



PUBLIC NOTICE

Federal Communications Commission
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WIRELINE COMPETITION BUREAU SEEKS COMMENT ON THE ELIGIBILITY OF BUNDLED COMPONENTS UNDER THE SCHOOLS AND LIBRARIES PROGRAM

CC Docket No. 02-6; GN Docket No. 09-51

Comment Date: [30 days after Federal Register publication]
Reply Comment Date: [45 days after Federal Register publication]

I. INTRODUCTION

1. In this public notice, the Wireline Competition Bureau (Bureau) seeks comment on a proposal to clarify the schools and libraries universal service support program (informally known as the E-rate program) requirements for bundling devices, equipment and services that are ineligible for E-rate support (“ineligible components”) with E-rate eligible services and products. In 2012, the Bureau sought comment on a petition filed by the State E-rate Coordinators Alliance (SECA) seeking clarification of how the Commission’s rules requiring cost allocation of ineligible components aligns with language in the Bureau’s 2010 *Gift Rule Clarification Order* that allowed, under limited circumstances, the bundling of ineligible end-user devices and equipment without cost allocation.¹ Having considered the comments filed in response to the *SECA Petition Public Notice*, the Bureau now proposes and seeks comment on additional clarifications to remove any potential uncertainty regarding the Commission’s requirement for applicants to cost allocate ineligible components when those ineligible components are bundled with eligible services.

II. BACKGROUND

2. Through the E-rate program, eligible schools and libraries may receive discounts for eligible services, including telecommunications services, telecommunications, Internet access, internal connections, and basic maintenance of internal connections.² The products and services eligible for E-

¹ Petition for Clarification Pertaining to the Eligibility of Free VoIP Handsets and Other End-User Equipment, State E-rate Coordinators Alliance, CC Docket No. 02-6, GN Docket No. 09-51, filed July 27, 2012 (SECA Petition); Wireline Competition Bureau Seeks Comment on a Petition Filed by the State E-Rate Coordinators Alliance Seeking Clarification Regarding the Eligibility of Bundled End User Equipment Under the Schools and Libraries Program, CC Docket No. 02-6, Public Notice, 27 FCC Rcd 9360 (Wireline Comp. Bur. 2012) (*SECA Petition Public Notice*); *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Order, 25 FCC Rcd 17324, 17328, para. 25 (Wireline Comp. Bur. 2010) (*Gift Rule Clarification Order*).

² 47 C.F.R. § 54.502(a).

rate support are identified on the eligible services list (ESL) which is released annually.³ The ESL also identifies other products and services that are not eligible for E-rate support. For example, end-user equipment, such as a computer or telephone, is identified on the ESL as ineligible for E-rate support.⁴ If an E-rate applicant submits a request for support for a product or service that includes both eligible and ineligible components, the applicant must allocate the cost of the eligible and ineligible components in the request.⁵ In addition, applicants and service providers are prohibited from using E-rate support to subsidize the procurement of ineligible or unrequested products and services, or from participating in arrangements that have the effect of providing a discount level to applicants greater than that to which the applicants are entitled.⁶ Instead, the value of all price reductions, promotional offers, and “free” products or services must be deducted from the pre-discount cost of services indicated in funding requests.⁷

3. In 2010, the Bureau issued the *Gift Rule Clarification Order* to address questions received by the Bureau regarding the Commission’s decision in the *Schools and Libraries Sixth Report and Order* about the E-rate program gift rules. The *Gift Rule Clarification Order* specifies that “service providers cannot offer special equipment discounts or equipment with service arrangements to E-rate recipients that are not currently available to some other class of subscribers or segment of the public.”⁸ At the same time, the *Gift Rule Clarification Order* explains that because “many cell phones are free or available to the general public at a discounted price with the purchase of a two-year service contract[, s]chools and libraries are free to take advantage of these deals, without cost-allocation...”⁹ The *Gift Rule Clarification Order* further states that schools and libraries “cannot accept other equipment with service arrangements that are not otherwise available to some segment of the public or class of users.”¹⁰ By way of example, the *Gift Rule Clarification Order* illustrates that “a service provider may not offer free iPads to a school with the purchase of telecommunications or Internet access services eligible under E-rate, if such an arrangement is not currently available to the public or a designated class of subscribers.”¹¹

4. Since releasing the *Gift Rule Clarification Order*, the Bureau has received several requests for clarification regarding the scope of the decision concerning bundled ineligible components. Moreover, some service providers have been offering or are contemplating offering bundles of free or

³ 47 C.F.R. § 54.502(b). See also Universal Service Administrative Company (USAC), Eligible Services List, at <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx> (last visited Apr. 9, 2013) (providing links to the Eligible Services Lists for funding years 2010-2013 and a link to archived Eligible Services Lists for funding years 1998-2009).

⁴ *Id.*; *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan for Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18805, para. 99 (2010) (*Schools and Libraries Sixth Report and Order*) (reiterating that the E-rate program does not provide support for content, or end-user devices such as computers or telephones).

⁵ See 47 C.F.R. § 54.504(e) (2010). See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9022-23, para. 462 (1997).

⁶ USAC, USAC Free Services Advisory, at <http://www.usac.org/sl/applicants/step02/free-services-advisory.aspx> (last visited Apr. 9, 2013).

⁷ *Id.*

⁸ *Gift Rule Clarification Order*, 25 FCC Rcd at 17328, para. 11.

⁹ *Id.* at n.25.

¹⁰ *Id.*

¹¹ *Id.*

heavily-discounted ineligible components with eligible services based on this order.¹² In July 2012, SECA filed a petition asking the Commission for clarification on whether, and if so, to what extent, the Commission's E-rate rules permit service providers to bundle end-user devices and equipment that are ineligible for E-rate support with E-rate eligible services without having to cost allocate.¹³ SECA indicated that the Bureau's decision to exempt free cell phones from cost allocation requirements when the phones are bundled with cellular service and available to the public or a certain class of users has simplified the application process for these types of funding requests. SECA expressed concern, however, that the exemption is being used expansively by other service providers who claim that newly created service "bundles" including end-user devices are available to a broad class of customers and therefore qualify for E-rate support.¹⁴ SECA also raised a concern as to whether this practice would further increase the demand for E-rate funding and threaten the ability to fund all priority one and two requests.¹⁵ In light of these concerns, SECA suggested that a request for bundled equipment with services meet additional criteria in order to be exempt from cost allocation.¹⁶

5. On August 10, 2012, the Bureau issued the *SECA Petition Public Notice*. Comments and reply comments were due on September 10 and September 24, 2012, respectively.¹⁷ The Bureau will incorporate the comments filed in response to the *SECA Petition Public Notice* into this proceeding.

III. DISCUSSION

6. Based on several unexpected issues that have arisen since the *Gift Rule Clarification Order* was released, we have determined that it may be in the best interest of E-rate applicants, service providers, and the public for the Bureau to interpret the Commission's rules regarding bundled ineligible components differently than was reflected in the Bureau's *Gift Rule Clarification Order*. Specifically, we propose to clarify that, beginning with applications seeking discounts for E-rate funding year 2014, any

¹² See, e.g., Comments on the FY 2013 Draft Eligible Services List of the Schools and Libraries Universal Service Mechanism, E-rate Provider Services, LLC, filed Aug. 6, 2012 (seeking clarification of the *Gift Rule Clarification Order* and stating that, for many months, service providers have been seeking clarification of the scope of the rule as well as contemplating how to craft customer offerings to best take advantage of the rule); Comments of Jive Communications, Inc. on the Draft Eligible Services List for the Schools and Libraries Universal Service Program, filed Aug. 6, 2012, at 1-2 (stating that after careful examination of the *Schools and Libraries Sixth Report and Order*, the *Gift Rule Clarification Order*, and a Client Services Bureau response to its inquiry, Jive began offering free handsets to E-rate and other customers that purchase VoIP service); Notice of *Ex Parte* Communication from Philip B. Gieseler, Philip B. Gieseler Consulting, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated Feb. 20, 2012); Notice of *Ex Parte* Communication from Glenn S. Richards, Counsel for Broadcore, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated Feb. 13, 2013) (*Broadcore Ex Parte*).

¹³ See SECA Petition.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.* The four additional criteria suggested by SECA are: (1) the cost of any end-user equipment provided as a part of a bundled service must be considered "ancillary" relative to the cost of the bundle as a whole; (2) the bundled service offering must be deemed a commercially common practice within the industry, not a unique offering of an individual service provider; (3) the arrangement must be currently available to the public and not just to a designated class of subscribers (e.g., a special bundle available only to the K-12 market, that is not available to all other customers, should not qualify for the cost allocation exemption); and (4) the service provider is not permitted to offer a package or packages of equivalent eligible services, without bundled end-user equipment, at a lower price.

¹⁷ *SECA Petition Public Notice*, 27 FCC Rcd at 9360.

ineligible components must be cost allocated, even if bundled with E-rate eligible services and offered to the public or some class of users. As further described herein, we seek comment on this proposal.

A. Requirements for Bundled Ineligible Components

7. We propose that, beginning in funding year 2014, service providers may no longer offer bundled ineligible components as E-rate eligible even if they determine the bundled offering falls within the scope of the *Gift Rule Clarification Order*. E-rate applicants may seek E-rate funding for the eligible services portion of any bundled offering but must provide a cost allocation for any ineligible components including, but not limited to, telephone handsets, computers, cell phones, and other components. We make this proposal out of our concern that the *Gift Rule Clarification Order* language that allowed, under limited circumstances, an exemption of our cost allocation requirements, may lead to unintended consequences. We are persuaded by those interested parties who have expressed concern that an open-ended interpretation and widespread use and expansion of this exception could lead to further strain on the E-rate fund, which is capped and already over-subscribed.¹⁸ Moreover, the out-of-pocket expenses at issue are for ineligible components that recipients have always understood to be ineligible for E-rate support. Additionally, to the extent that the real cost to the provider of the “free” or reduced price ineligible component results in a more expensive bundle, the money saved by not paying for the entire bundle will result in more funds being available to other E-rate recipients for E-rate eligible services. We seek further comment on these concerns and related matters. We ask commenters that support our proposal to provide a specific rationale for their position.

8. We make this proposal primarily because the record developed on this issue thus far demonstrates a lack of clarity about the rules regarding cost allocation for bundled ineligible components.¹⁹ We are also not persuaded that the clarifications suggested by stakeholders would be effective, because those suggestions could result in excessively burdensome procedures for applicants, service providers and the administrator of the E-rate program, USAC. For example, SECA’s proposals, and other potential outcomes that include procedures to determine which bundled offerings qualify for an exemption from cost allocation, are likely to be administratively unworkable and ultimately costly for the E-rate program.²⁰ Also, assigning a specific measurement as a maximum threshold for a bundled ineligible component, such as a percentage of a contract price or a specific dollar amount, as at least one commenter recommends,²¹ could in turn encourage recipients to set that dollar amount as a goal for spending or might prompt service providers to price equipment just under that maximum. This could

¹⁸ Some stakeholders believe that not requiring cost allocation for bundling ultimately shifts funding from eligible services to ineligible services. *See, e.g.*, Reply Comments of SECA on the *SECA Petition Public Notice*, filed Sept. 24, 2012, at 2. They also express concern that permitting an increasing number of ineligible services to be provided as part of a bundle with eligible services will result in the inability to fund all priority one fund requests.

¹⁹ Comments of Jive Communications, Inc. on the *SECA Petition Public Notice*, filed Sept. 10, 2012, at 3; Reply Comments of Philip B. Gieseler on the *SECA Petition Public Notice*, filed Sept. 24, 2012, at 2-3; Comments of E-Rate Central on the *SECA Petition Public Notice*, filed Sept. 8, 2012; Comments of NetDiverse, LLC on the *SECA Petition Public Notice*, filed Sept. 10, 2012, at 1.

²⁰ For example, SECA’s first criterion, which would require that the cost of bundled end-user equipment be “ancillary” relative to the cost of the bundle as a whole, may not work because in section 54.504(e) of the Commission’s rules “ancillary” means that an ineligible component’s price cannot be determined separately. Because SECA’s criterion assumes that some cost can be ascribed to the device, the device cannot be “ancillary.” Using similar terms such as “de minimis” or “minimal” may also prove to be vague and difficult to implement on a consistent basis.

²¹ Comments of NetDiverse, LLC on the *SECA Petition Public Notice*, filed Sept. 10, 2012.

further deplete funds, and could have other unintended negative consequences on participant purchasing decisions. Finally, determining whether a bundled service offering is a commercially common practice within the industry, and not a unique offering of an individual service provider, and that the bundled arrangement is currently available to the public and not just to a designated class of subscribers, would require both USAC and ultimately the Commission to perform analysis of individual service provider offerings on a case-by-case basis.²² We agree that it would be difficult to administer this exemption on a consistent basis without posing a drain on E-rate resources, because it could require additional personnel and market trend analysis that USAC is not prepared for or structured to perform.²³ We seek comment on whether putting measurements and procedures in place to implement the bundling exemption in the *Gift Rule Clarification Order* will cost more to the program than any savings that might be gained by some applicants if we continue to allow the exemption.

9. We also seek comment on any alternatives to our proposal. To the extent commenters believe that other interpretations would better serve the Commission's goals, including other proposals that might improve program efficiency while protecting E-rate funds, commenters should provide detailed descriptions of their proposals in their comments. We also welcome suggested alternatives that minimize the impact of these proposals on small businesses as well as comments regarding the costs and benefits of implementing our proposal.

B. Cost Allocation Procedures

10. We considered as part of this proposal the likely impact on applicants and we do not anticipate it will cause an unreasonable burden. E-rate program participants have always been required to detail the costs of ineligible components and our proposal would merely require them to apply this requirement to any bundled ineligible components they may have believed to fall within the purview of the *Gift Rule Clarification Order*. Although this may increase the amount of time applicants spend on their applications, we do not believe that this increase will be significant. We recognize, however, that applicants may desire additional guidance on how to best derive the costs of ineligible end-user devices. For example, for situations where component costs are not easily obtained and applicants must rely on their service providers for cost allocation percentages, how can applicants confirm such percentages? We seek comment on whether we should further clarify our current standard for cost allocations to provide additional guidance concerning end-user equipment. We also seek comment whether there are additional ways the Commission could reduce the burden on E-rate recipients that are required to cost allocate bundled components that they may have believed to be exempt from cost allocation in more recent funding years.

C. Ancillary Components

11. Finally, our proposal addresses only the cost allocation language in the *Gift Rule Clarification Order* pertaining to the treatment of ineligible components and does not purport to alter the Commission's cost allocation rules.²⁴ Other than the *Gift Rule Clarification Order* language, the only

²² SECA Petition at 3. Indeed, the language in the *Gift Rule Clarification Order* effectively requires a similar case-by-case analysis, which is proving to be challenging to all parties. Notice of *Ex Parte* Communication from Michael K. Sharp, Jive Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6 (dated Oct. 17, 2012); Broadcore *Ex Parte*.

²³ Comments of Jive Communications, Inc. on the *SECA Petition Public Notice*, filed Sept. 10, 2012, at 11.

²⁴ A request for discounts for a product or service that includes both eligible and ineligible components must allocate the cost of the contract to eligible and ineligible components. 47 C.F.R. § 54.504(e). If a product or service contains ineligible components, costs must be allocated to the extent that a clear delineation can be made between

(continued...)

existing exception to the cost allocation rules is the exception for ancillary components. An insignificant and strictly “ancillary” component can be bundled into a much broader product or service without cost allocation if the ineligible component is ancillary to the principle use of the eligible component, and is the most cost-effective means of receiving the eligible component functionality.²⁵ In order for an ineligible component to be ancillary, however, its price cannot be determined separately and independently from the price of the eligible components.²⁶ SECA asserts that in addition to the *Gift Rule Clarification Order* language, the rules concerning ancillary components may lack clarity and should be addressed by the Bureau.²⁷ Therefore, we seek comment on whether it is necessary to make changes, and if so, what clarifications could be made, to ensure that ineligible components are not bundled under the guise of being ancillary to a much broader product or service. For example, under what circumstances would it be appropriate for an applicant or service provider to assert that a separate piece of equipment, such as a telephone handset, cell phone or tablet, is ancillary to the eligible service it is paired with? Because their prices can almost always be determined independent of any eligible components, we do not think end-user devices could ever be considered ancillary to the services with which they are paired. We seek comment on this position.

IV. PROCEDURAL MATTERS

Initial Regulatory Flexibility Analysis

12. As required by the Regulatory Flexibility Act of 1980 (RFA),²⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this Public Notice. The IRFA is attached to this Public Notice as an appendix. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided at the beginning of this Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).²⁹ In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register.

Initial Paperwork Reduction Act of 1995 Analysis

13. This document seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the Federal Register inviting the public to comment on the

(Continued from previous page)_____

the eligible and ineligible components. 47 C.F.R. § 54.504(e) (1). The delineation must have a tangible basis, and the price for the eligible portion must be the most cost-effective means of receiving the eligible service. *Id.*

²⁵ 47 C.F.R. § 54.504(e)(2). If a product or service includes ineligible functionality, then, in general, the proportionate cost of this functionality must be removed from funding requests through a cost allocation process. However, in certain limited cases, if any ineligible functionality is not significant and strictly ancillary to the principle uses of the product or service, the full product or service may be eligible for discounts. *See* USAC, Eligible Services List for Funding Year 2013, *at* http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList-2013.pdf (last visited Apr. 9, 2013).

²⁶ 47 C.F.R. § 54.504(e)(2).

²⁷ SECA Petition at 2.

²⁸ *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

²⁹ *See* 5 U.S.C. § 603(a).

requirement, as required by the Paperwork Reduction Act of 1995.³⁰ In addition, pursuant to the Small Business Paperwork Relief Act of 2002,³¹ the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Ex Parte Presentations

14. Permit-But-Disclose. The proceeding this Public Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³² 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.

Filing Requirements

15. Comments and Replies. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,³³ interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed by paper or by using the Commission’s Electronic Comment Filing System (ECFS).³⁴

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- 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.

³⁰ Public Law 104-13, *see* 44 U.S.C. §§ 3501-3520.

³¹ Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

³² 47 C.F.R. §§ 1.1200 *et seq.*

³³ 47 C.F.R. §§ 1.415, 1.419.

³⁴ *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

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., SW, 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 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

In addition, we request that one copy of each pleading be sent to each of the following:

- (1) Bryan P. Boyle, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 6-A100, Washington, DC 20554; e-mail: Bryan.Boyle@fcc.gov; and
- (2) Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW, Room 5-B521, Washington, DC 20554; e-mail: Charles.Tyler@fcc.gov.

16. 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).

17. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS.³⁵ These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street, SW, Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

18. Additional Information. For additional information on this proceeding, contact Bryan P. Boyle of the Wireline Competition Bureau via telephone at (202) 418-7924 or via email at Bryan.Boyle@fcc.gov.

³⁵ Documents will generally be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

APPENDIX

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ 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 Public Notice. 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 Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the Public Notice and IRFA (or summaries thereof) will be published in the Federal Register.³

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

2. The public notice seeks comment on requirements that apply when service providers seek to bundle devices, equipment and services that are ineligible for E-rate support with E-rate eligible services and products. In the public notice, we propose to clarify that beginning with applications seeking discounts for E-rate fund year 2014, any ineligible components must be cost allocated, even if bundled with E-rate eligible services and offered to the public or some class of users. The Bureau's objective for the proposed rule is to provide clarity to E-rate recipients and service providers and stabilize fund expenditures. The current requirement as interpreted in the *Gift Rule Clarification Order*⁴ could further strain the E-rate program because it permits E-rate funding to pay for ineligible components and also lacks sufficient clarity to be interpreted on a consistent and fair basis in the marketplace. This Public Notice seeks comment on the Commission's definition of ancillary services and its relation to E-rate offerings with bundled ineligible components.

3. The prudent use of limited E-rate funding and clarity about E-rate rules are important to the long-term efficacy of the fund. The proposal contained in this public notice will help to achieve the Commission's goal of maintaining fund solvency and providing clear rules to E-rate recipients.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the public notice is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403.

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

5. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Gift Rule Clarification Order*, 25 FCC Rcd at 17328, para. 25.

⁵ 5 U.S.C. § 603(b)(3).

organization,” and “small governmental jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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).⁸ Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.⁹ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹⁰

6. Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹¹ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹² Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹³ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁴ Thus, we estimate that most governmental jurisdictions are small.

7. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.¹⁵

8. *Schools and Libraries.* As noted, “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.”¹⁶ 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 12.¹⁷ For-profit schools and libraries, and schools and libraries with endowments in excess of

⁶ 5 U.S.C. § 601(6).

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

⁸ Small Business Act, 15 U.S.C. § 632.

⁹ See SBA, Office of Advocacy, “Frequently Asked Questions,” at <http://web.sba.gov/faqs/faqindex.cfm?areaID=24> (last visited Apr. 9, 2013).

¹⁰ 5 U.S.C. § 601(4).

¹¹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹² 5 U.S.C. § 601(5).

¹³ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹⁴ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

¹⁵ 47 C.F.R. §§ 54.501-54.502, 54.504.

¹⁶ 47 C.F.R. § 54.500(c).

¹⁷ 47 C.F.R. § 54.500(k).

\$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.¹⁸ Certain other statutory definitions apply as well.¹⁹ The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities.²⁰ In funding year 2007 approximately 105,500 schools and 10,950 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 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

9. *Telecommunications Service Providers.* First, neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.²¹ According to Commission data, 1,307 incumbent carriers reported that they were engaged in the provision of local exchange services.²² Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.²³ Thus, under this category and associated small business size standard, we estimate that the majority of entities are small. We have included small incumbent local exchange carriers 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."²⁴ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.²⁵ 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.

10. Second, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.²⁶ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²⁷ According to

¹⁸ 47 C.F.R. § 54.501.

¹⁹ *Id.*

²⁰ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) codes 611110 and 519120 (NAICS code 519120 was previously 514120).

²¹ 13 C.F.R. § 121.201, NAICS code 517110.

²² FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (September 2010) (*2010 Trends Report*) (using data that is current as of Oct. 13, 2008).

²³ *Id.*

²⁴ 5 U.S.C. § 601(3).

²⁵ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

²⁶ 13 C.F.R. § 121.201, NAICS code 517110.

²⁷ *Id.*

the Commission's *2010 Trends Report*, 359 companies reported that they were engaged in the provision of interexchange services.²⁸ Of these 300 IXCs, an estimated 317 have 1,500 or few employees and 42 have more than 1,500 employees.²⁹ Consequently, the Commission estimates that most providers of interexchange services are small businesses.

11. Third, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.³⁰ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.³¹ According to the *2010 Trends Report*, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.³² 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.³³ Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

12. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.³⁴ Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."³⁵ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.³⁶ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.³⁷ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.³⁸ For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.³⁹

²⁸ *2010 Trends Report*, Table 5.3, page 5-5.

²⁹ *Id.*

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ *Id.*

³² *2010 Trends Report*, Table 5.3, page 5-5.

³³ *Id.*

³⁴ U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; at <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

³⁵ U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

³⁶ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

³⁷ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517211 (issued Nov. 2005).

³⁸ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

³⁹ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 517212 (issued Nov. 2005).

Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁴⁰ Thus, we estimate that the majority of wireless firms are small.

13. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).⁴¹ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁴² According to the *2010 Trends Report*, 413 carriers reported that they were engaged in wireless telephony.⁴³ Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.⁴⁴ We have estimated that 261 of these are small under the SBA small business size standard.

14. *Common Carrier Paging*. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).⁴⁵ Prior to that time, such firms were within the now-superseded category of “Paging.”⁴⁶ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴⁷ Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year.⁴⁸ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴⁹ Thus, we estimate that the majority of paging firms are small.

15. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁰ A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three

⁴⁰ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁴¹ 13 C.F.R. § 121.201, NAICS code 517210.

⁴² *Id.*

⁴³ *2010 Trends Report* at Table 5.3, page 5-5.

⁴⁴ *Id.*

⁴⁵ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;
at <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴⁶ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;
at <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴⁷ 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

⁴⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 5, NAICS code 517211 (issued Nov. 2005).

⁴⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁵⁰ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems et al.*, WT Docket No. 96-18 et al., Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 2732, 2811-12, paras. 178-81 (1997) (*Paging Second Report and Order*); Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, 10085-88, paras. 98-107 (1999).

years.⁵¹ The SBA has approved this definition.⁵² An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁵³ Fifty-seven companies claiming small business status won 440 licenses.⁵⁴ A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.⁵⁵ One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁵⁶

16. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 291 carriers reported that they were engaged in the provision of “paging and messaging” services.⁵⁷ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁵⁸ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

17. *Internet Service Providers*. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider’s own telecommunications facilities (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired Telecommunications Carriers,⁵⁹ which has an SBA small business size standard of 1,500 or fewer employees.⁶⁰ The latter are within the category of All Other Telecommunications,⁶¹ which has a size standard of annual receipts of \$25 million or less.⁶² The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.⁶³ That category had a small business size standard of \$21 million or less in annual receipts,

⁵¹ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁵² See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (WTB), FCC (Dec. 2, 1998).

⁵³ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁵⁴ See *id.*

⁵⁵ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

⁵⁶ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

⁵⁷ *2010 Trends Report* at Table 5.3, page 5-5.

⁵⁸ *Id.*

⁵⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; at <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

⁶⁰ 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

⁶¹ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; at <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

⁶² 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

⁶³ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; at <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

which was revised in late 2005 to \$23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.⁶⁴ Of those, 2,437 firms had annual receipts of under \$10 million, and an additional 47 firms had receipts of between \$10 million and \$24, 999,999.⁶⁵ Consequently, we estimate that the majority of ISP firms are small entities.

18. *Vendors of Internal Connections: Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: “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.”⁶⁶ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.⁶⁷ According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.⁶⁸ Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499.⁶⁹ Thus, under this size standard, the majority of firms can be considered small.

19. *Vendors of Internal Connections: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “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.”⁷⁰ The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.⁷¹ According to Census Bureau data for 2002, there were a total of 1,041

⁶⁴ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 518111 (issued Nov. 2005).

⁶⁵ An additional 45 firms had receipts of \$25 million or more.

⁶⁶ U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; at <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

⁶⁷ 13 C.F.R. § 121.201, NAICS code 334210.

⁶⁸ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (rel. May 26, 2005); at <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 450.

⁶⁹ *Id.* An additional 4 establishments had employment of 2,500 or more.

⁷⁰ U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; at <http://www.census.gov/naics/2007/def/ND334220.HTM#N334220>.

⁷¹ 13 C.F.R. § 121.201, NAICS code 334220.

establishments in this category that operated for the entire year.⁷² Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.⁷³ Thus, under this size standard, the majority of firms can be considered small.

20. *Vendors of Internal Connections: Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).”⁷⁴ The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is having 750 or fewer employees.⁷⁵ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.⁷⁶ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.⁷⁷ Thus, under this size standard, the majority of firms can be considered small.

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

21. In this Public Notice, the Bureau seeks public comment on proposals for cost allocating bundled ineligible components. The proposed rule could result in minimal additional reporting requirements.

22. These requirements are already part of section 54.504(e) of the Commission’s rules which require a clear delineation of eligible and ineligible services that are included on an application requesting E-rate discounts. The result of the Public Notice could be that small entities that had not been cost allocating certain bundled ineligible components per the *Gift Rule Clarification Order* would again be required to comply with section 54.504(e) requirements for cost allocating these components. Small

⁷² U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (rel. May 26, 2005); at <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

⁷³ *Id.* An additional 18 establishments had employment of 1,000 or more.

⁷⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334290 Other Communications Equipment Manufacturing”; at <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

⁷⁵ 13 C.F.R. § 121.201, NAICS code 334290.

⁷⁶ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (rel. May 26, 2005); at <http://factfinder.census.gov>. The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 471.

⁷⁷ *Id.* An additional 3 establishments had employment of 1,000 or more.

entities that are service providers and vendors in the E-rate program would also be required to reexamine offerings in accordance to any changed requirements.

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

23. 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.”⁷⁸

24. The proposed rulemaking could impose minimal additional burden on small entities. The only additional administrative burden the proposed rulemaking could impose on small entities, however, would be requiring them to cost allocate ineligible components that they may have presumed were exempted from the cost allocation requirements per the *Gift Rule Clarification Order*. Cost allocation requires determining the costs of eligible and ineligible components and reporting the delineation of those costs in a request for E-rate discounts on the FCC Form 471. E-rate recipients had been required to cost allocate ineligible components bundled with eligible services prior to the *Gift Rule Clarification Order*, and are already generally required to cost allocate all ineligible components. Thus, this rulemaking merely removes a short-term exemption that may have been applicable to certain equipment that met the limited qualifications outlined in the *Gift Rule Clarification Order*.

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

25. None.

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

⁷⁸ 5 U.S.C. § 603(c)(1) – (c)(4).