



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

In the Matter of)
Modernizing the E-rate) WC Docket No. 13-184
Program for Schools and Libraries)

**Petition for Reconsideration of the State E-Rate Coordinators’ Alliance
Regarding Shared NIF Equipment Cost Allocation Requirement**

Report and Order Released on December 3, 2019; FCC Order 19-117

The State E-Rate Coordinators’ Alliance (“SECA”)¹ has reviewed FCC Order 19-117, released December 3, 2019,² and hereby submits this Petition for Reconsideration with respect to the cost allocation requirement for shared Category Two equipment or services that serve non-instructional facilities (“NIFs”).

Specifically, SECA requests the FCC to reconsider its decision so as to remove the requirement that, applicants must deduct a proportional share of their Category Two funding request to cover a NIF’s use of Category Two *shared* equipment, such as firewalls, wireless controllers, core network routers and switches, and any other shared equipment that is used in part by NIFs. We believe the Commission erred when it concluded it was a relatively simple task to

¹ SECA accomplishes its work through the resources of its 98 individual members who provide statewide E-rate coordination activities in 44 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to assist them concerning all aspects of the program and provide more than 1300 hours of face-to face and online E-Rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission (FCC or Commission). In addition to the formal training hours, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails. SECA does not have any administrative staff and relies entirely on our members’ volunteer activities.

Further, several members of SECA work for and apply for E-rate on behalf of large, statewide networks and consortia that further Congress’ and the FCC’s goals of providing universal access to modern telecommunications services to schools and libraries across the nation.

² In re Modernizing the E-rate Program for Schools and Libraries, *Report and Order*, FCC 19-117 (released December 3, 2019)(“Category Two Order”).

subtract the cost of the NIF's use of shared network equipment and that it would be unlikely to significantly burden either applicants or USAC.³ We also believe that the Commission overlooked the burden and negative impact on service providers during the E-rate invoicing process.

Despite overwhelming support by the Category Two NPRM commenters, we are NOT asking for Category Two to fund site-specific equipment located in and used solely by NIFs, such as Wireless Access Points, structured cabling, and building-specific routers, switches, UPS, and racks. Although we believe that NIF-specific equipment meets the definition of educational purpose, our request is limited in nature and is only applicable to shared Category Two equipment whose usage includes a NIF among other eligible schools or libraries under an applicant's Billed Entity. We believe that this request will accommodate the Commission's desire to refrain from designating a NIF as a wholly eligible Category Two recipient of service, while at the same time fulfill the Commission's desire to enact policies that simplify the application process and program administration. Multiple benefits will inure to applicants, service providers and the E-rate administrator by removing the tedious and complex cost allocation requirement for NIFs' use of shared equipment without compromising any protections against waste, fraud or abuse of program resources. Elimination of the cost allocation requirement will clarify and streamline the Form 471 application process, the application review process, as well as the invoicing review process. We urge the Commission to reconsider this issue and modify the Order to implement this revision beginning with the FY 2021 E-rate Funding Year application process. To the extent that the Commission holds that this requirement is currently in effect, we also ask that the requirement be removed for FY 2020.⁴

I. Stand-Alone Non-Instructional Facilities Serve A Vital Educational Purpose.

A. The FCC Already Has Determined That All Activities Occurring on School and Library Property, Including Activities Inside NIFs, Meet the Definition of Educational Purpose.

As the digital world has expanded and with the advent of cloud-based services, Internet access is vital to all school employees and for all school services regardless of whether the access is from a classroom or a building used solely for administrative functions. Administrators who are meeting with parents, teachers who are posting grades to an online portal, students who are completing college applications in the guidance office, or transportation officials who are monitoring school bus activities all are conducting work that are essential to the education of students. These are just a few examples of the types of administrative activities now performed online using Internet access. Simply because these functions are occurring in a non-instructional facility rather than in a classroom, or in the administrative offices that are housed inside a school or

³ Category Two Order at ¶51.

⁴ Section V herein explains that the currently effectively regulation appears to allow applicants to refrain from performing cost allocations for a NIF's portion of Category Two shared equipment and service. To the extent that the Commission disagrees, we request relief via this Petition to apply effective with FY 2020.

library building, do not make them any less vital or nullify their educational purpose. It follows therefore that the equipment needed to ensure adequate Internet coverage inside NIFs meets the “educational purpose” definition established by the FCC in 2003:

We reiterate our recognition that the technology needs of participants in the schools and libraries program are complex and unique to each participant. We find that, in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program. To guide applicants in preparing their applications and to streamline the Administrator’s review of applications, we further establish a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.⁵

We believe that this definition applies equally with respect to the funding of Category One services and Category Two shared equipment and services to stand-alone NIFs.

B. Centralized Data Centers Conserve E-rate Funds.

In their Category Two NPRM comments, the West Virginia Department of Education explained that centralized data centers in NIFs allow applicants to operate their networks efficiently by housing centralized network equipment and operating the network on a consolidated basis.⁶ Core network equipment that is used by multiple schools may alleviate the need to purchase and install individual components in each school building and may be a more cost-effective solution. Yet, if a district opts to purchase a shared component and installs it in its centralized data center which is a NIF, it must reduce the cost of the shared equipment for the NIF’s use even if the shared equipment is far more cost-effective. The E-rate regulations should promote efficient network design, especially for large multi-building applicants, which would be facilitated by omitting the NIF cost allocation requirement for shared equipment.⁷

C. Larger Schools and Libraries are Disadvantaged by the NIF Cost Allocation Requirement for Shared Equipment.

The NIF cost allocation rules place larger school and library applicants at a disadvantage over smaller applicants because larger applicants are most likely to have stand-alone NIFs. Smaller schools and districts are more likely to locate administrative functions inside a school and therefore

⁵ In Re Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 03-101 (Released April 30, 2003) at ¶17.

⁶ West Virginia Department of Education Initial Comments filed August 16, 2019 at page 7. <https://ecfsapi.fcc.gov/file/1081698507941/West%20Virginia%20Department%20of%20Education%20NPRM%20Initial%20Comments%20FCC19-58A1.pdf>

⁷ See also the Reply Comments of the Ohio Information Technology Centers filed September 3, 2019 at page 6. [https://ecfsapi.fcc.gov/file/10903618303344/Ohio%20ITC%20Reply%20Comments%20on%20FCC%20Cat%20%20NPRM%20\(Final%202019-09-03\).pdf](https://ecfsapi.fcc.gov/file/10903618303344/Ohio%20ITC%20Reply%20Comments%20on%20FCC%20Cat%20%20NPRM%20(Final%202019-09-03).pdf)

would not be subject to the NIF cost allocation burden. We urge the Commission to consider this disparity created by requiring stand-alone administrative buildings to perform a cost allocation yet allowing administrative portions of buildings with classrooms and publicly accessible library buildings to receive the benefit of these funds by virtue of their physical proximity. The resolution of this issue is to remove the NIF cost allocation requirement in order to simplify the program and remove this disparity.

II. There is No Discernible Financial Impact on E-rate Funding Demand from Eliminating the Category Two NIF Cost Allocation Requirement for Shared Network Equipment and Services.

The continued dichotomy of the eligibility rules between Category One and Category Two eligibility for NIFs is a relic of the earlier program years that no longer is needed to serve the public interest.⁸ Now that Category Two funding is governed at the district-wide and library system-wide level, the restriction against using Category Two funding to pay for a NIF's use of shared equipment or services does not serve any valid public policy.

First, the activities inside NIFs already are considered to have an educational purpose. Second, allowing applicants to use Category Two funds to pay for a NIF's use of shared equipment does not create additional demand for funding. The capping of Category Two budgets establishes a set amount of funding available to applicants. If an applicant does not use its funds to help pay for the NIF's use of shared network equipment, the funds may be used to pay for other eligible purchases. The same amount of funds is available to the applicant in either case. Moreover, the central network equipment will be purchased by the district or library regardless of whether the NIF cost allocation requirement is in effect. NIF usage of shared equipment is ancillary but integral to the educational mission of schools and is already factored into school and library purchasing decisions for shared equipment. In other words, the elimination of this requirement will not somehow incent applicants to purchase more expensive equipment due to eliminating the NIF cost allocation requirement for shared equipment. The only difference would be that they do not have to deduct the portion of costs associated with the NIF usage.

III. Administrative Burden and Complexity

In the Category Two Order, the Commission stated that it was not persuaded that the administrative burden associated with deducting the cost of the non-instructional building's use of shared network equipment warrants eliminating a rule designed to ensure that E-Rate support is

⁸ The limitation was first announced by the FCC on its own motion over 20 years ago – well before the adoption of the “educational purpose” definition and well before any limitations were imposed on the amount of Category Two (then “Priority Two”) funding available to applicants to ensure that these resources were conserved. Federal-State Joint Board on Universal Service, *Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72*, 63 FR 2094, 2110 (1998).

“We take this opportunity to make clear, *on our own motion*, that the Order limits support for internal connections to those essential to providing connections within instructional buildings.” (emphasis added).

only provided to eligible schools and libraries for eligible purposes. Further, it was stated that the “relatively simple” task of subtracting the cost of the non-instructional facility’s use of the shared network element is unlikely to significantly burden either applicants or USAC. This finding that cost allocations may be considered relatively simple is at odds with the Commission’s rationale for adopting district-wide and library system-wide budgets.

In Appendix C, Final Regulatory Flexibility Analysis, of the Category Two Order, the Commission explained with respect to moving to district-wide and library system-wide budgets:

25. District-Wide or Library System-Wide Budgets. We adopt a rule providing that school districts and library systems shall calculate their budgets for the entire district or system, allowing applicants to use funds efficiently at the schools and libraries that need the funding. This dramatically reduces the requirements for the application review process, including, but not limited to, eliminating reporting of part-time students, *eliminating complicated cost allocations for equipment that is shared by members of a district or system*, and overall simplification of the application process from start to finish.⁹

Whether required to administer separate building-specific budgets or required to remove the NIF’s portion of costs for shared equipment, cost allocations are always complicated and should be avoided whenever possible. SECA believes we have made a compelling case in support of removing the requirement on a limited basis in the case of a NIF’s use of shared equipment and service for the following reasons.

A. NIF Cost Allocations When Insufficient Category Two Budget Funds are Available are Incredibly Complex for Applicants.

While it may sound simple to instruct applicants to deduct a proportional share of shared equipment requests to cover NIF charges, the cost allocation becomes unwieldy when the applicant’s Category Two budget is not large enough to cover the full cost of a single piece of shared equipment.

For example: If a 50%-discount district, comprised of 10 schools and 1 NIF, has a remaining Category Two pre-discount budget of \$30,000, and the cost of a core switch is \$50,000...

- Is the applicant eligible to apply for the full \$30,000 of the \$50,000 switch, assuming that the proportionate share of costs allocated to the NIF’s use is addressed due to the \$20,000 reduction to the prediscount cost due to the budget limitation?
- Or must the applicant determine that 1/11th (9%) of the cost is ineligible (using a total number of buildings cost allocation example)?
 - If so, is the 9% applied to the \$50,000, thus making the eligible pre-discount amount \$45,000? This would, presumably, be the same as saying that the applicant can apply for the full \$30,000.

⁹ Category 2 Order, Appendix C, ¶25 (emphasis added).

- Or must the applicant apply the 9% ineligible NIF usage to the \$30,000, thus making the eligible pre-discount cost of the switch \$27,300? In that case, the district would be responsible for:
 - ✓ 50% non-discounted share of the eligible prediscount amount of \$27,300: \$13,650 plus
 - ✓ 9% ineligible amount of the \$30,000: \$2,700 plus
 - ✓ 100% of the amount not covered by the Category Two cap: \$20,000

The complexity of this example is compounded even further when the shared network equipment may have a partial eligibility status based on functionality, such as a firewall, or when eligibility varies between line items

It has been and will remain unduly convoluted to educate applicants on these restrictions and to then expect that they will be able to comprehend and implement these requirements in a manner consistent with the restrictions. Likewise, service providers must then be informed of the applicant's methodology to ensure that they provision accurate discounted bills to applicants and submit accurate invoice forms to recoup the E-rate discount funding from the program.

Similarly, the same complexities must be mastered and applied accurately by the administrator's BPO contractor's personnel. Applicants are permitted to perform a cost allocation using a formula that is based on tangible criteria and produces realistic results.¹⁰ PIA reviewers must then issue information requests to applicants to obtain the cost allocation calculations and evaluate whether the applicant's methodology meets this standard of review. Even when applicants explain their calculations on their Form 471 applications, they inevitably will receive PIA inquiries that must be answered and then reviewed by PIA. The PIA review of cost allocations is yet one more step in the review of applications that needlessly slows down processing and the timely issuance of funding commitment decisions letters.

B. Cost Allocations Make Bid Evaluations Unwieldy.

Bid evaluation rules require price of eligible products and services to be the most heavily weighted factor. Any cost allocation requirement makes bid evaluations more complex, particularly when the equipment is partially eligible due to the product function. Couple that with additional cost allocations for shared NIF ineligibility, and one can quickly see that the bid evaluation process can become an easy point of compliance failure.

USAC's bid evaluation guidance is developed strictly for the easiest of procurements and does not contemplate whether the applicant is required to divide up the cost of the shared equipment cost into "school eligible" and "NIF eligible" and only score the "school eligible" portion in the "most heavily weighted factor" bid evaluation category.

¹⁰ <https://www.usac.org/e-rate/applicant-process/before-you-begin/eligible-services-overview/cost-allocations-for-services/>

Continuing with the above example, we ask how does an applicant ensure that they are only evaluating E-rate eligible costs? Following are two possible options; we do not know whether both are allowable or whether there is one method that must be followed.

Description	Weight	Core Switch Bid Option 1 Method	Core Switch Bid Option 2 Method
Bid Cost		\$50,000	\$50,000
% E-rate Eligible - NIF		91% (to account for NIF reduction)	100% (since equipment itself is fully eligible but is being used by ineligible location)
Calculated E-rate Eligible Cost		(91% * \$50,000) = \$45,500	\$50,000
Cost of equipment (eligible - used by schools)	55	Score points based on \$45,500, not based on \$50,000	Score points based on \$50,000 fully eligible cost
Cost of equipment (ineligible - used by NIFs)	15	Score points based on \$4,500.	N/A
Seamless integration with district's existing network infrastructure	20		
References	10		

Yet another dimension of cost allocation requires consideration of partially eligible equipment that contains ineligible features or functions. As an example, firewalls typically are partially eligible because they have embedded features that have been classified as ineligible, such as an anti-virus module. Each firewall manufacturer has a different eligibility percentage for each of their models. In addition to incorporating a cost allocation for the NIF's use of the firewall, there are other costs that must be deducted before completing the bid evaluation. Similar ambiguities arise in determining the appropriate method for computing E-rate eligible costs.

Description	Weight	Firewall Bid Option 1	Firewall Bid Option 2
Bid Cost		\$50,000	\$50,000
% E-rate Eligible - NIF		91% (to account for NIF reduction)	100% (since equipment itself is fully eligible but is being used by ineligible location)
Calculated E-rate Eligible Cost		(91% * \$50,000) = \$45,500	(100% * \$50,000) = \$50,000
% E-rate Eligible - Manufacturer		71%	71%
Calculated E-rate Eligible Cost After Manufacturer Eligibility		(71% * \$45,500) = \$32,305	(71% * \$50,000) = \$35,500
Cost of equipment (eligible - used by schools + eligible functions)	55	Score based on \$32,305	Score based on \$35,500
Ineligible costs - NIF + ineligible functions	15	Score based on \$17,695	Score based on \$14,500
Seamless integration with district's existing network infrastructure	20		
References	10		

In Option 1, the E-rate eligible cost is \$32,305 or 64.6% of the total costs whereas in Option 2 the E-rate eligible cost is 71% of the total costs. Are both methods compliant with E-rate bid evaluation rules? SECA members are unsure of the answer which makes it virtually certain that the applicants also do not know the answer. Clearly there is nothing simple or straightforward about performing these cost allocations.

C. Post-Commitment Processes are Similarly Confounding.

Service providers that provide discounted bills and that are subject to invoice reviews must be able to explain the cost allocation methodology that applicants used to compute the E-rate eligible prediscount price for each component and are susceptible to invoice denials should the invoice reviewer either not understand or disapprove the cost allocation calculations. Similarly, applicants that are subject to BCAP audits and PQA reviews will need to be able to explain the cost allocation methodology to the reviewers. Even if the PIA reviewer may have previously approved the calculations, there is no certainty or guarantee that upon further independent examination, a PQA reviewer or BCAP auditor will agree with this initial conclusion. Applicants are at additional risk for findings of non-compliance due to the ambiguity and lack of clear guidelines for cost allocations. SECA submits that this cost allocation requirement does not serve to protect against waste, fraud or abuse and in fact requires wasteful program expenditures for reviews of compliance with an unnecessary rule.

IV. Language in the Newly Established Rule is Structurally Inconsistent

Two sentences in the rules adopted in the Category Two Order, Section 54.502, paragraph (6), pertaining to this issue are in conflict with each other. The rules are:

§ 54.502 Eligible services

(d) *Funding year 2021 and beyond.* Schools, school districts, libraries, and library systems shall be eligible for support for Category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

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

Section 54.502 (d)(6) begins by saying that support is available for NIFs if those Category Two services are essential for the effective transport of information to or within one or more

instructional buildings, or if the use of the services meets the definition of educational purpose. But the next sentence states that when applying for Category Two funding, applicants are required to deduct the cost of the NIFs usage (share) of the Category Two services or equipment. We do not understand how these two statements are consistent with each other. If shared Category Two equipment includes usage by a NIF, and that equipment is essential for the transport of information to a school or library, or if the use of that equipment meets the definition of educational purpose, then applicants should NOT be required to perform a cost allocation for the NIFs usage of that Category Two equipment. To put it simply, if the NIF use is ancillary to a service that is *primarily* used for the effective transport of information to or within one or more instructional buildings, there should be no cost allocation required.

V. The Commission Should Clarify that Cost Allocation of NIF Usage of Shared Equipment is Not Currently Required in FY 2020.

The wording of the current regulation governing Category Two funding does not contain language compelling applicants to cost-allocate and deduct the portion of costs for NIF use of shared equipment. The new requirement that is explicitly inserted in the regulation effective for FY 2021 is missing from the current version which suggests that the cost of a NIF's use of shared equipment may be allocated among the site-specific building budgets:

§ 54.502 Eligible Services

(c) Funding year 2020. Libraries, schools, or school districts with schools that receive funding for category two services in funding year 2020 shall be eligible for support for category two services pursuant to paragraphs (c)(1) through (6) of this section.

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

(emphasis added). The language “the applicant shall deduct the cost of the non-instructional building’s use of the Category two services or equipment” is not included in the current regulation, and therefore, SECA believes that the NIF cost allocation requirement is not currently in effect. We request the Commission to confirm this interpretation. Further, because the language regarding cost allocation for Funding Year 2021 moving forward is far more explicit compared to that for Funding Years 2015 through 2020, SECA asks that the Commission hold harmless any applicants

that followed the cost allocation rules verbatim as they appear in the Code of Federal Regulations for Funding Years 2015 through 2020.

VI. Revision to Regulations to Implement this Petition for Reconsideration

The following revisions to 47 C.F.R. Section 54.502(d)(6) are recommended in order to implement the relief requested in this Petition for Reconsideration:

(d) Funding year 2021 and beyond. Schools, school districts, libraries, and library systems shall be eligible for support for category two services pursuant to the five-year budgets described in paragraphs (d)(1) through (6) of this section.

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

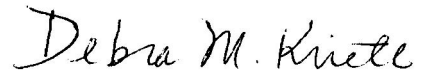
VII. Conclusion

We appreciate that the FCC chose to make permanent the Category Two funding mechanism and simplify the program for applicants, service providers and USAC, by moving to district-wide budgets, creating stable 5-year single Category Two cycles, resetting all Category Two budgets, eliminating annual inflation adjustments, and allowing applicants to use their Category Two enrollments for up to 5 years. The ineligible NIF cost allocation requirement is viewed as one of the only areas for which the opportunity for simplification was overlooked.

We understand many of the Commission's rules and procedures appropriately and necessarily are designed to eliminate waste, fraud and abuse, or close loopholes that could applicants to misapply the rules. The NIF cost allocation requirement for shared services and equipment, however, is **not** one of those situations. We do not foresee this modification being subject to waste, fraud or abuse. In retaining the shared equipment NIF cost allocation requirement, the only outcome will be additional stress for applicants, additional PIA review time, and additional audit findings. The benefits of eliminating the NIF-ineligible cost allocation rule for any and all funding years strongly outweigh any perceived risks. In fact, we can think of zero actual risks or downsides to eliminating this requirement. There are only multiple positives.

The Commission stated that the third step they were taking in the Category Two Order was to “decrease the administrative burden of applying for Category two services.”¹¹ The State E-rate Coordinators’ Alliance respectfully requests the Federal Communications Commission to reconsider their decision and not require a cost allocation for the NIF usage of shared equipment for the reasons set forth above.

Respectfully submitted,



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¹¹ Category Two Order at ¶ 2.