts at new schools if the number of students in the district is unchanged despite a new school being built. Similarly, would a district-wide budget calculation simplify the application process by eliminating the need for school districts to count part-time students given that

they would have the flexibility to allocate funding as they see fit? Moreover, a district-wide calculation should simplify the review of applications where there are shared services by E-Rate eligible entities. Under the current approach, cost allocation between the budgets of the entities sharing the service is required, adding to the applicant burden. Finally, calculating budgets on a district-wide basis would afford local entities that are familiar with the needs of their schools the opportunity to leverage that knowledge in making determinations about the efficient and effective allocation of E-Rate funds in fulfillment of the program's objectives and goals. We seek comment on each of these potential benefits and how they would impact applicants. What are the other potential benefits that could be realized in using district-wide budgets?

15. We also seek comment on the costs of moving to district-wide budgets, including with respect to the allocation and distribution of category two funding. For instance, under a district-wide budget approach, there is a risk that fewer entities will receive category two E-Rate support if school districts elect to request funding only for certain schools. For example, in some states, charter schools are considered a part of a school district, while in others, they are independent from the district. For charter school applicants that are subject to school district administration, are there risks that category two E-Rate support requested by the school district will be unfairly distributed among the schools in the district? We seek comment on these risks and whether any safeguards could be used to ensure that funding is available for all eligible schools.

16. We also seek comment on how a district-wide budget approach should be administered. For example, how should applicants and USAC determine which entities are part of a district for purposes of applying for and setting district-wide category two budgets? In particular, some parochial schools and charter schools apply as a group for purposes of calculating a district-wide discount rate under the Commission's rules. Should we consider using a similar approach when setting district-wide budgets for these entities? Further, what would happen if districts combine or separate during the five-year budget cycle? Are there other issues we should consider, including any rules or procedures that would need to be modified, under a district-wide category two budget approach?

17. We also seek comment on whether the same approach is appropriate for library systems.

In general, would library systems benefit from a system-wide budget in the same way schools might? Our rules also provide two budget multipliers for libraries (i.e., \$2.30 or \$5.00 per square foot), depending on the library's IMLS locale code. Would this require a modification in order for all library outlets in a system to share the same locale code? If so, what is the best method for determining the locale code for a system? Are there any other administrative issues to consider in using a system-wide budget for libraries?

18. Finally, if we move to district-wide budgets, should we also consider easing the equipment transfer rules within a district? With the move to district-wide discounts and district-wide category two budgets, the original concerns that led to the adoption of a prohibition on equipment transfers for a period of three years after purchase—namely, that applicants might replace or upgrade their equipment more often than necessary or to circumvent the then-existent two-in-five rules—would no longer be relevant. We note, at the same time, that under section 54.516(a) of the Commission's rules, schools, libraries, and consortia are required to maintain asset and inventory records of equipment purchased and the actual locations of such equipment for a period of 10 years after purchase.

19. *Budget Calculations.* We seek comment on simplifying the budget calculations generally. For example, should the student count and square footage in the first year of a five-year cycle be used for all five years to ease administration of the budgets? The ability to obtain additional funding if there is a student population increase or new library building was designed to provide flexibility, but applicants have raised concerns about the difficulty of updating this information during the application review process. Would having a set pre-discount budget for five years make the review process easier because applicants would only have to verify this information once? Or are there significant advantages to having the budgets rise (or fall) depending on student population or square footage each year? If so, are there other ways to ease the review process for verifying student counts and square footage if we keep entity-level budgets on an annual basis? Should we establish a presumption that the student counts verified in one of the last four funding years are still accurate for the purposes of setting a category two budget, absent an effort by the applicant to increase the student count? Such a presumption could result in waste of funding if a school's student population dropped significantly, for example, due to migration of students to a new school. How could such an outcome be avoided if we were to adopt such a

presumption?

20. Similarly, we propose to codify rounding the inflation calculation to two decimals for the category two multipliers in funding year 2020. This approach will simplify the calculation for USAC and applicants and is consistent with other Commission rules that establish rounding. We seek comment on this proposal. Recognizing that applicants do not always know the inflation adjustment before the filing window, we also seek comment on whether there is a better way to adjust for inflation, such as adjusting the budgets just once every five years.

21. *Application and Administration.* We also seek comment on other ways to make the application process for category two services and the administration of category two budgets simpler and more efficient. What administrative changes would have the greatest impact on applicants and USAC? For example, we seek comment on whether there are ways to simplify how applicants request category two services on the FCC Form 471 and on whether the Commission should provide guidance on using master contracts for category two services. Additionally, are there changes to the FCC Form 500 cancellation process that would simplify the category two budget process?

22. We seek comment on the five-year budget cycles and how best to transition from the existing category two budget rules following the five-year test period. The category two budget rules currently contemplate rolling budgets; that is, each year applicants calculate the pre-discount budget based on the current funding year student counts and budget multipliers, and then subtract the pre-discount amounts on the commitments received in the prior four funding years. For instance, assume a hypothetical school with 1,000 students that first received category two funding in funding year 2015; its budget in funding year 2015 would be $150,000. If there is no change in student count, in funding year 2016, the school's budget would be $151,500, minus the pre-discount amount of any funding received in funding year 2015. In funding year 2017, the budget would be $153,469.50, minus the pre-discount amount of any funding received in funding years 2015 and 2016, and so forth through funding year 2019. If not for the five-year test period established in the *2014 Second E-Rate Order*, 80 FR 5961 (February 4, 2015), in funding year 2020, the school's budget would be the student count multiplied by the funding year 2020 budget multiplier, minus the pre-discount amount of any funding received in funding years

2016, 2017, 2018, and 2019; funding received in funding year 2015 would not count against the school's budget in funding year 2020. In this manner, the budgets were designed to be rolling, and an applicant could determine its budget by looking to its current student count, the current inflation-adjusted per-student budget multiplier, and the amount of funding received in the prior four funding years. The goal of this rolling approach is to provide applicants with greater certainty about whether funding would be available after the end of a five-year budget cycle and thus prevent unnecessary spikes in spending in the last year of such a cycle.

23. The five-year test period adopted in 2014, however, makes it such that no applicant is able to request funding in a sixth year under the category two budget approach, and thus although the budgets were designed to be rolling, in practice they are not. We seek comment on using rolling budgets as originally intended. Under this approach, in funding year 2020, applicants would calculate their five-year budgets based on their student counts, inflation-adjusted per-student budget multipliers, and any funding committed in in funding years 2016, 2017, 2018, and 2019 (but not funding year 2015). What are the other benefits of this rolling approach? What are the costs of this approach? For example, is it administratively burdensome to calculate budgets in this way?

24. As an alternative to a rolling five-year cycle approach, we seek comment on moving to a fixed five-year cycle from funding year 2020 through funding year 2024, with a new fixed five-year budget starting for all applicants every five years. Would a fixed five-year cycle be a more efficient and/or an easier-to-administer system than a rolling five-year cycle approach? How can applicants be incentivized to avoid wasteful spending at the end of a fixed cycle by requesting funds solely because the funds are scheduled to expire? What are the other costs and benefits of rolling and fixed budget cycles? We seek comment on these approaches and any alternatives.

25. If we were to use a rolling budget approach, should we consider modifying the rolling budgets to smooth the amount of support available over a five-year cycle by providing some funding each funding year? For instance, should we consider a system where an additional 20% is added to the applicant budget each year while still having a maximum budgeted amount that can be spent each year? Continuing with the illustration above of a school with 1,000 students, in the first year the school received

funding, its budget would be $150,000. In the following year, the school's budget would be $151,500, minus the pre-discount amount of any funding received in the prior funding year, plus $30,300, which is 20% of the school's $151,500 budget. Under this additive approach, a school would be able to roll unused funding from year to year; however, applicants would not be permitted to request more than $150 per student (adjusted for inflation) in any given funding year. This approach would both allow applicants to either seek funding each year or carry the budget forward to the next year, and ensure that applicants always have access to at least some funding in every year. Because student counts can fluctuate, an applicant that sees a large decline in student population in one funding year could have a much smaller category two budget than previously anticipated. Using this additive approach of providing some portion of funding to the school each funding year could smooth that fluctuation. However, it could make tracking budgets more challenging. Specifically, under the current system, applicants calculate budgets using three variables (i.e., their current student count, the inflation-adjusted per-student budget multiplier, and the amount of funding received in the prior four funding years) while applicants would have to track the added 20% each year, adding a fourth variable to their calculations each year. We seek comment on this additive approach, its costs and benefits, and any alternatives to smooth out the amount of support available under a rolling five-year budget approach while minimizing administrative burdens on applicants and USAC.

26. Further, we seek comment on how to transition from the existing category two budget rules to any modified category two budget rules. As described above, if we simply extend the current rules, in funding year 2020, an applicant's budget calculation would take into account funding requested in funding years 2016 through 2019. For administrative efficiency, however, we seek comment on starting fresh in funding year 2020 and resetting all applicant budgets, to allow applicants a new opportunity to track their category two budgets and ease the transition's impact on all E-Rate program stakeholders. We recognize, however, that some applicants have not requested all of their category two budgets from funding year 2015 through 2019, while others will have used all of their budgets for those years. We, therefore, also seek comment on whether there is an administratively feasible way to take previous category two funding commitments into account when transitioning all applicants in funding

year 2020.

27. Alternatively, depending on the timing of the new rules and the extent of the changes, should we consider using funding year 2020 as a bridge to transition to the final rules we adopt in this proceeding? For example, should we consider extending the existing rules for one funding year without any modifications? This approach could allow applicants that received support in funding year 2015 and have completed the five-year cycle, or applicants still within their five-year cycles with funds remaining in their budgets, to request support and allow for a smoother transition to the new rules. Should we permit applicants who have completed a five-year cycle to nevertheless access any unused funds in funding year 2020, in what would be a sixth year? Similarly, should any particular restrictions apply to applicants that did not receive category two support in funding year 2015 through 2019? Should we further provide some additional category two support to the existing five-year budgets, for example, $30 per student or 20% of the library budget of $2.30 or $5.00? Commenters supporting this alternative are encouraged to also address what category two funding opportunities, if any, should be made for those E-Rate eligible entities who have already depleted their respective category two budgets. Or should we consider having a second, later filing window for category two service requests in funding year 2020? How can we best reduce applicant confusion and provide for simplified administration of the category two budgets as we move beyond funding year 2019? We seek comment on other alternatives that would afford a smooth and effective transition to the category two rules we adopt in the context of this proceeding.

III. PROCEDURAL MATTERS

28. *Initial Regulatory Flexibility Analysis*. 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 this Notice of Proposed Rulemaking (*NPRM*). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the

NPRM and IRFA (or summaries thereof) will be published in the *Federal Register*.

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

30. Taking steps to close the digital divide is a top priority for the Commission. The E-Rate program provides a vital source of support to schools and libraries, ensuring that students and library patrons across the nation have access to high-speed broadband and essential communications services. The rules we propose in the *NPRM* seek to make permanent the category two budget approach for all E-Rate applicants beyond funding year 2019. We seek comment in the *NPRM* on streamlining and simplifying the administration of the E-Rate program for applicants, service providers, and the Universal Service Administrative Company. In addition, the rules that we propose or seek comment on in the *NPRM* would eliminate confusion over how to apply for category two services which provide connectivity within schools and libraries and include internal connections, basic maintenance of internal connections, and managed internal broadband services. We seek comment on our proposals as well as comments on other ways to lessen the administrative burden on participating schools and libraries within the framework of the category two budget approach.

31. The proposed action is authorized pursuant to sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

32. 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).

33. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

34. 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." Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).

35. 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 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37, 132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of "small governmental jurisdictions."

36. As noted, a "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and

secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law." A secondary school is generally defined as "a non-profit institutional day or residential school that provides secondary education, as determined under state law," and not offering education beyond grade 12. A library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library, and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition." For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In funding year 2017, approximately 104,500 schools and 11,490 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 104,500 schools and 11,490 libraries might be affected annually by our action, under current operation of the program.

37. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange services. Of this total 1,307 an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

38. We have included small incumbent LECs in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have, therefore, included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

39. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

40. *Competitive Access Providers (CAPs)*. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. Under the SBA size standard, a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees. U.S. Census Bureau data for 2012 show that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to Commission data, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,442 CAPs and competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

41. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises

establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

42. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

43. *Internet Service Providers (Broadband)*. Broadband Internet service providers include wired (*e.g.*, cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there

were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard the majority of firms in this industry can be considered small.

44. *Internet Service Providers (Non-Broadband)*. Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (*e.g.*, dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million. Consequently, under this size standard a majority of firms in this industry can be considered small.

45. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are "Radio and Television Broadcasting and Wireless Communications Equipment" with a size standard of 1,250 employees or less and "Other Communications Equipment Manufacturing" with a size standard of 750 employees or less." U.S. Census Bureau data for 2012 show that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012 shows that 383 establishments operated for the year. Of that number 379 operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, we conclude that the majority of Vendors of Infrastructure Development or "Network Buildout" are small.

46. *Telephone Apparatus Manufacturing*. This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be

standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways." The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 266 establishments that operated for the entire year. Of this total, 262 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms can be considered small.

47. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 show that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

48. The proposals under consideration in the *NPRM*, if adopted, may result in new and/or modified reporting, recordkeeping and other compliance requirements for both small and large entities. At this time, the Commission cannot quantify the cost of compliance with the potential rule changes in the *NPRM*, but we anticipate that the result of any rule changes will produce requirements that are equal to or less than existing requirements, and we do not believe small entities will have to hire attorneys, engineers, consultants, or other professionals in order to comply. Moving from a per-school or per-library budget to a per-district or per-system budget for category two services, for example, would streamline the application process for category two services from start to finish, simplifying the calculation, the FCC

Form 471 application, Program Integrity Assurance (PIA) reviews, and the FCC Form 500 cancellation process. Moreover, adopting this approach may also simplify some of the more complicated issues that applicants face when seeking E-Rate support. Additionally, to find other ways to reduce any administrative processes which could impact compliance costs, we have sought comment on how the application process for category two services can be made simpler and more efficient. Regarding our proposal to amend our rules to make permanent the category two budget approach beyond funding year 2019 in five-year funding cycle increments, we have sought comment on whether the benefits associated with making permanent the category two budget rules outweigh the cost of compliance associated with administering them.

49. 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."

50. In the *NPRM*, we have taken steps to minimize the economic impact on small entities with the rule changes that we have proposed. Under the current E-Rate program, the category two budget rules will begin to sunset in funding year 2020. Absent a rule change, applicants seeking category two services will have to navigate two sets of rules until funding year 2024. We have therefore proposed amending the rules to make permanent the category two budget approach for all applicants beyond funding year 2019, which, if adopted, will remove the burden and the cost to small entities of having to navigate and comply with two different sets of rules. This proposal will also lessen the reporting requirements on small entities thereby lessening their administrative costs for report preparation. To further reduce the reporting and administrative requirements for small entities, we seek comment on moving to a district-wide or system-wide budget, rather than a school entity or library entity budget. We anticipate that permitting school districts and library systems to calculate a district-wide budget, rather

than maintaining records and allocating costs between budgets for each school and library, may simplify the current application process by reducing the number of applications filed, reducing the paperwork burden for reporting student counts, and reducing the complexity of the budgets overall. The Commission expects to more fully consider ways to minimize the economic impact and explore alternatives for small entities following the review of comments filed in response to the *NPRM*.

51. *Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules*. None.

52. *Paperwork Reduction Act*. The *NPRM* may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). 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 it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

53. *Ex Parte Rules*. This proceeding 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). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of

electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

54. *Filing Procedures*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and reply comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, 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.
  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
  - 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 445 12th Street, S.W., Washington DC 20554.

55. 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).

IV. ORDERING CLAUSES

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

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

Federal Communications Commission.

Marlene Dortch,
Secretary.

Proposed Rule

For the reason discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

1. The authority citation continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

2. Amend § 54.502 by revising paragraph (b), removing paragraph (c) and redesignating paragraph (d) as paragraph (c) to read as follows:

§ 54.502 Eligible Services.

* * * * *

(b) *Category Two Budgets*. Libraries, schools, or school districts with schools that receive funding for category two services pursuant to paragraphs (b)(1) through (6) of this section.

(1) *Five-year budget*. Each eligible school or library shall be eligible for a budgeted amount of support for category two services over a five-year funding cycle beginning the first funding year support is received. Excluding category two support committed prior to funding year 2020, each school or library shall be eligible for the total available budget less the pre-discount amount of category two services commitments in the prior four funding years. The category two budget levels and the funding floor shall be adjusted for inflation annually in accordance with § 54.507(a)(2). Beginning in funding year 2020, the dollar amount shall be rounded to two decimal points. The increase shall be rounded to the nearest 0.01 by rounding 0.005 and above to the next higher 0.01 and otherwise rounding to the next lower 0.01.

(2) *School budget*. Each eligible school shall be eligible for support for category two services up to a pre-discount price of $150 per student (adjusted for inflation since funding year 2015) over a five-year funding cycle. Applicants shall calculate the student count per district at the time the discount is calculated each funding year. New schools may estimate the number of students but shall repay any support provided in excess of the maximum budget based on student enrollment the following funding year.

(3) *Library budget*. Each eligible library located within the Institute of Museum and Library Services locale codes of "11 – City, Large," defined as a territory inside an urbanized area and inside a principal city with a population of 250,000 or more, "12 – City, Midsize," defined as a territory inside an urbanized area and inside a principal city with a population less than 250,000 and greater than or equal to 100,000, or "21 – Suburb, Large," defined as a territory outside a principal city and inside an urbanized area with population of 250,000 or more, shall be eligible for support for category two services, up to a pre-discount price of $5.00 per square foot (adjusted for inflation since funding year 2015) over a five-year funding cycle. All other eligible libraries shall be eligible for support for category two services, up to a pre-discount price of $2.30 per square foot (adjusted for inflation since funding year 2015) over a five-year funding cycle. Applicants shall provide the total area for all floors, in square feet, of each library outlet separately, including all areas enclosed by the outer walls of the library outlet and occupied by the library, including those areas off-limits to the public.

(4) *Funding floor*. Each eligible school and library will be eligible for support for category two services up to at least a pre-discount price of $9,200 (adjusted for inflation since funding year 2015) over a five-year funding cycle.

(5) *Requests*. Applicants shall request support for category two services for each school or library based on the number of students per school building or square footage per library building. Category two funding for a school or library may not be used for another school or library. If an applicant requests less than the maximum budgeted category two support available for a school or library, the applicant may request the remaining balance in a school's or library's category two budget in subsequent funding years of the five-year funding cycle. The costs for category two services shared by multiple eligible entities shall be divided reasonably between each of the entities for which support is sought in that funding year.

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

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