



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU PROVIDES GUIDANCE ON E-RATE PROGRAM CATEGORY TWO BUDGETS

### WC Docket No. 13-184

By this Public Notice, the Wireline Competition Bureau (Bureau) provides guidance related to the new district-wide budgets for category two services, effective beginning in funding year 2021.<sup>1</sup> Adopted by the Commission in the *Category Two Report and Order*, the new rules make permanent the category two budget approach,<sup>2</sup> set fixed five-year budget cycles, and reset the budgets beginning in funding year 2021.<sup>3</sup> Category two budgets are now calculated at the school district-level based on the total number of full-time students in a school district, rather than on a school-by-school basis. School districts may use the budgets as needed at schools within the district.

Specifically, pursuant to the *Category Two Report and Order*, we provide further guidance to E-Rate applicants regarding: (1) how to determine whether students at a charter school should be counted as part of the public school district or separately and (2) how to count part-time students that attend schools that are not a part of the school district (i.e., independent schools) with only part-time students.<sup>4</sup> In addition, to the extent school buildings are either fully or partially closed due to the coronavirus (COVID-19) pandemic, we provide guidance regarding how to count students that attend these schools for category two budget purposes, and remind applicants of the Commission's cost allocation rules for the use of shared equipment by non-instructional facilities.

**Charter Schools.** In the *Category Two Report and Order*, the Commission stated that “applicants should consider all schools that fall under the control of a central administrative agency as a district for the purpose of calculating a shared, district-wide budget” consistent with how district-wide discounts are calculated.<sup>5</sup> The Commission explained that charter schools that operate independently of a public school district or a central administrative agency, and are individually responsible for their finances and administration, should separately calculate their own category two budgets.<sup>6</sup>

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<sup>1</sup> *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order, 34 FCC Rcd 11219 (2019) (*Category Two Report and Order*) (adopting district-wide budgets for category two services, which are those services needed for connectivity within the building, like WiFi).

<sup>2</sup> *Id.* at 11224-25, paras. 15-17.

<sup>3</sup> *Id.* at 11226-27, paras. 19-20.

<sup>4</sup> *Id.* at 11229, para. 25 (directing the Bureau to provide clarifying guidance regarding the implementation and administration of the district-wide category two budgets).

<sup>5</sup> *Id.* at 11229, para. 23 & n.75; *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8870, 8956, para. 220 (2014) (*2014 First E-Rate Order*) (“[A]n applicant should determine its discount using all E-rate eligible students in schools that fall under the control of a central educational agency.”).

<sup>6</sup> *Category Two Report and Order*, 34 FCC Rcd at 11229 at para. 24.

Following the Commission's adoption of the rule requiring district-wide discounts in 2014, the Universal Service Administrative Company (USAC) adopted procedures, approved by the Bureau, which defer to state law to determine whether a charter school's students should be counted as part of the district's discount rate calculation or as part of an independent charter school's or consortium of schools' discount rate calculation. We recognize, however, that many charter schools, even when they are legally part of a school district under state law, may conduct their own procurements, contracting, and payments for E-Rate services and have an independent budget from the school district.<sup>7</sup> For these charter schools, sharing a category two budget with the school district could lead to confusion or conflicts when requesting funds or, in the event of an improper payment, in recovering funds.

To avoid confusion and provide a framework for addressing how charter schools operate in practice, beginning in funding year 2021, we will permit charter schools to demonstrate that they are individually responsible for their finances and administration even when they are legally part of a school district under state law whether for category two budget or discount rate purposes. This approach will allow charter schools in this position to file as an independent charter school with their own category two budget and discount rate. In doing so, we direct USAC to modify its procedures beginning in funding year 2021 for determining whether a charter school is dependent or independent of the district for the calculation of both district-wide category two budgets and district-wide discount rates.<sup>8</sup>

Specifically, if state law considers a charter school to be part of a school district, the charter school will be presumed to be a part of the district for purposes of calculating the category two budget and discount rate, unless the charter school demonstrates financial and administrative independence from the district, in which case it will have its own separate category two budget and discount rate. Evidence of a charter school's financial and administrative independence may include, but is not limited to, a charter school's chartering contract, bills and contracts with vendors in the name of the charter school, or a letter from either the State Education Agency or the school's charter authorizer provided during USAC's Program Integrity Assurance (PIA) review (i.e., the review process used by USAC to verify the completeness and accuracy of an applicant's FCC Form 471 application to ensure overall compliance with E-Rate program rules prior to issuing a Funding Commitment Decision Letter).

***Independent Schools with Part-Time Students Only.*** In the *Category Two Report and Order*, the Commission determined that it is no longer necessary for schools in districts to undertake the time-consuming process of counting part-time students when calculating their category two budgets given the greater flexibility afforded to school districts in allocating category two support under the district-wide budgets.<sup>9</sup> Specifically, in an effort to streamline both the application filing and review process, the Commission stated that "going forward we will base student counts on full-time enrollment only and eliminate the need for schools or school districts to count part-time students in their enrollment numbers."<sup>10</sup>

As a result of this change, we clarify that, beginning in funding year 2021, school districts are to count each full-time student in the district one time when calculating their district-wide budget, based on their state's definition of full-time student.<sup>11</sup> In addition, independent schools that are attended by students from multiple districts on a part-time basis only (such as vocational schools that are not part of a

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<sup>7</sup> See, e.g., Letter from Debra M. Kriete, Esq., Chairperson, State E-rate Coordinators' Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-184, at 3 (filed Sept. 8, 2020).

<sup>8</sup> This modification does not affect district-wide discounts calculated prior to funding year 2021 using the prior procedures.

<sup>9</sup> *Category Two Report and Order*, 34 FCC Rcd at 11229, para. 26.

<sup>10</sup> *Id.*

<sup>11</sup> See Petition for Reconsideration and/or Clarification of Infinity Communications and Consulting, Inc., WC Docket No. 13-184, at 2 (filed Jan. 21, 2020), <https://www.fcc.gov/ecfs/filing/10120034983945> (Infinity Petition).

school district), and which were not addressed in the *Category Two Report and Order*, should continue to count these students as full-time students consistent with previous guidance provided under the prior category two budget rules.<sup>12</sup>

***School Buildings that Are Fully or Partially Closed Due to COVID-19.*** In explaining how to count part-time students under the prior category two budget rules, the Commission stated in the *Second 2014 E-Rate Order* that “students who attend a virtual class that originates at a school, but who are not in the school premises cannot be counted in that school’s student count.”<sup>13</sup> Because part-time students are no longer counted under the new rules, this language is no longer relevant for determining enrollment. In light of the number of schools implementing plans to offer instruction to some or all students via remote learning on a full- or part-time basis due to COVID-19, we clarify that students enrolled at brick and mortar schools should be counted as full-time students regardless of whether they receive some or all instruction via remote learning during the impact of the COVID-19 pandemic.<sup>14</sup>

Recognizing that student enrollment at schools has been impacted by COVID-19, and funding year 2021 being the first year of the five-year budget cycle under the new rules, we will permit applicants to provide their full-time enrollment numbers from their funding year 2020 FCC Form 471 applications in funding year 2021.<sup>15</sup> We remind applicants that they must validate their student enrollment numbers once during the five-year funding cycle to set their category two budgets and may update the enrollment numbers in future funding years during the five-year cycle if they choose to do so.<sup>16</sup>

***Cost Allocation for the Use of Shared Equipment by Non-Instructional Facilities.*** In the *Category Two Report and Order*, the Commission simplified the overall cost allocation required for shared category two services and equipment by moving to district-wide budgets.<sup>17</sup> Category two funding is not available for non-instructional facilities or the administrative buildings of a library.<sup>18</sup> We remind applicants that they are required to comply with the Commission’s cost allocation rules and remove the costs of any use of shared network equipment by a non-instructional facility.<sup>19</sup>

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<sup>12</sup> USAC, News Brief (March 23, 2016), <https://apps.usac.org/sl/tools/news-briefs/preview.aspx?id=676> (*directing schools in Scenario 2 to count students as full-time students*); see Infinity Petition at 1-2.

<sup>13</sup> *Modernizing the E-Rate Program for Schools and Libraries; Connect America Fund*, WC Docket Nos. 13-184, 10-90, Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538, at para. 87 (2014) (*2014 Second E-Rate Order*).

<sup>14</sup> We remind applicants that off-campus use of eligible services, even if used for an educational purpose, is ineligible for support. See 47 U.S.C. §§ 254(h)(1)(B), (h)(2) (E-Rate-funded services must be used for “educational purposes” and the Commission’s rules must “enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for ... school classrooms ... and libraries.”); see also *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Order, 34 FCC Rcd 11959, 11967 (WCB 2019) (adopting the eligible services list for funding year 2020, which requires that off-campus use be cost-allocated from a funding request, among other things).

<sup>15</sup> Typically, applicants should provide full-time enrollment and National School Lunch Program (NSLP) data as of October 1 prior to the filing of the FCC Form 471, or use the most current figure available, but we recognize that it may be difficult to report student enrollment and NSLP numbers as of October 1, 2020 due to COVID-19.

<sup>16</sup> See *Category Two Report and Order*, 34 FCC Rcd at 11236, para. 44.

<sup>17</sup> *Id.* at 11238-39, paras. 50-51. See also Petition for Reconsideration of State E-rate Coordinators’ Association, WC Docket No. 13-184 (filed Jan. 21, 2020), <https://www.fcc.gov/ecfs/filing/10121070724152>.

<sup>18</sup> See *Federal-State Joint Board on Universal Service, et al.*, CC Docket No. 96-45 et al., *Fourth Order on Reconsideration and Report and Order*, 13 FCC Rcd 5318, 5440, paras. 208-10 (1997).

<sup>19</sup> See *Category Two Report and Order*, 34 FCC Rcd at 11238-39, paras. 50-51.

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