

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

In the Matter of)
Schools and Libraries Universal Service) CC Docket No. 02-6
Support Mechanism)
A National Broadband Plan) GN Docket No. 09-51
For Our Future)

ORDER

Adopted: May 23, 2014

Released: May 23, 2014

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) revises our guidance for the E-rate program (more formally known as the schools and libraries universal service support program) with respect to the requirement that applicants deduct from their E-rate funding requests the value of ineligible services bundled with services eligible for E-rate support, a process referred to in the E-rate program as cost allocation. The 2010 Clarification Order permitted, under limited circumstances, E-rate applicants to seek E-rate support for purchases of eligible services bundled with ineligible components without providing a cost allocation separating out the value of the ineligible components.1 Beginning in funding year 2015, we once again require E-rate recipients to cost allocate ineligible components that are bundled with eligible products or services, even under the limited circumstances allowed for by the 2010 Clarification Order. Based on our review of the record, we find that allowing E-rate applicants to purchase bundles of eligible products or services and ineligible components without deducting the value of the ineligible components risks having the federal universal service fund (Fund) overpay for services, and resulted in applicant and service provider confusion.2 We therefore determine that E-rate applicants must deduct the value of ineligible components bundled with eligible services unless those ineligible components qualify as "ancillary" to the eligible services under the Commission's rules.3 This revised interpretation of our rules shall be effective beginning in funding year 2015.

1 See 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 (Wireline Comp. Bur. 2010) (2010 Clarification Order).

2 We frequently refer to bundles of eligible services with ineligible components in this Order. By eligible service, we mean any service or product that is eligible for E-rate support. By ineligible component, we mean any service, product, equipment, device or other functionality that is ineligible for E-rate support. See USAC, Eligible Services List, http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx (last visited May 12, 2014) (providing links to the ESLs for funding years 2010-2014 and a link to archived ESLs for funding years 1998-2009); see also 47 C.F.R. § 54.504(e) (2011) (requiring that 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).

3 The Commission rules state that "[i]f a product or service contains ineligible components that are ancillary to the eligible components, and the product or service is the most cost-effective means of receiving the eligible component (continued...)

II. BACKGROUND

2. The E-rate program provides eligible schools and libraries with discounts for telecommunications services, telecommunications, Internet access, internal connections, and basic maintenance of internal connections.⁴ The Commission releases an ESL, which identifies those products and services eligible for E-rate support.⁵ If an applicant submits a request for E-rate support for a product or service that includes both eligible and ineligible components, the E-rate rules require an applicant to determine the cost of the ineligible components, and the applicant may not seek support for the cost of those components.⁶ Applicants and service providers may not use E-rate support to subsidize their procurement of ineligible or unrequested products and services, and may not participate in arrangements that have the effect of providing a discount level to applicants greater than that to which the applicants are entitled.⁷ Instead, applicants must deduct the value of all price reductions, promotional offers, and “free” products or services from the pre-discount cost of services indicated in their funding requests.⁸

3. Among other things, the 2010 *Schools and Libraries Sixth Report and Order* adopted gift rules for the E-rate program modeled on the gift rules applicable to federal agencies, with the goal of prohibiting gifts that might have undue or improper influence on a procurement decision.⁹ In the *2010 Clarification Order*, the Bureau addressed questions it received about these rules.¹⁰ In particular, the Bureau addressed the treatment of charitable donations, explaining that even if a charitable donation furthers educational programs and purposes, it will violate the E-rate program gift rule if it is provided for the specific purpose of influencing the E-rate competitive bidding process.¹¹ So, for example, the gift rules prohibit gifts of equipment that increase the demand for a donor’s services, because the underlying purpose of such gifts is likely to influence the purchasing patterns of the recipient school or library under

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functionality, without regard to the value of the ineligible component, costs need not be allocated between the eligible and ineligible components. Discounts shall be provided on the full cost of the product or service. An ineligible component is ‘ancillary’ if a price for the ineligible component cannot be determined separately and independently from the price of the eligible components, and the specific package remains the most cost-effective means of receiving the eligible services, without regard to the value of the ineligible functionality.” 47 C.F.R. § 54.504(e)(2). See also *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order, 18 FCC Rcd 26912, 26927, para. 37 (2003) (*Schools and Libraries Third Report and Order*).

⁴ See 47 C.F.R. § 54.502(a). The Commission has sought comment on the services that should be eligible for E-rate discounts in the pending *E-rate Modernization NPRM*. See *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Notice of Proposed Rulemaking, 28 FCC Rcd 11304 (2013).

⁵ See 47 C.F.R. § 54.502(b); see also USAC, Eligible Services List, <http://www.usac.org/sl/applicants/beforeyoubegin/eligible-services-list.aspx>.

⁶ See 47 C.F.R. § 54.504(e) (2011); *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26927, para. 37; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9022-23, para. 462 (1997) (subsequent history omitted).

⁷ See *2010 Clarification Order*, 28 FCC Rcd at 17328, para. 11; see also USAC, USAC Free Services Advisory, <http://www.usac.org/sl/applicants/step02/free-services-advisory.aspx> (last visited May 12, 2014).

⁸ *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District et al.*, *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 26407, 26434, para. 60 (2003).

⁹ *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, 18800-02, paras. 86-90 (2010) (*Schools and Libraries Sixth Report and Order*).

¹⁰ *2010 Clarification Order*, 25 FCC Rcd 17324.

¹¹ *Id.* at 17328, para. 11

the E-rate program.¹² The Bureau further explained 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.”¹³ In a footnote, the Bureau stated 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.”¹⁴ By way of example, the footnote also explained 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.”¹⁵

4. In response to this guidance, beginning in funding year 2011 some service providers began offering – or started contemplating to offer – bundles of free or heavily-discounted ineligible components with eligible services.¹⁶ This prompted the applicant and service provider community to seek clarity on the scope of the guidance.¹⁷ The State E-rate Coordinators Alliance (SECA) filed a petition seeking clarification on whether certain end-user devices could be purchased in bundles without cost allocation, and proposing standards for purchasing bundled ineligible components without cost allocation.¹⁸ On August 10, 2012, the Bureau issued a Public Notice seeking comment on the SECA Petition.¹⁹

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 17328, para. 11 n.25. The order did not elaborate on why in that instance no cost allocation would be required.

¹⁵ *Id.*

¹⁶ *See, e.g.,* Reply Comments of Jive Communications, Inc. on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2-3 (dated June 7, 2013) (Jive Reply Comments) (stating that after careful examination of the *Schools and Libraries Sixth Report and Order*, the *2010 Clarification Order*, and a Client Services Bureau response to its inquiry, Jive began offering free handsets to E-rate and other customers that purchase voice over Internet protocol (VoIP) service).

¹⁷ *See, e.g.,* Comments of E-rate Provider Services, LLC on the FY 2013 Draft Eligible Services List of the Schools and Libraries Universal Service Mechanism, CC Docket No. 02-6, (dated Aug. 6, 2012) (seeking clarification on the *2010 Clarification Order* and stating that for many months, service providers have been seeking clarification of the scope of the guidance as well as contemplating how to best craft customer offerings to best take advantage of the guidance); 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. 21, 2012) (stating that there is currently confusion about the scope of the *2010 Clarification Order* guidance); 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) (discussing confusion over whether VoIP handset bundles fall under the *2010 Clarification Order* guidance).

¹⁸ SECA Petition for Clarification Pertaining to the Eligibility of Free VoIP Handsets and Other End-User Equipment, CC Docket No. 02-6, GN Docket No. 09-51 (filed July 27, 2012) (SECA Petition). Comments filed in response to that petition are incorporated into this proceeding. *See 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, Public Notice, 28 FCC Rcd 4212 (Wireline Comp. Bur. 2013) (*E-rate Bundled Components Public Notice*).

¹⁹ *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*).

5. After considering the record developed in response to the *SECA Petition Public Notice*, the Bureau issued the *E-rate Bundled Components Public Notice* seeking comment on requiring ineligible components to be cost allocated, even if bundled with E-rate eligible services and offered to the public or some class of users, and highlighting the prospect of the Bureau modifying the bundled services guidance provided in the *2010 Clarification Order*, rather than adopting the proposals made in the *SECA Petition Public Notice* to clarify this guidance.²⁰

III. DISCUSSION

6. Based on our review of the record, we now adopt the proposal made in the *E-rate Bundled Components Public Notice*, and revise our guidance regarding cost allocation for bundles of eligible services and ineligible components to more properly align with the Commission's cost allocation rules for the E-rate program, the best interests of the Fund, and the best interests of applicants for E-rate support. As a result, beginning with funding year 2015, E-rate recipients must cost allocate non-ancillary²¹ ineligible components that are bundled with eligible products or services, including those components that previously would have fallen within the scope of components not requiring cost allocation as described in the *2010 Clarification Order*. Applicants may continue to seek E-rate funding for the eligible components of any bundled service offering but now must cost allocate non-ancillary ineligible components including, but not limited to, end user devices such as telephone handsets, VoIP handsets, computers, cell phones, and other components that are not eligible for E-rate discounts. We make no other changes to the gift guidance in the *2010 Clarification Order*. If a gift was prohibited prior to today's Order, it remains prohibited by our rules.

7. The record persuades us that the *2010 Clarification Order* guidance, which was focused on providing a further explanation of the Commission's E-rate program gift rules, is not the best reading of the Commission's rules because it did not fully consider the interplay between the gift rules and cost allocation requirements. As a result, the guidance in that order created substantial uncertainty for applicants and service providers about which ineligible components were required to be cost allocated.²² Moreover, because the *2010 Clarification Order* did not impose limitations on what types of equipment or services could be bundled, we have become increasingly concerned that it unintentionally created risk that bundled offerings could result in expenditures for ineligible equipment or services that could drain the resources available for eligible equipment or services.²³

²⁰ See *E-rate Bundled Components Public Notice*.

²¹ For information on what constitutes an ancillary component, see *supra* note 3 and *infra* para. 13.

²² See SECA Reply Comments on the *SECA Petition Public Notice*, CC Docket No. 02-6, at 6-7 (dated Sept. 24, 2012) (stating that uncertainty creates confusion, causing unnecessary risk for applicants); Reply Comments of Philip B. Gieseler on the *SECA Petition Public Notice*, CC Docket No. 02-6, at 2-3 (dated Sept. 24, 2012) (Gieseler *SECA Petition Public Notice* Comments) (discussing the benefits of certainty for E-rate recipients).

²³ Not a single commenter offered evidence demonstrating that providing support for bundles of eligible and ineligible components imposes no additional cost to the Fund, and we are not persuaded by arguments that it would be inappropriate to rescind the cost allocation guidance provided in the *2010 Clarification Order* because we have not quantified its cost to the Fund. See Comments of Funds for Learning, LLC on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 7-8 (dated May 23, 2013) (Funds for Learning Comments) (“[F]ree ‘stuff’ might be costing the program something, and in some cases it probably is, but that is a very weak foundation upon which to support a rule change....”) (emphasis and quotation marks in the original); Reply Comments of Verizon and Verizon Wireless on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated June 7, 2013) (“[I]t is not apparent—and the [*E-rate Bundled Components Public Notice*] does not substantively address—whether the common wireless industry practice of offering free or discounted devices to customers actually has had a material impact on the demand for E-rate subsidies.”); Comments of Sprint Nextel Corporation on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated May 23, 2013) (Sprint Comments) (“[I]nsofar
(continued...)”) (continued...)

8. The *2010 Clarification Order* guidance has proven to be incompatible with the Commission's E-rate rules regarding eligible services and cost allocation, which serve to prevent the E-rate program from paying for more than just eligible services. Permitting E-rate support for bundled ineligible components without requiring cost allocation creates the risk that E-rate funds will pay for ineligible services, leaving less money for eligible services.²⁴ The Commission's ongoing commitment to strong stewardship of the Fund and to combatting waste, fraud and abuse in the E-rate program requires us to strive to ensure that E-rate support is not diverted to ineligible services, and the interpretation of our rules adopted here helps guard against that risk.²⁵

9. In addition, we have found that the *2010 Clarification Order* has caused confusion over the interplay between that order and the Commission's cost allocation rules. The Commission's cost allocation rules require that "[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."²⁶ By exempting some bundled offerings from those general cost allocation rules, the cost allocation guidance in the *2010 Clarification Order* inadvertently created substantial tension between the guidance provided by the Bureau and the Commission's rules. Moreover, commenters expressed frustration that the *2010 Clarification Order* cost allocation guidance did not make clear what products or services, other than cell phones, did not require cost allocation.²⁷ Rescinding the cost allocation guidance of the *2010 Clarification Order* and once again requiring cost allocation of all non-ancillary ineligible components of a bundle reflects the best reading of Commission rules and will make it easier for applicants to determine what must be cost allocated.²⁸ We agree with the commenter who stated that the longstanding cost allocation requirement is "a simple and conceptually sound approach."²⁹

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as Sprint is aware, there is no data to support this supposition [that requiring cost allocation for ineligible bundled devices will result in more funds being available for E-rate eligible services]"); Reply Comments of T-Mobile USA, Inc. on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated June 7, 2013) (T-Mobile Reply Comments) ("Neither the [*E-rate Bundled Components Public Notice*] nor the record in this proceeding presents evidence, however, that the bundling rule has in fact increased reimbursements from the fund or placed the fund under any strain"). One commenter argued that there is data showing the cost of permitting ineligible bundled devices to not be cost allocated to the Fund, but did not provide the data. See Comments of E-rate Central to the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 1 (dated May 17, 2013) (E-rate Central Comments).

²⁴ See e.g. Comments of E-rate Provider Services, LLC on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated May 21, 2013) (E-rate Provider Services Comments); Comments of Broadcore, Inc. on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated May 21, 2013) (Broadcore Comments) (both stating that there is significant pressure on E-rate services and that allowing ineligible services to be bundled without cost allocation is not cost efficient for the E-rate fund).

²⁵ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15813, para. 14 (2004) (discussing ongoing efforts to combat waste, fraud and abuse).

²⁶ 47 C.F.R. § 54.504(e).

²⁷ See Comments of SECA on the *E-rate Bundled Components Public Notice*, CC Docket No. 02-6, at 2 (dated June 7, 2013) (SECA Comments) (stating that confusion exists because of the "other equipment" language in the *2010 Clarification Order* guidance); Comments of NetDiverse, LLC on the *SECA Petition Public Notice*, CC Docket No. 02-6, at 2 (dated Sept. 10, 2012) (stating that further clarification is needed because there is confusion among applicants and service providers); Gieseler *SECA Petition Public Notice* Comments at 3 (arguing that "[a]ll beneficiaries deserve clear, bright line information about what can be a part of an eligible funding request").

²⁸ In its petition, SECA proposed that the Commission adopt a four-part test for determining which bundled offerings should qualify for an exemption from cost allocation: (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

(continued...)

10. Some commenters recommended that the Bureau reaffirm the cost allocation language in the *2010 Clarification Order*, but limit its reach to bundles of cell phone handsets and service.³⁰ Having a separate cost allocation policy for cell phones might be a practical approach to address the difficulties in assessing equipment price,³¹ but allowing bundling without cost allocation, even in relatively narrow circumstances, is in tension with the Commission's rules.³² Moreover, treating bundles of cell phones and cell phone service differently than other bundles of eligible services and ineligible components is inconsistent with the Commission's general commitment to technological neutrality, and risks having the E-rate program funds overpay for cell phone service.³³ Requiring cost allocation for all bundled ineligible components, including cell phones, comports more fully with Commission rules.³⁴

11. Some commenters argue that we should maintain the guidance in the *2010 Clarification Order* because bundling eligible and ineligible services is often the most economical way for E-rate recipients to receive services.³⁵ But under today's decision, E-rate applicants may continue to achieve those economies by purchasing bundles containing eligible products or services and ineligible components. They are merely required to deduct the value of these ineligible components from their funding requests when they seek discounts for purchases of bundled services. In practical terms, this means that when applicants submit requests for funding on an FCC Form 471, they must identify which costs in the bundle are eligible and which costs are ineligible.

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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. *SECA Petition* at 3. However, we find that the implementation of these proposals would create substantial tensions with the Commission's cost allocation rules, and we agree with commenters that the test would pose administrative difficulties for applicants and USAC. *See Reply Comments of Jive Communications, Inc. on the SECA Petition Public Notice*, CC Docket No. 02-6, at 11-12 (dated Sept. 10, 2012) (explaining the administrative difficulties applicants would face in determining whether a bundled component would comply with the SECA test); E-rate Central Comments at 2 (stating that the SECA proposal would be "somewhat difficult to administer").

²⁹ E-rate Central Comments at 2.

³⁰ *See SECA Comments* at 2-3 (proposing cell phones only be exempt from cost allocation rules); Funds for Learning Comments at 11 (requesting that E-rate recipients not be required to cost allocate cell phones even if they are required to cost allocate other end-user devices).

³¹ *See SECA Comments* at 2 (arguing that there is no confusion regarding applying the *2010 Clarification Order* guidance to cell phones); Funds for Learning Comments at 11 (discussing the difficulty of and expenses related to cost allocating cell phones).

³² *See supra* para 9.

³³ *See E-rate Provider Services Comments* at 3 (arguing that not requiring cost allocation for bundled ineligible cell phones only would provide the cell phone industry with an unfair advantage over competing industries); Jive Reply Comments at 11 (stating that the *2010 Clarification Order* guidance should be administered in a technologically-neutral manner); Broadcore Comments at 2 (also discussing pressure on E-rate funds resulting from funding ineligible components).

³⁴ *See supra* paras. 7-9.

³⁵ *See Sprint Comments* at 1-2 (stating that it is unaware of instances in which a bundled package is more expensive than a package containing only E-rate eligible services); Jive Reply Comments at 3 (arguing that the price of bundled services is often no more than stand-alone prices); T-Mobile Reply Comments at 3-4 (arguing that mobile devices generally have high stand-alone prices when compared to bundles that are a part of long-term contracts).

12. Several commenters have asked for guidance on the Commission's cost allocation requirements.³⁶ We recognize that, as explained above, cost allocation requires some administrative effort, but compliance with the requirement is relatively simple. Under the Commission's rules, if a product or service contains ineligible components, costs should be allocated to the extent that a clear delineation can be made between the eligible and ineligible components. The clear 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.³⁷

13. Finally, as explained above, cost allocation is not required for ineligible ancillary components as defined by the Commission's rules.³⁸ Although some commenters recommend amending the definition of "ancillary",³⁹ a substantive change to the Commission's rule on ancillary components is beyond the scope of this proceeding.⁴⁰ We remind applicants that the definition of ancillary requires that the price for the otherwise ineligible component cannot be determined separately and independently from the price of the eligible components, and that the specific service which contains the ineligible ancillary component remains the most cost-effective way for the applicant to receive that service.⁴¹ USAC reviews requests for E-rate funding to ensure that any ineligible components deemed as ancillary to eligible services are truly ancillary under the Commission's definition.

IV. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act of 1980 (RFA),⁴² the Bureau has prepared a Final Regulatory Flexibility Analysis relating to this Order. The FRFA is set forth in the Appendix.

B. Paperwork Reduction Act Analysis

15. This document contains revised 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 of the PRA. We note that pursuant to the

³⁶ See E-rate Central Comments at 2-4 (seeking guidance regarding amortization and determining standalone prices but recognizing that the longstanding cost allocation requirement is "a simple and conceptually sound approach"); Funds for Learning Comments at 2-3 (suggesting various options for cost allocation); SECA Comments at 5 (requesting additional guidance on cost allocation). Some commenters questioned whether our solution would increase administrative efficiency because cost allocation is administratively cumbersome. See Funds for Learning Comments at 2-3 (discussing the time and effort involved in cost allocation); Jive Reply Comments at 5 (stating that cost allocation is not straightforward); T-Mobile Reply Comments at 7 (arguing that the negative consequences of cost allocation would outweigh the benefits of requiring it).

³⁷ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26927, para. 37; 47 C.F.R. § 54.504(e)(1).

³⁸ See *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26927, para. 37; see also 47 C.F.R. § 54.504(e)(2).

³⁹ See Comments of Donna Rea on the *E-rate Bundled Components Public Notice*, at 1 (dated Apr. 13, 2013) (arguing that some cellular devices should fall under the definition of "ancillary"); E-Rate Provider Services Comments at 6 (asking that the definition of "ancillary" be broadened to include small features in software packages).

⁴⁰ See 47 C.F.R. § 0.91 (allowing the Bureau to act on requests for interpretation of Commission rules).

⁴¹ 47 C.F.R. § 54.504(e)(2).

⁴² See 5 U.S.C. § 604. 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, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁴³ 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.

16. In the present document, we rescind the guidance in the *2010 Clarification Order*⁴⁴ regarding cost allocation requirements in the E-rate program (more formally known as the schools and libraries universal service support program). We have determined that it is in the best interest of the E-rate program and its participants to require E-rate recipients to cost allocate ineligible components that are bundled with eligible services and that may have been subject to the limited exemption provided by the guidance in the *2010 Clarification Order*. Any information collected from applicants is limited to information explaining the cost allocation.

C. Congressional Review Act

17. The Bureau will include a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.⁴⁵

V. ORDERING CLAUSE

18. Accordingly, IT IS ORDERED, that pursuant to the authority contained in sections 1 through 4, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151 – 154, 254, and 303(r), and authority delegated in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Third Report and Order, 12 FCC Rcd 22485, 22488-89, para. 6 (1997), this Order IS ADOPTED, effective thirty (30) days after publication of the text or summary thereof in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

⁴³ See 44 U.S.C. § 3506(c)(4).

⁴⁴ See *2010 Clarification Order*, 25 FCC Rcd 17324.

⁴⁵ See 5 U.S.C. § 801(a)(1)(A).

APPENDIX

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Wireline Competition Bureau (Bureau) included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *E-rate Bundled Components Public Notice* in CC Docket No. 02-6 and GN Docket No 09-51.² The Bureau sought written public comment on the proposals in the *E-rate Bundled Components Public Notice*, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

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

2. This Order continues the Bureau's efforts to simplify the E-rate program and encourage the prudent use of limited E-rate funds. In it, we clarify that beginning with applications seeking discounts for E-rate funding year 2015, 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 prudent use of limited E-rate funding and clarity about E-rate rules are important to the long-term efficacy of the federal universal service fund (Fund). This clarification will help to achieve the Commission's goal of maintaining Fund solvency and providing clear rules for E-rate recipients.

B. Summary of Significant Issues Raised by Public Comments to the IRFA

3. No comments specifically addressed the IRFA.

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

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁴ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵ 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).⁶

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 *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, Public Notice, 28 FCC Rcd 4212 (Wireline Comp. Bur. 2013) (*E-rate Bundled Components Public Notice*).

³ 5 U.S.C. § 603(b)(3).

⁴ 5 U.S.C. § 601(6).

⁵ 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).

⁶ Small Business Act, 15 U.S.C. § 632.

Nationwide, there are a total of approximately 28.2 million small businesses, according to the SBA.⁷ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁸

5. Nationwide, as of 2002, there were approximately 1.6 million small organizations.⁹ 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.”¹⁰ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹¹ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹² Thus, we estimate that most governmental jurisdictions are small.

6. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.¹³

7. *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.”¹⁴ 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 12.¹⁵ For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.¹⁶ Certain other statutory definitions apply as well.¹⁷ The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities.¹⁸ 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.

⁷ See SBA, Office of Advocacy, “Frequently Asked Questions,” http://www.sba.gov/sites/default/files/FAQ_March_2014_0.pdf (last visited May 12, 2014).

⁸ 5 U.S.C. § 601(4).

⁹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁰ 5 U.S.C. § 601(5).

¹¹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹² 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.*

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

¹⁴ 47 C.F.R. § 54.500(c).

¹⁵ 47 C.F.R. § 54.500(k).

¹⁶ 47 C.F.R. § 54.501.

¹⁷ *Id.*

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

8. *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.¹⁹ According to Commission data, 1,307 incumbent carriers reported that they were engaged in the provision of local exchange services.²⁰ Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.²¹ 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.”²² 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.²³ 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.

9. 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.²⁴ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²⁵ According to the Commission’s 2010 Trends Report, 359 companies reported that they were engaged in the provision of interexchange services.²⁶ Of these 300 IXCs, an estimated 317 have 1,500 or few employees and 42 have more than 1,500 employees.²⁷ Consequently, the Commission estimates that most providers of interexchange services are small businesses.

10. 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.²⁸ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.²⁹ According to the 2010 Trends Report, 1,442 CAPs and competitive local exchange carriers (competitive LECs)

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

²⁰ 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).

²¹ *Id.*

²² 5 U.S.C. § 601(3).

²³ 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).

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

²⁵ *Id.*

²⁶ *2010 Trends Report*, Table 5.3, page 5-5.

²⁷ *Id.*

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

²⁹ *Id.*

reported that they were engaged in the provision of competitive local exchange services.³⁰ 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.³¹ Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

11. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.³² Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.”³³ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.³⁴ 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.³⁵ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.³⁶ 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.³⁷ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.³⁸ Thus, we estimate that the majority of wireless firms are small.

12. 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).³⁹ Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.⁴⁰ According to the 2010 Trends Report, 413 carriers reported that they were engaged in wireless telephony.⁴¹ Of these, an estimated 261 have 1,500

³⁰ 2010 Trends Report, Table 5.3, page 5-5.

³¹ *Id.*

³² U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”;
<http://www.census.gov/naics/2007/def/NDEF517210.HTM#N517210>.

³³ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”;
<http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

³⁴ 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).

³⁵ 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).

³⁶ *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.”

³⁷ 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).

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

⁴⁰ *Id.*

⁴¹ 2010 Trends Report at Table 5.3, page 5-5.

or fewer employees and 152 have more than 1,500 employees.⁴² We have estimated that 261 of these are small under the SBA small business size standard.

13. *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).⁴³ Prior to that time, such firms were within the now-superseded category of “Paging.”⁴⁴ Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.⁴⁵ 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.⁴⁶ Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁴⁷ Thus, we estimate that the majority of paging firms are small.

14. 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.⁴⁸ 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 years.⁴⁹ The SBA has approved this definition.⁵⁰ An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.⁵¹ Fifty-seven companies claiming small business status won 440 licenses.⁵² 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.⁵³ 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

⁴² *Id.*

⁴³ U.S. Census Bureau, 2007 NAICS Definitions, “517210 Wireless Telecommunications Categories (Except Satellite)”; <http://www.census.gov/naics/2007/def/ND517210.HTM#N517210>.

⁴⁴ U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

⁴⁵ 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).

⁴⁶ 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).

⁴⁷ *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.”

⁴⁸ *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).

⁴⁹ *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

⁵⁰ See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau (WTB), FCC (dated Dec. 2, 1998).

⁵¹ See *929 and 931 MHz Paging Auction Closes*, Public Notice, 15 FCC Rcd 4858 (WTB 2000).

⁵² See *id.*

⁵³ See *Lower and Upper Paging Bands Auction Closes*, Public Notice, 16 FCC Rcd 21821 (WTB 2001).

51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.⁵⁴

15. 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.⁵⁵ Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees.⁵⁶ We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

16. *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,⁵⁷ which has an SBA small business size standard of 1,500 or fewer employees.⁵⁸ The latter are within the category of All Other Telecommunications,⁵⁹ which has a size standard of annual receipts of \$25 million or less.⁶⁰ The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.⁶¹ That category had a small business size standard of \$21 million or less in annual receipts, 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.⁶² 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, 999,999.⁶³ Consequently, we estimate that the majority of ISP firms are small entities.

17. *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

⁵⁴ 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.

⁵⁵ 2010 Trends Report at Table 5.3, page 5-5.

⁵⁶ *Id.*

⁵⁷ U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers”; <http://www.census.gov/naics/2007/def/ND517110.HTM#N517110>.

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

⁵⁹ U.S. Census Bureau, 2007 NAICS Definitions, “517919 All Other Telecommunications”; <http://www.census.gov/naics/2007/def/ND517919.HTM#N517919>.

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

⁶¹ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers”; <http://www.census.gov/epcd/naics02/def/NDEF518.HTM>.

⁶² 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).

⁶³ An additional 45 firms had receipts of \$25 million or more.

equipment, such as bridges, routers, and gateways.”⁶⁴ The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.⁶⁵ According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.⁶⁶ Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499.⁶⁷ Thus, under this size standard, the majority of firms can be considered small.

18. *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.”⁶⁸ The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.⁶⁹ According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.⁷⁰ Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.⁷¹ Thus, under this size standard, the majority of firms can be considered small.

19. *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

⁶⁴ U.S. Census Bureau, 2002 NAICS Definitions, “334210 Telephone Apparatus Manufacturing”; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

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

⁶⁶ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (rel. May 26, 2005); <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 were 450.

⁶⁷ *Id.* An additional 4 establishments had employment of 2,500 or more.

⁶⁸ U.S. Census Bureau, 2007 NAICS Definitions, “334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing”; <http://www.census.gov/naics/2007/def/ND334220.HTM#N334220>.

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

⁷⁰ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (rel. May 26, 2005); <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 were 929.

⁷¹ *Id.* An additional 18 establishments had employment of 1,000 or more.

television broadcast, and wireless communications equipment).⁷² The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is having 750 or fewer employees.⁷³ According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.⁷⁴ Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.⁷⁵ 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

20. This Order reinstates the requirement that E-rate applicants cost allocate all bundled ineligible components other than those that fall under the Commission's definition of "ancillary."⁷⁶ Cost allocation requirements are already part of section 54.504(e) of the Commission's rules, which requires a clear delineation of eligible and ineligible services that are included on an application requesting E-rate discounts. The rulemaking results in minimal additional reporting requirements.

21. The result of this rulemaking is that small entities that had not been cost allocating certain bundled ineligible components will again be required to comply with section 54.504(e) requirements for cost allocating these components. Small entities that are service providers and vendors in the E-rate program will 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

22. 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."⁷⁷

23. This rulemaking could impose minimal additional burdens on small entities. The only additional administrative burden the 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 by the *2010 Clarification Order*. Cost allocation requires determining

⁷² U.S. Census Bureau, 2002 NAICS Definitions, "334290 Other Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

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

⁷⁴ U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (rel. May 26, 2005); <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 were 471.

⁷⁵ *Id.* An additional 3 establishments had employment of 1,000 or more.

⁷⁶ See 47 C.F.R. § 54.504(d)(2).

⁷⁷ 5 U.S.C. § 603(c)(1) – (c)(4).

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 *2010 Clarification Order*, and are already generally required to cost allocate all ineligible components.

F. Report to Congress

24. The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.⁷⁸ In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and the FRFA (or summaries thereof) will also be published in the Federal Register.⁷⁹

⁷⁸ See 5 U.S.C. § 801(a)(1)(A).

⁷⁹ See 5 U.S.C. § 604(b).