

(vi) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality: Chapter 53, Hazardous Waste, sections 17.53.104, 17.53.201, 17.53.202, 17.53.206, 17.53.207, 17.53.208, 17.53.212, 17.53.213, 17.53.214, 17.53.215, 17.53.1202(6)(m) and (n), 17.53.1202(7).

(3) *Related legal provisions.* The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, are not incorporated by reference and are not federally enforceable:

(i) Montana Code Annotated (MCA) 2021, Title 75, Environmental Protection: Chapter 10, Waste and Litter Control, sections 75–10–403(13), 75–10–405(1)(i) and (j), 75–10–405(2)(a), 75–10–431, 75–10–432, 75–10–433, and 75–10–434.

(ii) Administrative Rules of Montana (ARM), effective May 14, 2022, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, sections 17.53.111(4) (phrase addressing fees), 17.53.111(6), 17.53.112, 17.53.113, 17.53.301(2)(p) (phrase addressing fees), 17.53.703, 17.53.1202(6)(l), and 17.53.1202(18).

(4) *Memorandum of agreement.* The Memorandum of Agreement between EPA Region 8 and the State of Montana, signed by the State of Montana Department of Environmental Quality on August 22, 2018, and by the EPA Regional Administrator on August 2, 2018, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(5) *Statement of legal authority.* Independent Legal Counsel Statement, accompanied by an Attorney General concurrence letter signed by the Attorney General of Montana on December 27, 1983 as amended June 7, 1984 and revisions, supplements and addenda to that Statement accompanied by Attorney General concurrence letters dated September 23, 1993, March 28, 1995, June 29, 1995, April 4, 2005, January 31, 2008 and May 31, 2022, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Program description.* The Program Description and any other materials submitted as supplements thereto, although not incorporated by reference, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the entry “Montana” to read as follows:

#### Appendix A to Part 272—State Requirements

\* \* \* \* \*

#### Montana

The regulatory provisions include: Administrative Rules of Montana, Title 17, Environmental Quality, Chapter 53, Hazardous Waste, effective May 14, 2022, sections 17.53.101, 17.53.102, 17.53.105, 17.53.107, 17.53.111(1), 17.53.111(2), 17.53.111(3), 17.53.111(4) (except the phrase “and receives the registration fee required by ARM 17.53.113”), 17.53.111(5), 17.53.111(7), 17.53.301 (except the phrase addressing fees at 17.53.301(2)(p)), 17.53.404, 17.53.405, 17.53.406, 17.53.501, 17.53.502, 17.53.601, 17.53.602, 17.53.603, 17.53.604, 17.53.701, 17.53.702, 17.53.704, 17.53.706, 17.53.707, 17.53.708, 17.53.801, 17.53.802, 17.53.803, 17.53.901, 17.53.902, 17.53.903, 17.53.1001, 17.53.1002, 17.53.1003, 17.53.1004, 17.53.1101, 17.53.1102, 17.53.1201, 17.53.1202 (except 17.53.1202(6)(l), (6)(m), (6)(n), (7) and (18)), 17.53.1203, 17.53.1301, 17.53.1302, 17.53.1303, 17.53.1401, 17.53.1402, 17.53.1501, and 1502.

Copies of the Montana regulations that are incorporated by reference are available from the Montana Secretary of State, Administrative Rules Services, P.O. Box 202801, Helena, MT 59620–2801 (Phone: 406–438–6122)

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

[CC Docket Nos. 02–6, 96–45 and 97–21; FCC 23–56; FRS ID 160335]

### 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:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) take steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, the Commission expects to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, the

Commission also amends its rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. 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:** Effective September 29, 2023, except for §§ 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

**FOR FURTHER INFORMATION CONTACT:** Johnny Roddy [johnny.rodny@fcc.gov](mailto:johnny.rodny@fcc.gov) or Kate Dumouchel [kate.dumouchel@fcc.gov](mailto: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](mailto: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., 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 Commission also released a companion 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 FNPRM published August 9, 2023 at 88 FR 53837. The full text of this document is available 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 seek comment on further possible rule changes suggested by commenters in a the *FNPRM*.

## II. Discussion

2. Consistent with efforts to encourage more Tribes to participate in the E-Rate program, the Commission now takes steps to increase Tribal library eligibility and continue to reduce administrative burdens in the program. In doing so, the Commission expects to make the program more accessible to Tribal communities, so that they can leverage E-Rate funds to improve and meet the broadband connectivity needs of their communities. Where appropriate, the Commission also amends the rules to benefit non-Tribal applicants as well, to simplify and streamline the E-Rate program for all participants. First, the Commission modifies the rules to allow Tribal college and university (TCU) libraries to apply for and receive E-Rate support, provided they are also serving as a public library in their community. Next, the Commission adopts a number of changes to simplify and improve the E-Rate application process for Tribal library and other applicants. The Commission also takes steps to enhance communication with Tribal Nations by providing additional outreach to Tribal entities and leaders and by adopting a definition of "Tribal" to better identify Tribal applicants. Finally, the Commission also adds a Tribal representative to the Universal Service Administrative Company (USAC) Board of Directors to ensure Tribal input into the administration and oversight of the federal USF and the universal service support programs. Taken together, 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. The Commission also seeks comment on additional rule changes and clarifications suggested by commenters to further streamline and improve the application process for all E-Rate applicants. The Commission considers certain of those suggestions in the *FNPRM*.

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

4. The American Library Association (ALA) argues, for example, that TCU libraries like Ilisagvik College's Tuzzy Consortium Library do not just serve students, faculty, and staff, but also the wider community, even providing workforce and career programs to members of the public, and should therefore be permitted to draw on the E-Rate program support like any other library. During the April 13, 2023 Tribal Consultation and Listening Session, the Director of Education for the Inupiat Community of the Arctic Slope, Mark Roseberry, explained that their TCU library is responsible for serving their entire Alaskan community and that the library would greatly benefit from E-Rate funding. The American Indian Higher Education Consortium (AIHEC) noted that, of the 35 accredited TCUs, 31 open their libraries to the public as the only public library in their rural communities, acting as a vital resource in the communities they serve. AIHEC further commented that TCU libraries serve the public at their own expense despite facing internet connection costs ranging from 21 to 70 times the national average at much slower speeds. It noted that TCU libraries, such as Oglala Lakota College, provide a wide variety of services to the public for free, offering computers and internet access to community members who would not otherwise have access to the internet so that they can do homework, complete research, and find employment. The Commission finds that permitting TCU libraries that also serve as public libraries to receive E-Rate support will provide a meaningful benefit to Tribal communities, particularly where the TCU library may be the only library in its community. The Commission therefore will consider a TCU library eligible to apply for E-Rate support if it

serves as a public library by having dedicated library staff, regular hours, and a collection available for public use in its community.

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

6. The State E-Rate Coordinators' Alliance, the Schools, Health, and Libraries Broadband Coalition, the Consortium for School Networking, and the State Educational Technology Directors Association (collectively, the Joint Commenters), in their comments, also suggest that a TCU library should only be eligible when there is no other Tribal library accessible to the community. The Commission is not convinced that this restriction is either necessary or meaningful. First, there are a very limited number of TCU libraries, which limits the impact of granting eligibility. It is also administratively challenging to determine whether another Tribal library is "accessible" to the community. Finally, the Commission does not impose similar restrictions in the E-Rate program to

limit funding when two or more libraries may be serving the same community. If an otherwise eligible library is providing services to the public and members of the public are making use of those services, the presence of another eligible library accessible to that community has no impact on the eligibility of either library. For these reasons, the Commission declines to adopt this restriction at this time.

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

8. Allowing TCUs that serve as public libraries to participate in E-Rate is also consistent with the federal government’s special treatment of TCUs. TCUs are unique higher education institutions that are controlled or chartered by a federally recognized Tribe, governed by a board of whose members are a majority Indian, and have a majority of Indians as its student body. Congress provides support for TCUs as part of its responsibility to provide for Indian education and facilitate its policy of enabling Tribal control of all matters relating to the education of Indian students. Congress has stated that the federal government has a special responsibility, as part of its overall trust responsibility to Indian Tribes, for the education of Indian students, and the federal government has long recognized and “charged itself with moral obligations of the highest responsibility and trust” toward Indian Tribes.

Accordingly, TCUs are unique higher education institutions that are entitled to special treatment from the federal government based on their trust relationship between the United States and Indian Tribes and their mission of providing education to Indian students.

9. Building on the Commission proposals in the *Tribal E-Rate NPRM*, 88 FR 14529, March 9, 2023, the Commission implements several measures to streamline and simplify the E-Rate application process for Tribal libraries and other similarly situated applicants. First, the Commission streamlines the application process for libraries making small purchases. Next, the Commission increases the category two discount rate for Tribal library applicants with the most need, helping to offset the costs of in-building equipment and services. The Commission also increases the minimum amount of funding that is available for category two purchases, with the goal of encouraging Tribal libraries that do not currently participate in the program to apply for E-Rate support. And finally, the Commission provides guidance on a number of cost-allocation calculation issues that applicants have raised to reduce the administrative burden and streamline the E-Rate program overall. Collectively, the Commission expects these changes to contribute to the Commission’s ongoing goals of both improving and streamlining the program, and reducing barriers to accessing E-Rate funding for Tribal applicants.

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

purchases of equipment to install or upgrade their Wi-Fi networks.

11. Commenters broadly supported expanding the existing competitive bidding exemption to include category two equipment and services, with suggestions ranging from support for the proposed \$3,600 exemption to eliminating the competitive bidding requirement entirely for Tribal entities. Because competitive bidding is essential to ensuring cost-effective purchasing in the E-Rate program, the Commission disagrees with commenters that suggest eliminating competitive bidding for Tribal entities entirely or where there is only one commercial service offering. At the same time, the Commission acknowledges that there are administrative costs associated with the E-Rate application process that can be burdensome, particularly for smaller entities. WTA explained that the low-cost category two services and equipment requests that small libraries often make also do not attract many bids in Tribal and rural areas. As commenters highlighted, the competitive bidding process can be challenging, especially for smaller libraries that have a limited staff. The Commission believes that adopting a \$3,600 exemption for libraries requesting category two equipment and services, matching the existing \$3,600 competitive bidding exemption for commercially available high-speed internet access services, strikes the right balance in simplifying the E-Rate application process, while retaining competitive bidding requirements where appropriate to ensure that limited E-Rate resources are spent efficiently and effectively. The Commission expects that the exemption will provide a meaningful benefit to Tribal, small, and rural library applicants by making it easier to receive funding for the Wi-Fi network equipment and services they need.

12. The Commission emphasizes that Tribal, and other small or rural library applicants may only request E-Rate support based on the actual cost of the equipment or service requested. The Commission cautions library applicants and service providers that cost-effective purchases are still required under this exemption in order to avoid waste in the program, and directs USAC to review the costs for equipment and services and to deny funding for purchases that are determined to not be cost-effective. In this regard, the Commission notes that it is generally straightforward to review and compare the costs of category two equipment, given that it tends to be widely commercially available, in order to ensure that

applicants are not seeking reimbursement for wasteful spending. The Commission also agrees with ALA that libraries may be subject to state and local requirements that help ensure that these low-cost purchases are still cost-effective. At present, a competitive bidding exemption for category two equipment and services costing less than \$3,600 allows the Commission to determine whether this small exemption can help libraries, but are not precluded from amending this level in the future. Based on limited record evidence, the Commission declines to extend the exemption to school entities at this time, but seeks further comment on this question in the *FNPRM*.

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

14. Tribal libraries tend to be under-resourced, operating on a limited budget to meet the diverse needs of their patrons. Many lack full-time, permanent library staff, much less a dedicated information technology (IT) staff member, often relying on the same IT staff that serves the larger Tribal government. While the Commission appreciates the request by applicants for more support for staffing costs, section 254 of the Communications Act constrains what services are eligible for E-Rate program support. Given these statutory constraints that limit the Commission's ability to fund certain costs, the Commission therefore has tried to identify other options to make internet connectivity more affordable for Tribal libraries. The Commission believes that a five percentage point increase to the maximum discount rate, from 85% to 90%, will make category two services more affordable, allowing Tribal libraries to stretch their limited budgets to better meet their community's Wi-Fi network connectivity needs. Commenters agreed

and broadly supported an increase, arguing that a higher discount rate would make a "big difference" to applicants and would result in important additional savings to Tribal applicants. In an April 13, 2023 Tribal Consultation and Listening Session, Tribal participants from Alaska noted that costs are very high in their remote communities, and that an increase in the discount rate would be especially helpful. By making category two services more affordable, the Commission expects that this increase will provide a meaningful benefit to Tribal libraries, that in turn, will encourage greater participation in the E-Rate program.

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

to increase participation in the E-Rate program.

16. As part of the efforts to simplify the E-Rate program, the *Tribal E-Rate NPRM* sought comment on common cost-allocation issues that Tribal libraries and other non-Tribal applicants experienced, noting that cost allocation can be confusing for all E-Rate applicants and may pose particular challenges for Tribal libraries, especially those located in multipurpose buildings. Commenters provided a number of examples where cost allocation can complicate the application process. The Alaska Department of Education and Early Development and the Alaska State Library provided an example where a Tribal library is in a building with a room that is infrequently used as an office by an ineligible entity. They noted that relaxing the cost allocation requirements for minimal or occasional use of a single room from an eligible location could make a real difference for these applicants in small villages where the library may act as the hub of that community. Other commenters also provided a number of other scenarios wherein schools and libraries are required to cost allocate for the minimal internet usage of a variety of in-building offerings, such as offices, health kiosks and other healthcare services, childcare, pre-kindergarten, adult education, and vocational and technical classes available to the public. These and similar services, though ineligible themselves for E-Rate support, may provide significant benefit, while having a minimal impact on the school's or library's total internet usage and no real impact on schools and libraries' decision-making process in determining the level of internet service they need. Yet, schools and libraries that decide to offer these valuable services to their students, staff, and library patrons are required to conduct cost-allocation calculations to remove those portions of minimal ineligible internet usage by these services. In addition, if a school or library selects a product or service containing an ineligible component and that product or service is the most cost-effective means of receiving the eligible component functionality, those ineligible components are ancillary, and costs do not need to be allocated between the eligible and ineligible components.

17. The Commission agrees with commenters that conducting cost allocations to exclude costs associated with minimal ineligible use or service components can be challenging, especially with regards to services. As a means of providing a safe harbor, the Commission adopts a presumption that

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

18. In specific regard to Tribal libraries, if the Tribal library is selecting the most cost-effective means of receiving the eligible service without regard to the value of the ineligible components, the burden to allocate a portion of the cost for any ineligible use may decrease participation by these small entities. So, with this presumption, the Commission expects the occasional office use, such as described by the Alaska Department of Education and Early Education and Alaska State Library, could be considered ancillary and cost allocation would not be required, as long as 90% of the requested internet service is used for the library's eligible purposes. The Commission declines to fully remove cost allocation requirements for all Tribal libraries housed in a multipurpose building because of concerns that the exception could lead to the E-Rate program funding largely ineligible services—for instance, if a

large administrative building has a small Tribal library located within one room in the building—but the Commission seeks additional comment on this issue in the companion *FNPRM*.

19. Next, the Commission addresses concerns raised by the Joint Commenters and clarifies that expenses associated with cabling that is primarily being used to provide broadband connectivity within schools and libraries need not be cost allocated, provided it is the most cost-effective means of receiving the eligible service. The Joint Commenters note that applicants have periodically experienced difficulties receiving E-Rate support for cabling, or have been required to return funding based on what equipment the cabling was connected to after installation. They further explain that these issues typically arise in the context of installing internal cabling throughout a building that “provide data transmission to specific points located in the ceilings or in walls of a school or library building, thus creating a ‘drop’ or ‘jack’ for various types of equipment to connect to, and then gain access to the communications network.” Cabling is conditionally eligible for E-Rate support, which means that it is ineligible for E-Rate funding when it is for an ineligible use, such as for a security camera network or voice network, and the costs must be allocated or removed from the funding requests. However, the Commission agrees that it is unworkable to determine conditional eligibility of the cabling on a drop-by-drop basis, particularly after the fact, depending on what broadband-enabled device is plugged into the local area network cabling. Many devices may be connected to a school or library's local area network, both wired and wirelessly, and the devices connected to a network may change over time. The Commission therefore finds that the eligibility determination should be based on the purposes of the network as a whole, rather than for each cabling “drop” or “jack”. As such, cabling “drops” or “jacks” that are part of a local area network primarily serving an eligible purpose (*i.e.*, distributing broadband throughout a school or library building) are eligible for E-Rate and do not require cost allocation. The Commission anticipates that this will help applicants by providing them certainty to request category two funding for the cabling needed for their Wi-Fi networks without concern that in the future an auditor will seek recovery of a small portion of that E-Rate funding due to a broadband-enabled device,

such as a security camera, being attached at a later date. At the same time, the Commission expects applicants' category two budgets will constrain them from requesting more cabling drops than necessary for their local area networks. Regardless of this clarification, the Commission reminds applicants that cabling is ineligible to the extent it is installed specifically for a security camera network or for a dedicated voice network.

20. Finally, the Commission addresses an issue with the cost allocation required for shared equipment that is located at a non-instructional facility, including library administrative buildings. While NIFs are eligible for category one support, category two support is generally not available for NIFs unless the equipment is “essential for the effective transport of information to or within one or more instructional buildings of a school or non-administrative library buildings, or the Commission has found that the use of those services meets the definition of educational purpose.” This is generally a district switch located in an administrative building or data center. Under the current rules, a school district or library system generally cannot use any of its budget for category two equipment for a NIF. The exception for essential, shared equipment still applies, and therefore, applicants can purchase this type of equipment to be located in a NIF, but the rules now explicitly state that the applicant must remove the costs associated with the NIF's use of the shared equipment. As a result, the Commission has since learned that applicants have been required to undergo complicated cost-allocation calculations that have proven to be administratively burdensome, resulting in the removal of a small fraction of the funding request for the needed equipment, undercutting the Commission's efforts to streamline the category two application process. As long as the applicant is choosing the most cost-effective offering for the shared equipment (*e.g.*, a district switch) without regard for the NIF's use, the Commission agrees that the applicant should not be required to cost allocate the NIF's use of the shared equipment. In recognition of this, the Commission now amends the rules to no longer require cost allocation to remove the costs associated with the NIFs' use of the shared equipment in NIFs and related-library administrative buildings. Removing these requirements will permit applicants to forego these complex cost-allocation procedures as they seek to equip their schools and

libraries with the category two equipment they need to serve their students and library patrons.

21. The Commission recognizes that there still exist potential cost-allocation challenges for those Tribal libraries that share space with other governmental and/or community organizations or services, often in unique configurations. The Commission therefore directs USAC to publicly post plain language guidance, approved by the Wireline Competition Bureau (Bureau), providing examples of Tribal library cost allocations as they may arise. This could help other Tribal library applicants understand whether they need to cost allocate in their particular situation and provide examples on how they should cost allocate, if required. The Commission also seeks comment in the *FNPRM* if there are additional cost-allocation examples that would benefit from further Commission guidance.

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

23. *Tribal Definition.* To ensure that Tribal entities can be identified as Tribal when applying for E-Rate support and that Tribal libraries can receive the increase in category two funding, the Commission adopts and add the definition for "Tribal" in § 54.500 of the Commission's E-Rate rules.

24. This definition of Tribal is modified slightly as compared to the definition proposed in the *Tribal E-Rate NPRM* as a result of the record the Commission received. The Commission chose not to include those entities for

whom "the majority of students or library patrons served are Tribal members" as being Tribal because, as one commenter noted, this approach would be difficult to demonstrate and administer. Additionally, after discussion with Tribal representatives during the May 19, 2023 Tribal Consultation and Listening Session the Commission determined that both that portion of the definition and the Tribal lands portion of the definition proposed in the *Tribal E-Rate NPRM* were adequately covered by the remaining portion of the proposed definition. The Commission also included the "Alaska native village, regional corporation, or village corporation" language based upon suggestions from the May 19 Tribal Consultation and Listening Session, incorporating language from the definition of Tribal used by the Institute of Museum and Library Services (IMLS). The Alaska Department of Education and Early Development and the Alaska State Library in their joint comments supported this approach. While one commenter suggested maintaining the present system whereby applicants self-identify as Tribal, the category two rule changes require implementation of a definition for Tribal applicants to evaluate their eligibility for the enhanced benefits. In addition, to better track and more easily identify Tribal entities and their Tribal affiliation, the Commission will also collect the applicant's Tribal affiliation as part of the application process.

25. *USAC Board of Directors.* Next, the Commission adopts the proposal to add a new director to the USAC Board of Directors to represent the interests of Tribal communities. Consistent with the existing rules governing the USAC Board, the Commission establishes a new seat on the Board and require Tribal entities to nominate a person to this seat to represent the interests of Tribal communities. This idea was first suggested by ALA and the Association of Tribal Archives, Libraries, and Museums (ATALM) in their joint comments to the *2021 Tribal Libraries NPRM*, 86 FR 57097, October 14, 2021, wherein they explained how such a position could simultaneously provide USAC with information from the Tribal community and provide the Tribal community with information directly from USAC. Commenters that addressed the addition of a Tribal director unanimously supported the proposal. Participants at the April 13, 2023 Tribal Consultation and Listening Session were also supportive of this proposal, noting that USAC's Board would benefit from having a Tribal perspective that

could speak to the unique political and geographical identity of Tribal communities, a sentiment reiterated by Chief Executive Melanie Benjamin in reply comments filed by the Mille Lacs Band of Ojibwe. Adding a Tribal director to the Board allows USAC, the USF, and all the universal service programs USAC administers to benefit from the perspective that a Tribal representative will provide.

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

27. *Outreach and Training.* The Commission seeks to aid Tribal library applicants by directing USAC to provide additional training and outreach throughout the application, invoicing and post-commitment processes. The Tribal Libraries E-Rate Pilot Program the Commission tested last year demonstrated the value of one-to-one and cohort assistance, tailored to the needs of new Tribal library applicants. The Commission received positive feedback from participants and commenters alike, who have requested ongoing support to navigate the technical and administrative processes. The Pilot Program also provided helpful lessons learned for both USAC and the Commission to enhance future E-Rate Tribal related trainings. The Commission therefore directs USAC to establish an enhanced training program that includes both cohort and on-demand learning opportunities that are targeted to Tribal E-Rate applicants. Where possible, the Commission encourages USAC to conduct hands-on, in-person training opportunities, as suggested by ALA. Enhancing Tribal governments' and libraries' awareness of

the E-Rate program, as well as program requirements, is integral to the other changes adopted herein. The Commission also directs USAC to provide specific support for TCU libraries, which will be eligible for the E-Rate program for the first time. The Commission encourages USAC to identify any TCU library applicants and provide them with additional resources to assist them in the setting up their entity profiles in the E-Rate Productivity Center (EPC) and through the application and reimbursement processes.

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

29. The Commission declines to adopt an extended or separate application filing window for Tribal libraries, as that could cause confusion, but directs the Bureau to continue considering requests for waiver of the FCC Form 471 application filing deadline, recognizing the special circumstances that Tribal library applicants face when applying for the E-Rate program. From speaking with Tribal governments and libraries, the Commission recognizes that the procurement processes for Tribal libraries can be on different timelines from the procurement processes for Tribal schools, that there are fewer staff to handle such filings, and that it can be time-consuming to get approvals for procurements from Tribal officials. However, commenters suggested that

extending the filing window or creating a wholly separate filing window would not be helpful at this time and that waiver requests are a better way to assist Tribal libraries in applying for E-Rate support. Therefore, recognizing that the E-Rate process may be particularly challenging for small entities like Tribal libraries, the Commission urges such entities to file timely waiver requests of the FCC Form 471 application filing deadline and to describe in such requests relevant special circumstances, such as delays from additional Tribal approvals. The Commission expects the Bureau to adjudicate any such requests quickly. In this way, the Commission maintains useful program deadlines while also providing assistance to Tribal library applicants.

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

### III. Procedural Matters

#### A. Paperwork Reduction Act Analysis

31. The document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the revised information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the

Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

#### B. Congressional Review Act

32. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

#### C. Final Regulatory Flexibility Act

33. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Tribal E-Rate NPRM*. The Commission sought written public comment on the proposals in the *Tribal E-Rate NPRM*, including comment on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

34. 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.

35. Taking steps to close the digital divide is a top priority for the Commission. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides vital support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In this document, the Commission enhances Tribal access to E-Rate funding by making both Tribal library specific rule changes and program wide changes that will help all

applicants, including Tribal libraries. The Commission modifies its rules to allow TCU libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community. The Commission simplifies the program by eliminating competitive bidding requirements for Tribal libraries seeking funding for \$3,600 total or less of category two funding, increasing the category two maximum discount rate from 85% to 90%, and increasing the category two funding floor from \$25,000 to \$55,000 for Tribal libraries. The Commission also provides guidance related to cost allocation by establishing a presumption that if at least 90% of an applicant's internet usage is for an eligible use the remaining ineligible portion is presumed to be ancillary and, therefore, does not need to be cost allocated. The Commission clarifies that cabling that is a part of a local area network is eligible for funding and does not need to be cost allocated. The Commission also modifies its rules to no longer require applicants to cost allocate the costs associated with a non-instructional facility's (NIF) use of shared equipment in NIFs and related library administrative buildings. The Commission directs USAC to increase training and outreach to Tribal libraries and to provide additional support to applicants and registered users of the E-Rate Productivity Center. Lastly, the Commission amends its rules to adopt a definition for "Tribal" and modifies its rules to add an additional Director to the USAC Board to represent Tribal communities.

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

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

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

39. 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).

40. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* 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 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.

41. 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.

42. 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."

43. Small entities potentially affected by the rules herein are 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, Radio and Television Broadcasting, and Wireless Communications Equipment Manufacturing.

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

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



small entities that may have smaller staff and fewer resources.

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

47. In this document, the Commission takes steps to minimize the economic impact on small entities with the rule changes that it has adopted. The Commission made rule changes that will lower the burden for applicants to the E-Rate program. By granting Tribal libraries an exemption from the competitive bidding process for category two purchases totaling under \$3,600, the Commission greatly simplifies the process of receiving funding for these small purchases, making it easier for Tribal libraries with a small staff to apply for E-Rate. The Commission also made changes to category two funding for Tribal libraries, increasing the maximum discount they can be eligible for from 85% to 90%, and increasing the minimum funding budget, increasing the funding floor from \$25,000 to \$55,000 for Tribal libraries. This will reduce the share that they must pay for Wi-Fi networks, increase the amount of support that is eligible for reimbursement, and allow small libraries to have greater access to funding at a lower cost to themselves.

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

49. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the

*Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### IV. Ordering Clauses

50. *Accordingly, it is ordered*, that pursuant to the authority contained in sections 1 through 4, 201–202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, this Report and Order *is adopted* effective September 14, 2023.

51. *It is further ordered*, that pursuant to the authority contained in sections 1 through 4, 201 through 202, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–202, 254, 303(r), and 403, Part 54 of the Commission’s rules, 47 CFR part 54, *is amended*, and such rule amendments shall be effective September 14, 2023, except for §§ 54.503(c)(2)(i)(B) and 54.504(a)(1)(ii), which are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the effective date for those sections after approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act.

52. *It is further ordered*, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, that the Petition for Reconsideration filed by the State E-Rate Coordinators’ Alliance on January 21, 2020, *is dismissed*.

53. *It is further ordered* that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of the Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

54. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Federal Communications Commission.

**Marlene Dortch**,

*Secretary.*

#### Final Rules

For the reasons discussed above, the Federal Communications Commission amends 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 adding, in alphabetical order the definition of “Tribal” to read as follows:

##### § 54.500 Terms and definitions.

\* \* \* \* \*

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

\* \* \* \* \*

■ 3. Section 54.501 is amended by revising paragraph (b)(2) and adding paragraph (b)(4) to read as follows:

##### § 54.501 Eligible recipients.

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

##### § 54.502 Eligible Services.

\* \* \* \* \*

(d) \* \* \*

(4) *Funding floor.* Each eligible school and library shall be eligible for support for category two services of at least a

pre-discount price of \$25,000 over five funding years. Tribal libraries shall be eligible for support for category two services of at least a pre-discount price of \$55,000 over five funding years.

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

■ 5. Section 54.503 is amended by revising paragraph (e) to read as follows:

§ 54.503 Competitive bidding requirements.

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

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

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

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

■ 6. Delayed indefinitely, amend § 54.503 by revising paragraphs (c)(2)(i)(B).

§ 54.503 Competitive bidding requirements.

- (c) \* \* \*
(2) \* \* \*
(i) \* \* \*

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

■ 7. Delayed indefinitely, section 54.504 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 54.504 Requests for services.

- (a) \* \* \*
(1) \* \* \*
(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and, except for the limited case of Tribal college or universities, their budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

■ 8. Section 54.505 is amended by revising paragraph (c) introductory text and adding paragraph (g) to read as follows:

§ 54.505 Discounts.

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

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

■ 9. Section 54.701 is amended by revising paragraph (b) to read as follows:

§ 54.701 The Administrator of universal service support mechanisms.

(b)(1) The Administrator shall establish a twenty (20) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705:

- (i) The Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism;
(ii) The Rural Health Care Committee, which shall oversee the rural health care support mechanism; and
(iii) The High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism.

(2) The Board of Directors shall not modify substantially the power or authority of the Committees of the Board without prior approval from the Federal Communications Commission.

■ 10. Section 54.703 is amended by revising paragraph (b) introductory text and paragraph (b)(12), redesignating paragraph (b)(13) as paragraph (b)(14), and adding a new paragraph (b)(13) to read as follows:

§ 54.703 The Administrator's Board of Directors.

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

- (12) One director shall represent state consumer advocates;
(13) One director shall represent Tribal communities; and

■ 11. Section 54.705 is amended by redesignating paragraphs (a)(2)(iv) and (v) as paragraphs (a)(2)(v) and (vi), and adding a new paragraph (a)(2)(iv) to read as follows:

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

- (a) \* \* \*
(2) \* \* \*
(iv) One Tribal community representative;