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

In the Matter of	)	
	)	
E-Rate Program Amortization Requirement	)	WC Docket No. 19-2
	)	
Modernizing the E-Rate Program for Schools and Libraries	)	WC Docket No. 13-184
	)	
	)	

NOTICE OF PROPOSED RULEMAKING AND ORDER

Adopted: January 29, 2019 **Released: January 31, 2019**

Comment Date: (30 days after date of publication in the Federal Register)
Reply Comment Date: (45 days after date of publication in the Federal Register)

By the Commission: Commissioners O'Rielly and Rosenworcel issuing separate statements.

I. INTRODUCTION

1. Schools and libraries rely on the Commission's E-Rate program[1] to ensure that they can receive affordable, high-speed broadband so they can connect today's students with next-generation learning opportunities. A Commission decision in 2000 limited E-Rate's use for this purpose by requiring schools and libraries to amortize over three years upfront, non-recurring charges of $500,000 or more, including charges for special construction projects.[2] This amortization requirement increased costs for E-Rate supported builds and created uncertainty for applicants about the availability of E-Rate funding for the second and third years of the amortization cycle. In 2014, the Commission suspended the requirement through funding year 2018 in order to lower these barriers to broadband infrastructure investment.[3] Our experience over the past few years suggests that allowing the amortization requirement to be restored would decrease broadband investment while increasing administrative burdens, and that eliminating the requirement would not create a drain on E-Rate funding. Therefore, we now propose to eliminate the amortization requirement and we waive the requirement for the duration of this rulemaking. Through these measures, we seek to further the Commission's goal of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

[1] The E-Rate program is formally known as the schools and libraries universal service support mechanism.

[2] *Request for Review by Brooklyn Public Library, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc*., CC Docket Nos. 96-45, 97-21, Order, 15 FCC Rcd 18598, 18606, para. 19 (2000) (*Brooklyn Order*). The components of special construction costs eligible for E-Rate discounts include costs for design and engineering, project management, digging trenches, and laying fiber. *See Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 31 FCC Rcd 9767, 9775 (2016); *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 18762, 18773, n.54 (2010).

[3] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, 15545-47, paras. 17-21 (2014) (*2014 Second E-Rate Order*) (suspending the requirement that E-Rate applicants amortize upfront, non-recurring category one charges of $500,000 or more for funding year 2015 through funding year 2018).

II. BACKGOUND

2. Focusing on connectivity in schools and libraries, the Universal Service Fund's (USF's) E-Rate program provides support for what are called category one and category two services. Category one services include telecommunications services and Internet access.[4] Category two services include internal connections, basic maintenance of internal connections, and managed internal broadband services.[5] Under the program rules, funding is based on demand up to an annual Commission-established cap.[6] If demand exceeds the funding cap, E-Rate funds are allocated according to rules of priority.[7] Under the Commission's rules, first priority for E-Rate funding is given to requests for category one services. The remaining available funds are allocated to requests for support for category two services.

3. In 2000, the Commission expressed concern that large upfront charges for non-recurring services—which are often charges for the construction of new or upgraded network infrastructure—could drain available E-Rate funding by diverting large sums to a limited number of applicants.[8] To mitigate this concern, the Commission held that applicants must amortize upfront, non-recurring charges when such charges vastly exceed the monthly recurring charges of the relevant service.[9] The Universal Service Administrative Company (USAC), which administers the E-Rate program, accordingly adopted a policy requiring applicants to amortize upfront, non-recurring category one charges of $500,000 or more over a period of three years.[10]

4. In the *2014 Second E-Rate Order*, the Commission suspended the amortization requirement for funding year 2015 through funding year 2018, finding that the suspension would lower barriers to infrastructure investment, including fiber deployment, by allowing applicants to plan large construction projects with the knowledge that they (or their service provider) could recover the discounted portion of the non-recurring charges upfront instead of over a period of three years.[11] The Commission also found relevant that the concerns about draining E-Rate funding raised in 2000 had not proven to be "well-founded," and that the amortization requirement might actually increase costs for applicants as service providers often pass on the costs of financing large projects through recurring charges.[12] Rather than eliminate the requirement altogether, however, the Commission elected to temporarily suspend it.[13] Absent Commission action, the amortization requirement will apply to requests for special construction projects in funding year 2019.

III. NOTICE OF PROPOSED RULEMAKING

5. To promote the buildout and deployment of high-speed networks and connections on a permanent basis to unserved and underserved schools and libraries, including those in rural areas, we

[4] 47 CFR § 54.507(f).

[5] 47 CFR § 54.507(g)(1)(ii).

[6] *See* 47 CFR § 54.507(a), (f).

[7] *See id.*

[8] *Brooklyn Order*, 15 FCC Rcd at 18606, para. 19; *see also Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 31 FCC Rcd 9767, 9775 (2016) (one-time, upfront costs typically associated with deploying new or upgraded fiber to eligible school and library locations are special construction charges).

[9] *See Brooklyn Order*, 15 FCC Rcd at 18606-07, para. 20; *see also 2014 Second E-Rate Order*, 29 FCC Rcd at 15545, para. 18.

[10] *See 2014 Second E-Rate Order*, 29 FCC Rcd at 15545-46, para. 18.

[11] *See id.* at 15545, para. 17.

[12] *See id.* at 15545, para. 18.

[13] *See id.* at 15546, para. 20.

propose to eliminate the amortization requirement for non-recurring category one funding requests over $500,000, including for special construction, from the E-Rate program. As discussed below, our experience indicates that the suspension of the amortization requirement has encouraged the deployment of high-speed, low-cost broadband networks by eliminating administrative barriers and making E-Rate funding more predictable.

6. Based on the information before us, it appears that suspending the amortization requirement has: (1) decreased administrative burdens associated with applying for E-Rate support; (2) allowed applicants and service providers to receive disbursements for the full E-Rate supported portion of projects sooner; and (3) reduced uncertainty regarding the availability of funding. Under the suspension, rather than filing funding requests in each year of the amortization cycle, applicants have had to file only a single funding request to receive E-Rate support for a project, thereby reducing the administrative effort and costs associated with filing funding requests.[14] Moreover, during the suspension, service providers have recouped their buildout costs in one funding year rather than over the three-year amortization cycle, which, in turn, has likely made special construction a more attractive option for service providers.[15] Additionally, applicants have enjoyed more certainty about funding for their special construction projects, receiving commitments for projects upfront, rather than in a piecemeal fashion over three years.[16] As a result, the suspension of the amortization requirement has provided applicants and service providers with increased certainty and predictability that E-Rate funding will be available for large, special construction funding requests, which has likely incentivized efficient investment in infrastructure, including the deployment of fiber.

7. We invite comment on, and evidence regarding, whether the amortization suspension has encouraged the deployment of high-speed, low-cost connections. We also seek comment on the effect of the amortization suspension on applicants and on USF expenditures. Has permitting service providers to recoup costs up front allowed applicants and the USF to pay less over time because service providers have not otherwise recouped capital costs over time through higher recurring charges? Would permanently eliminating the amortization requirement allow applicants and the USF to pay less over time for the same reason?

8. If the amortization requirement were to be restored, we expect that the increased administrative burden, delayed funding commitments for special construction projects due to the three-year amortization cycle, and uncertainty around receiving funding commitments in the second and third years of the cycle would deter applicants from seeking funding for special construction. We seek comment on this view. We also seek comment on the effect of restoring the amortization requirement on applicants and on USF expenditures. Would applicants, particularly those in underserved and rural areas,

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[14] *See* Letter from John Windhausen, Executive Director, SHLB Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184 at 1 (dated Oct. 30, 2018) (SHLB Letter) (highlighting the administrative flexibility the suspension of the amortization requirement has provided).

[15] *See id.* at 2 ("If the process reverts to the old amortization practice, we expect that some and perhaps many of these projects will have to cancel their [Requests for Proposals]. Some service providers may be unwilling or unable to bid on these projects because they may not have the arrangements in place to carry these costs. At a minimum, we have been told by service providers that their bid prices will likely have to increase as a result [of amortization]."); *see also* Letter from Emily Bastedo, Senior Advisor to the Governor on Education Policy, State of Illinois, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket 02-6, WC Docket No. 13-184 at 3 (dated Oct. 31, 2018) (Illinois Governor's Office Letter) ("Failure to extend the suspension of the amortization policy will have a chilling effect on further construction of high speed networks to school districts most in need throughout the State of Illinois.").

[16] *See* SHLB Letter at 2 (stating that the "risk of non-funding in the out-years of the amortization cycle makes the use of this process highly speculative and unattractive to vendors"); *see also 2014 Second E-Rate Order*, 29 FCC Rcd at 15545, n.27 (referencing comments from NCTA noting that allowing recovery of all non-recurring costs at the same time provides greater certainty).

be discouraged from requesting funding for special construction if the amortization requirement were to be restored? Would these applicants simply not request funding for any services at all? Would they be forced to seek funding for more costly service options, such as funding for services provided over more expensive legacy networks, thereby resulting in an increase in USF expenditures? Or would they still seek special construction funding for new networks, but with all buildout costs rolled into monthly recurring charges? What effect would this have on USF expenditures in the long term? Specifically, would rolling buildout charges into higher monthly recurring charges ultimately cause applicants and the USF to pay more over time? Does paying buildout charges upfront increase USF expenditures in the short term but decrease USF expenditures in the long term because it reduces monthly recurring charges? We also seek comment on whether an amortization requirement would conflict with the economic realities of special construction projects. Would requiring service providers to wait several years to recover their investments for high sunk cost, low marginal cost undertakings such as special construction make them less likely to build out to unserved areas? If applicants were forced to amortize certain special construction projects, would service providers have to seek financing for part of the project, and would that increase the overall cost of the project?

9. Further, over the four funding years of the suspension, it appears the concern that one-time charges would create a drain on the Fund has not materialized. To the contrary, funding requests from funding years 2015 through 2017 that would have been amortized if the requirement had been in place represented less than 5% of all E-Rate funding commitments during that period.[17] Going forward, we do not expect that allowing all funding associated with a special construction project to be paid out in one funding year, rather than over the course of three funding years, would divert funding from other services, as demand for E-Rate funding was typically under the cap from funding years 2015 through 2018,[18] and there is no indication that there will be a significant increase in demand for future funding years.

10. Are commenters nevertheless concerned that large special construction funding requests could deplete all E-Rate funds available under the cap and leave insufficient funding available for category two services? If so, we seek data to support commenters' concerns. And to the extent that commenters believe that large special construction funding requests could create a drain on E-Rate funding, how would requiring amortization of such requests alleviate this concern? In particular, even if demand were to approach the E-Rate funding cap, we do not believe that requiring amortization for large,

[17] During this period, USAC committed a total of $411.6 million for funding requests that would have required amortization, or 4.9% of the total $8.41 billion committed from funding years 2015 through 2017. For funding year 2015, commitments that would have been amortized equaled $123.6 million, or 3.8% of the total $3.25 billion committed. For funding year 2016, commitments that would have been amortized equaled $153.8 million, or 5.4% of the total $2.85 committed. For funding year 2017, commitments that would have been amortized equaled $134.1 million, or 5.8% of the total $2.31 billion committed. *See* USAC, OpenData, *E-Rate Request for Discount on Services: FRN Status (FCC Form 471 and related information)*, https://opendata.usac.org/E-rate/E-rate-Request-for-Discount-on-Services-FRN-Status/qdmp-ygft (last visited Dec. 19, 2018).

[18] For funding year 2015, demand was $3.92 billion, and the E-Rate funding cap was $3.9 billion. For funding year 2016, demand was $3.61 billion, and the E-Rate funding cap was $3.94 billion. For funding year 2017, demand was $3.20 billion, and the E-Rate funding cap was $3.99 billion. For funding year 2018, demand was $2.77 billion, and the E-Rate funding cap was $4.06 billion. *See* Letter from Mel Blackwell, USAC, to Julie Veach, Wireline Competition Bureau, CC Docket No. 02-6 (dated May 6, 2015); *2014 Second E-Rate Order*, 29 FCC Rcd at 15584, para. 114; Letter from Mel Blackwell, USAC, to Matthew S. DelNero, Wireline Competition Bureau, CC Docket No. 02-6 (dated June 6, 2016); *Wireline Competition Bureau Announces E-Rate Inflation-based Cap for Funding Year 2016*, CC Docket No. 02-6, Public Notice, 31 FCC Rcd 4446 (WCB 2016); Letter from Craig Davis, USAC, to Kris Monteith, Wireline Competition Bureau, CC Docket No. 02-6 (dated May 17, 2017); *Wireline Competition Bureau Announces E-Rate Inflation-based Cap for Funding Year 2017*, CC Docket No. 02-6, Public Notice, 32 FCC Rcd 1869 (WCB 2017); Letter from Catriona Ayer, USAC, to Kris Monteith, Wireline Competition Bureau, CC Docket No. 02-6 (dated Apr. 17, 2018); *Wireline Competition Bureau Announces E-Rate Inflation-based Cap for Funding Year 2018*, CC Docket No. 02-6, Public Notice, 33 FCC Rcd 1923 (WCB 2018).

upfront category one funding requests would necessarily alleviate this problem because requiring amortization would not reduce the amount of funding requested—it would simply spread out the amount of funding provided over a minimum of three years. While this approach could mitigate the impact of a one-year surge in demand for special construction, it would not mitigate problems that a consistent increase in demand would create. Are there better ways to mitigate any drain on E-Rate funding caused by large, upfront requests for category one funding other than requiring amortization?

11. To the extent that commenters disagree with our proposal to permanently eliminate the amortization requirement, they should explain why and provide supporting data. What are the benefits, if any, of reinstating the amortization requirement for funding year 2020 and beyond, and how do those benefits outweigh the costs of the amortization requirement discussed above? Are there problems that resulted from the amortization suspension that we have not identified?

IV. ORDER

12. To continue to promote buildout of high-speed networks to unserved and underserved schools and libraries and maintain the status quo for E-Rate program applicants while we consider eliminating the amortization requirement altogether, we grant a waiver of the amortization requirement during this rulemaking proceeding. As discussed in the *Notice of Proposed Rulemaking*, were we to take no action in this regard, applicants would be required to amortize all special construction funding requests of $500,000 or more over a period of at least three years starting with funding year 2019. We continue to believe that suspension of the amortization requirement lowers barriers to, and thereby promotes, broadband infrastructure investment, including fiber deployment.[19]

13. Section 1.3 of the Commission's rules authorizes the Commission to suspend, revoke, amend, or waive a Commission rule for good cause shown.[20] We are concerned that restoring the amortization requirement before we have an opportunity to evaluate whether to permanently eliminate it could adversely impact recent progress in the deployment of high-speed connections for underserved schools and libraries, particularly those in rural areas. Further, we find it significant that during funding years 2015 through 2018, the undesired outcome that the requirement was meant to avoid—i.e., creating a drain on E-Rate funding by allowing applicants to receive support for large, upfront, construction charges all in the same funding year—has not materialized.[21] We also are concerned that allowing the amortization requirement to be restored may thwart buildout of high-speed networks to E-Rate applicants, particularly those in rural areas, due to the administrative burdens and uncertainty it introduces into the E-Rate application process.[22] Although we expect to receive new and useful information from stakeholders

[19] *See 2014 Second E-Rate Order*, 29 FCC Rcd at 15546, para. 19 (stating that suspending the amortization requirement would incentivize fiber deployment).

[20] 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d. 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. The Commission may, on an individual basis, take into account considerations of hardship, equity, or more effective implementation of overall policy. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

[21] *See* SHLB Letter at 2 ("There is no evidence that special construction projects have caused a drain on the E-rate fund, which is borne out by the overall decrease in demand over the four years that the suspension has been in effect.").

[22] *See id.* at 2 (stating that allowing amortization to be restored could jeopardize cost-effective connectivity for some E-Rate applicants and that many planned projects for funding year 2019 might need to be cancelled if the amortization requirement were restored); Letter from Cynthia B. Schultz, Counsel to Illinois Department of Innovation and Technology to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-184, at 2 (dated Oct. 19, 2018) (Illinois DIT Letter) (urging the Commission to eliminate the amortization requirement or extend the suspension of it); Illinois Governor's Office Letter at 2 (explaining that a restoration of

(continued….)

in response to our proposal and questions, we are cognizant of the impact that allowing the suspension to sunset would have on applicants during the course of this rulemaking. In particular, without an extension of the suspension, some applicants may decide that they have to cancel special construction projects already underway and others may even be discouraged from seeking funding as bid prices will likely rise.[23] We find that such an outcome would undermine the Commission's goal of promoting broadband deployment and closing the digital divide. Accordingly, we find that good cause exists for, and the public interest would be served by, a waiver of our rules to waive the amortization requirement for the duration of this rulemaking while we consider our proposal to permanently eliminate it.

14. To ensure that all E-Rate applicants receive the benefit of the waiver of the amortization requirement, the waiver shall apply to all funding year 2019 applications, regardless of whether they are filed before or after the effective date of this Order, and all other applications filed for the duration of this rulemaking. Further, we direct USAC to identify any funding year 2019 applications that seek funding based on amortized amounts and to inform the applicants that filed those applications that they can amend their applications to request funding based on non-amortized amounts until the close of the funding year 2019 application window.

V. PROCEDURAL MATTERS

15. *Initial Regulatory Flexibility Analysis.*—As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[24] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) relating to this NPRM. The IRFA is set forth in Appendix A.

16. *Paperwork Reduction Act.*—The NPRM may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the *Federal Register* inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. §§ 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

17. *Ex Parte Rules*.—This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[25] 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

(Continued from previous page)
the amortization requirement will mean that $17 million in Illinois state match funding might not be available to Illinois E-Rate applicants because the appropriation for this funding would lapse before the amortization cycle is completed).

[23] *See supra* n.16.

[24] *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. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

[25] 47 CFR §§ 1.1200 *et seq.*

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.

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

19. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://apps.fcc.gov/ecfs/.

20. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

21. 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.

22. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

23. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

24. 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).

25. *Contact Person.*—For additional information on this proceeding, contact Bryan P. Boyle of the Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7924.

VI. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED that, pursuant to the authority found 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, and section 1.3 of the Commission's rules, 47 CFR § 1.3, this Notice of Proposed Rulemaking and Order IS ADOPTED.

27. IT IS FURTHER ORDERED that the requirement to amortize certain E-Rate funding requests originally adopted in the *2014 Second E-Rate Order*, 29 FCC Rcd at 15545, para. 17, shall be waived for the duration of this rulemaking.

28. IT IS FURTHER ORDERED that the waiver of the amortization requirement shall be effective upon release.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

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 Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the NPRM and IRFA (or summaries thereof) will be published in the *Federal Register*.[3]

2. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254.[4] On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.[5] Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.[6]

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

3. The rule we propose in this NPRM is directed at streamlining the administration of the E-Rate program for applicants, service providers, and the Universal Service Administrative Company. The rule that we propose would eliminate burdens associated with requesting funding for special construction.

B. Legal Basis

4. The legal basis for the NPRM is contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will 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.[7] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[8] In addition, the term "small business" has the

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[1] 5 U.S.C. § 603. The RFA, 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. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *See id.*

[4] *See generally* 47 U.S.C. § 254.

[5] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service First Report and Order*).

[6] 47 CFR § 54.502.

[7] 5 U.S.C. § 603(b)(3).

[8] 5 U.S.C. § 601(6).

same meaning as the term "small business concern" under the Small Business Act.[9] 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).[10]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[11] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[12] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[13]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[14] Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).[15]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[16] U.S. Census Bureau data from the 2012 Census of Governments[17] indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[18] Of this number there were 37, 132 General purpose governments (county,[19] municipal and town or township[20]) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts[21] and special districts[22]) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000.[23] Based on this data we estimate that at least 49,316 local government

[9] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632(a)). 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).

[10] Small Business Act, 15 U.S.C. § 632.

[11] *See* 5 U.S.C. § 601(3)-(6).

[12] *See* SBA, Office of Advocacy, Frequently Asked Questions (June 2016), https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf.

[13] *See id.*

[14] 5 U.S.C. § 601(4).

[15] Urban Institute, National Center for Charitable Statistics, Internal Revenue Service, Exempt Organizations Business Master File, bmf.bm1608.csv (August 2016), https://nccs-data.urban.org/data/bmf/2016/bmf.bm1608.csv. Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than $100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of $50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of $100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date.

[16] 5 U.S.C. § 601(5).

[17] *See* 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7." *See also* U.S. Census Bureau, American Factfinder, *Census of Governments*

(continued….)

jurisdictions fall in the category of "small governmental jurisdictions."[24]

1. Schools and Libraries

9. As noted, a "small entity" includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[25] 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.[26] A library includes "(1) a public library, (2) a public elementary school or secondary school library, (3) an academic library, (4) a research library [] and (5) a private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition."[27] 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.[28] Certain other statutory definitions apply as well.[29] The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities.[30] In funding year 2017, approximately 104,500 schools and 11,490 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 104,500 schools and 11,490 libraries might be affected annually by our action, under current operation of the program.

2. Telecommunications Service Providers

10. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers and under the SBA size standard, such a business is small if it has 1,500 or fewer employees.[31] According to Commission data, 1,307 Incumbent Local

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https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG# (last visited Dec. 19, 2018).

[18] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

[19] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01. There were 2,114 county governments with populations less than 50,000.

[20] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

[21] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. There were 12,184 independent school districts with enrollment populations less than 50,000.

[22] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01. The U.S. Census Bureau data did not provide a population breakout for special district governments.

Exchange Carriers reported that they were engaged in the provision of local exchange services.[32] Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.[33] Thus, under this category and the associated small business size standard, we estimate that the majority of entities are small.

11. We have included small incumbent LECs in this RFA analysis. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[34] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[35] 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.

12. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to IXCs. The closest NAICS Code category is Wired Telecommunications Carriers and the applicable size standard under SBA rules consists of all such companies having 1,500 or fewer employees.[36] According to Commission data, 359 companies reported that they were engaged in the provision of interexchange services.[37] Of these 300 IXCs, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.[38] Consequently, the Commission estimates that most providers of interexchange services are small businesses.

13. *Competitive Access Providers (CAPs).* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers.[39] This provides that a Wired Telecommunications Carrier is a small entity if it employs no more than 1,500 employees.[40] According to Commission data, 1,442 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.[41] Of these 1,442 CAPs and

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[23] *See* U.S. Census Bureau, American Factfinder, *2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01; U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01; U.S. Census Bureau, American Factfinder, *2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States* (Sept. 26, 2013), https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38, 266 special district governments have populations of less than 50,000.

[24] *Id.*

[25] 47 CFR § 54.500.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] 13 CFR § 121.201; NAICS codes 611110 and 519120 (NAICS code 519120 was previously 514120).

[31] 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICs code as 517311 for Wired Telecommunications Carriers. *See* U.S. Census Bureau, *2017 NACICS Definition,* 517311 Wired Telecommunications Carriers, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017 (last visited Dec. 19, 2018).

competitive LECs, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.[42] Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

14. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[43] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[44] For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.[45] Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.[46] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

15. *Wireless Telephony.* 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).[47] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[48] For this industry, U.S. Census Bureau data for 2012 shows that there were 967 firms that operated for the entire year.[49] Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1,000 employees or more.[50] Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[51] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[52] Therefore, more than half of these entities can be considered small.

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[32] Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*).

[33] *Id.*

[34] 5 U.S.C. § 601(3).

[35] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, U.S. Small Business Administration, to William E. Kennard, Chairman, Federal Communications Commission, CC Docket No. 98-147 et al., at 2 (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); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

[36] 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition shows the NAICs code as 517311 for Wired Telecommunications Carriers. *See* U.S. Census Bureau, *2017 NACICS Definition*, 517311 Wired Telecommunications Carriers, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517311&search=2017 (last visited Dec. 19, 2018).

[37] *Trends in Telephone Service*, Table 5.3, page 5-5.

[38] *Id.*

[39] 13 CFR § 121.201; NAICS code 517110.

[40] *Id.*

[41] *Trends in Telephone Service*, Table 5.3, page 5-5.

[42] *Id.*

[43] U.S. Census Bureau, *2012 NAICS Definitions*, 517210 Wireless Telecommunications Carriers (Except Satellite), https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2012+NAICS+Search (last visited Dec. 19, 2018).

3. Internet Service Providers (ISPs)

16. *Internet Service Providers (Broadband).* Broadband Internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers.[53] Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.[54] The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees.[55] U.S. Census Bureau data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[56] Consequently, under this size standard the majority of firms in this industry can be considered small.

17. *Internet Service Providers (Non-Broadband).* Internet access service providers such as Dial-up Internet service providers, VoIP service providers using client-supplied telecommunications connections and Internet service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) fall in the category of All Other Telecommunications. The SBA has developed a small business size standard for All Other Telecommunications which consists of all such firms with gross annual receipts of $32.5 million or less.[57] For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year.[58] Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[59] Consequently, under this size standard a majority of firms in this industry can be considered small.

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[44] 13 CFR § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[45] U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (Jan. 8, 2016), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[46] *Id.* Available census data does 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."

[47] 13 CFR § 121.201(b); NAICS code 517210.

[48] *Id*.

[49] U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States,* Table EC1251SSSZ5, Information: Subject Series: Estab and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210 (Jan. 8, 2016), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517210.

[50] *Id.* Available census data does 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."

[51] *Trends in Telephone Service* at Table 5.3, page 5-5.

[52] *Id*.

[53] *See* 13 CFR § 121.201. The Wired Telecommunications Carrier category formerly used the NAICS code of 517110. As of 2017 the U.S. Census Bureau definition show the NAICs code as 517311.

[54] *Id.*

[55] *Id.*

[56] *See* U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, Information: Subject Series - Estab & Firm Size: Employment Size of Firms: 2012, 517110 Wired Telecommunications Carriers (Jan. 8, 2016), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/51SSSZ5//naics~517110.

4. Vendors of Internal Connections

18. *Vendors of Infrastructure Development or "Network Buildout."* The Commission has not developed a small business size standard specifically directed toward manufacturers of network facilities. There are two applicable SBA categories in which manufacturers of network facilities could fall and each have different size standards under the SBA rules. The SBA categories are "Radio and Television Broadcasting and Wireless Communications Equipment" with a size standard of 1,250 employees or less[60] and "Other Communications Equipment Manufacturing" with a size standard of 750 employees or less."[61] U.S. Census Bureau data for 2012 shows that for Radio and Television Broadcasting and Wireless Communications Equipment firms 841 establishments operated for the entire year.[62] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[63] For Other Communications Equipment Manufacturing, U.S. Census Bureau data for 2012 shows that 383 establishments operated for the year.[64] Of that number 379 firms operated with fewer than 500 employees and 4 had 500 to 999 employees. Based on this data, we conclude that the majority of Vendors of Infrastructure Development or "Network Buildout" are small.

19. *Telephone Apparatus Manufacturing.* This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."[65] The SBA size standard for Telephone Apparatus Manufacturing is all such firms having 1,250 or fewer employees.[66] According to U.S. Census Bureau data for 2012, there were a total of 266 establishments in this category that operated for the entire year.[67] Of this total, 262 had employment of under 1,000, and an additional 4 had

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[57] 13 CFR § 121.201; NAICS Code 517919.

[58] *See* U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table No. EC1251SSSZ5, Information: Subject Series – Estab & Firm Size: Employment Size of Firms: 2012, 517919 All Other Telecommunications (Jan. 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[59] *See* U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table No. EC1251SSSZ4, Information: Subject Series – Estab & Firm Size: Receipts Size of Firms: 2012, 517919 All Other Telecommunications (Jan 8, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table.

[60] 13 CFR § 121.201, NAICS Code 334220.

[61] 13 CFR § 121.201, NAICS Code 334290.

[62] U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334220, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[63] *Id*.

[64] U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by

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employment of 1,000 to 2,499.[68] Thus, under this size standard, the majority of firms can be considered small.

20. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment.[69] 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 established a small business size standard for this industry of 1,250 employees or less.[71] U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year.[72] Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees.[73] Based on this data, we conclude that a majority of manufacturers in this industry are small.

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Employment Size: 2012, NAICS Code 334290, https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334290.

[65] U.S. Census Bureau, 2012 NAICS Definitions, 334210 Telephone Apparatus Manufacturing, https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.334210# (last visited Dec. 19, 2018).

[66] 13 CFR § 121.201, NAICS code 334210.

[67] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334210 (Dec. 18, 2015), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334210. 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 data for firms or companies only gives the total number of such entities for 2012, which was 250. *See also* U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table No. EC1231SG1, Manufacturing: Summary Series, General Summary: Detailed Statistics by Subsectors and Industries: 2012 (Dec. 18, 2015), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG1//naics~334210.

[68] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by Employment Size: 2012, NAICS Code 334210 (Dec. 18, 2015), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_31SG2&prodType=table. An additional four establishments had employment of 2,500 or more.

[69] The NAICS Code for this service is 334220. 13 C.F.R 121.201. *See also* U.S. Census Bureau, American Factfinder, 2012 NAICS Definitions, 334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.334220# (last visited Dec. 19, 2018).

[70] *Id*.

[71] 13 CFR § 121.201, NAICS Code 334220.

[72] U.S. Census Bureau, American Factfinder, *2012 Economic Census of the United States*, Table EC1231SG2, Manufacturing: Summary Series: General Summary: Industry Statistics for Subsectors and Industries by

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

21. The proposal under consideration in the NPRM may, if adopted, result in recordkeeping requirements for both large and small entities, but they should be equal to or less than existing requirements.

22. *Eliminating Amortization Requirement*. We propose to permanently eliminate the amortization requirement from the E-Rate program to provide applicants and service providers with increased certainty that E-Rate funding will be available for large, special construction funding requests, thereby likely incentivizing efficient investment in infrastructure, including deployment of fiber. We seek comment on whether eliminating the amortization requirement would increase administrative burdens for small entities.

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."[74]

24. In this NPRM, we seek comment on a reform to the E-Rate program. We seek to streamline the program rules and administration for applicants and service providers planning their E-Rate participation in future funding years. We recognize that our proposed rule would impact small entities. The rule we propose would lessen reporting burdens on small entities.

1. Proposed rules that lessen reporting burdens

25. *Eliminating amortization requirement.* By eliminating the amortization requirement, applicants may file a single application for a special construction project, rather than multiple applications over multiple years for the same special construction project.

2. Proposed rules that increase reporting burdens

26. *Compliance burdens.* Implementing our proposed rule would impose some burden on small entities by requiring them to become familiar with the new rule to comply with it.

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

27. None.

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Employment Size: 2012, NAICS Code 334220 (Dec. 18, 2015), https://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/31SG2//naics~334220.

[73] *Id*.

[74] 5 U.S.C. § 603(c)(1) – (c)(4).

STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY

Re: *E-Rate Program Amortization Requirement,* WC Docket No. 19-2*; Modernizing the E-Rate Program for Schools and Libraries,* WC Docket No. 13-184.

This item considers the limited question of whether the Commission ought to eliminate E-Rate applicants' requirement to amortize large upfront, non-recurring costs over multiple years. While I would have been interested in delving into broader E-Rate reform ideas, I am open to examining whether the proposal would improve administration of the program and look forward to reviewing the record on this matter.

A related but equally significant question is whether the current universe of eligible special construction costs—which are subject to our amortization policy—ought to include self-provisioned networks. As I have expressed in the past, spending E-Rate funds on applicant-constructed broadband networks can be a recipe for wasteful overbuilding, especially given the overly broad parameters for self-provisioning adopted by the previous Commission. It would make sense, in my opinion, for the Commission to review the impact of the 2014 rules as they pertain to self-construction, to ensure ratepayers are fully protected and that broadband investment is not being undermined. Further, we should consider examining the effects of the 2014 order's dark fiber policy and the track record of E-Rate applicants as network operators. I look forward to working with my colleagues on these matters in due course.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL**

Re: *E-Rate Program Amortization Requirement*, WC Docket No. 19-2; *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184

The idea behind E-Rate is simple: let's get all of our schools and libraries connected to modern communications and the internet. Thanks to this simple, but bold proposition, today schools and libraries in communities in every state across the country are now connected to the internet. In fact, E-Rate is the nation's largest educational technology program.

A few years ago, at my urging, this agency embarked on a process to update E-Rate—because the program appeared stuck in the dial-up era. This work brought the program forward and produced results—tens of millions of students now have the broadband they need in their classrooms and libraries. Libraries have seen dramatic increases in support. Rural schools and libraries have benefitted.

Today, we look to extend the impact of our policies in connection with one discrete aspect of the E-Rate program—eliminating the need to amortize large construction costs in order to make it easier to connect schools and libraries. This is the right call and it has my support.