



September 8, 2020

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Modernizing the E-rate Program for Schools and Libraries
WC Docket No. 13-184; Ex Parte Submission
E-rate Filing Process for Charter Schools

Dear Secretary Dortch:

In the “Category Two” Report and Order released on December 3, 2019 (FCC 19-117), the FCC stated 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 category two budgets and apply for funding.¹ The Order further directed the Wireline Competition Bureau to provide clarifying guidance relating to the implementation of district-wide budgets as may be appropriate.²

SECA members have discussed the issues that have arisen in the past regarding the manner in which charter schools that are considered affiliated with a school district according to state law must apply for E-rate funding, and believe that a brief review of the practices that have occurred since the implementation of the 2014 E-rate modernization orders may be useful to contextualize the recommendations we offer below.

Current Practices

The manner in which charter schools file for E-rate has been a source of some confusion stemming from the adoption of district-wide discount calculations and the Category two budget process in the July 2014 E-rate Order (FCC 14-99). Paragraph 220 of that Order prescribed that charter schools that are not “affiliated financially or operationally with a school district,” should calculate their discount separately. Similarly, Paragraph 105 of that Order stated that charter and private schools that operate independently from a school district receive their own Category two budget. Thus, the corollary is that charter schools that do not operate independently from a school district must be included in the school’s district’s Category two budget calculation.

This presumption is somewhat more complicated because in some states charter schools are considered by state law to be “dependent” on their chartering public school district but operate financially independent from the school district. There is still considerable confusion as to whether a charter school must file for E-rate as part of a school district with which it may be organizationally affiliated, even if the charter school is operationally independent from the school district.

¹ *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order FCC 19-117 (Released December 3, 2019), 34 FCC Rcd 11219, 11229, ¶ 24.

² *Id.* at ¶ 25.

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The resolution of this issue per the E-rate administrator was to require this type of charter school – organizationally affiliated with a school district but operating financially independent from the school district – to be linked to the school district in EPC as a child entity, but allow the charter school to file for E-rate on their own. This was accomplished by having the charter school obtain an E-rate entity number for a consortium, and then file for E-rate and list the District as a consortium member. The district's E-rate discount was then imputed to the charter school consortium Form 471 application and the charter school was able to truthfully attest to the certifications required on the Form 470 and Form 471 applications. In reality, however, these types of charter schools are not in fact consortia. This designation was procedurally necessary to enable the charter school to file its own E-rate applications in EPC based on the foundational 'parent/child' relationship structure of each entity's profile in EPC.

Now that the Category two budgets will be calculated at the district-wide level beginning FY 2021, the need for clarification of the manner in which charter schools may file for E-rate is even more urgent. **The existing approach will no longer work because the operationally independent charter schools need to be able to exert direct control over their Category two budgets based on their own enrollment and NSLP/CEP data.** If the current approach were to be continued, the charter school would have to negotiate with the school district to informally apportion the district's Category two budget and the district would have to refrain from spending that portion of the budget attributable to the charter school's students. Only then would the charter school be able to claim its Category two budget and apply for E-rate. This informal approach will be administratively confusing and complex for school districts, charter schools and the E-rate administrator to coordinate and implement. A more formal, permanent solution that has clear boundaries between operationally independent charter schools and school districts must be prescribed.

SECA members whose states have charter schools that fall into this category where the school is designated as part of the district under state law, but the charter school is operationally independent from any school district offer the following proposed solution. Some of the affected States include, but may not be limited to, Alaska, Colorado, Georgia, Oregon, and Tennessee. We have found that within the same state or jurisdiction, some charter schools may be dependent, and others may be independent.

Overview of Recommendations Regarding the E-rate Classification of Charter Schools

A charter school that meet the definition of eligible school recipient in accordance with 47 C.F.R. 54.501 may apply for E-rate using the following methods:

- Through a district – When a school district is responsible for the charter school's business operations including procurement, contracting, and purchasing, the billed entity is the school district, and therefore, the school district shall apply for E-rate on behalf of the charter school. As explained below, this type of charter school would be considered a **Dependent Charter School**.
- As an independent school – When an independent board or governing organization controls the charter school's business operations including managing its own procurement, contracting, and purchasing, the billed entity is the charter school, and therefore, the charter school shall apply for E-rate as an independent school. As explained below, this type of charter school would be considered an **Independent Charter School**.
- As a consortium – Independent charter schools may choose to join an E-rate consortium and file for E-rate funding as part of the consortium. For example, an Education Management Organization (EMO) may serve as the consortium lead and apply for E-rate on behalf of a group of public and/or private

schools it represents. Independent charter schools may also be eligible to join regional or state E-rate consortia depending on the individual consortium requirements.

Detailed Recommendations and Discussion

1. We recommend that the FCC prescribe that each eligible Charter School (as defined by 47 C.F.R. Section 54.501) must be classified as either **independent or dependent for E-rate filing purposes, and this determination shall be predicated upon which entity is the Billed Entity (the entity who pays the bills)**. This designation is necessary in order to ensure that the charter school is able to correctly file for E-rate funding, and school districts are also aware of these parameters. **Providing clear definitions for different types of charter schools that are mutually exclusive of one another is essential to successfully implementing this approach.** Establishing clear definitions will assist school districts, charter schools and the E-rate administrator to be able to resolve any questions, conflicts, or concerns regarding the filing process.
2. **The classification of an Independent Charter School is based on the charter school's operational independence. Operational independence is based on the presence of two mandatory characteristics:**
 - A. The charter school is financially responsible for procuring, contracting, and paying for E-rate services and equipment; **and**
 - B. The charter school has a separate, independent budget from a school district with which they may be organizationally affiliated.

The charter school must be able to certify and prove that the school is financially responsible for paying for its E-rate services and equipment. Contracts and bills from vendors in the name of the charter school, and evidence of payment of these bills by the charter school could verify this certification. The charter school must also be able to prove its operational independence from a school district by demonstrating that the school administers its own independent budget. These inquiries may be addressed during the PIA process.

Within EPC, an Independent Charter School shall be assigned its own Billed Entity Number and shall apply for E-rate funding as a school or as part of a consortium. The Independent Charter School shall not be linked as a child entity to any school district and shall apply for E-rate as a school. If an Independent Charter School is currently linked as a child entity of a district in EPC, the Independent Charter School shall be delinked from the school district. Such requests shall be implemented by the Client Service Bureau.

Under this approach, the Independent Charter School students will be excluded from any school district's discount or Category two budget calculations. This approach assures that the Independent Charter School students would **not** be "double counted" as part of a school district's calculations and also as part of the charter school's own calculations. It also assures that the Independent Charter School will be able to manage its own Category two budget.

3. **The classification of a Dependent Charter School is based on the charter school's operational dependence on a school district. Operational dependence is based on the presence of two mandatory characteristics:**
 - A. The school district is financially responsible for procuring, contracting, and paying for E-rate services and equipment on behalf of the charter school; **and**

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B. The school district's budget incorporates the E-rate expenditures for the charter school.

Within EPC, a Dependent Charter School shall be included as a child entity of the school district on which they are operationally dependent. The charter school's students shall be incorporated into the school district's E-rate discount calculation and Category two budget calculation. The school district shall apply for E-rate and pay the non-discounted share of the E-rate purchases behalf of the charter school. The school district on which the Dependent Charter School is operationally dependent may also choose to join an E-rate consortium.

In conclusion, we believe these recommendations will provide needed clarity to the E-rate community and are able to be implemented within the existing framework of EPC, and do not require any system modifications.

We would be happy to discuss our recommendations with you and answer any questions you may have. We hope that you will incorporate these recommendations into your clarifying guidance on this important matter.

Respectfully submitted,



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Chairperson

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