



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

In the Matter of	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	)	CC Docket No. 97-21
	)	

**Petition for Reconsideration and/or Clarification of the State E-rate Coordinators’ Alliance**

The State E-rate Coordinators’ Alliance (“SECA”) applauds the Federal Communications Commission’s (“FCC” or “Commission”) streamlining of the E-rate program in its recent July 21, 2023 Report and Order and Further Notice of Proposed Rulemaking (FCC 23-56).<sup>1</sup> The various measures will simplify the program while keeping intact all existing safeguards to maintain the integrity of the program.

There are two different areas of the *Tribal E-rate Order* where the language concerning the removal of the cost allocation requirement could be interpreted in different ways leading to conflicting guidance, and therefore is ambiguous. Depending on the Commission’s intention, reconsideration or clarification is requested to address and resolve these ambiguities.

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<sup>1</sup> *Schools and Libraries Universal Service Support Mechanism, Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 02-6, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking (*Tribal E-Rate Order*).

## Clarification of Removal of NIF Cost Allocation for Shared Equipment

In several sections of the *Tribal E-rate Order*, the FCC agreed with stakeholders that complex cost allocation requirements to deduct ancillary ineligible costs should be eliminated wherever possible. In one critical area, however, regarding the use of shared Category 2 network equipment by non-instructional facilities (NIFs), the language in the *Order* and the associated regulation, 47 C.F.R. §54.502(d)(6), are ambiguous and may not achieve the results to which the Commission intended. This Petition is submitted, pursuant to 47 C.F.R. §1.429(d), to request the Commission resolve this ambiguity by reconsidering and/or clarifying its decision.

In its initial Comments submitted in this proceeding, SECA and the other Joint Commenters requested the Commission to remove the restriction that precluded NIFs from using or receiving any benefit of Category 2-funded equipment and related services. Shared equipment is network equipment that is used by and for the benefit of two or more eligible buildings.

SECA previously petitioned for reconsideration of an earlier Commission Order to request the rescission of this restriction. The Petition explained that NIFs serve vital educational purposes and since Category 2 funding for each applicant was budgeted and capped, applicants should be free to determine how best to expend and use their limited Category 2 funding. In both the comments filed in this proceeding and its earlier petition for reconsideration, SECA sought relief for **all NIFs'** use of Category 2 shared network equipment.

Paragraph 29 of the *Tribal E-rate Order* set forth the following analysis and conclusions. The italicized, highlighted language is subject to ambiguity and could be construed to limit relief to only those NIFs where the equipment is physically located.

29. Finally, we address an issue with the cost allocation required for shared equipment that *is located at* a non-instructional facility, including library administrative buildings. While NIFs are eligible for category one support, category two support is generally not available for NIFs unless the equipment is “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.” This is generally a district switch located in an administrative building or data center. Under the current rules, a school district or library system generally cannot use any of its budget for category two equipment for a NIF. The exception for essential, shared equipment still applies, and therefore, applicants can purchase this type of equipment *to be located in a NIF*, but the rules now explicitly state that the applicant must remove the costs associated with the NIF’s use of the shared equipment. As a result, we have since learned that applicants have been required to undergo complicated cost-allocation calculations that have proven to be administratively burdensome, resulting in the removal of a small fraction of the funding request for the needed equipment, undercutting our efforts to streamline the category two application process. As long as the applicant is choosing the most cost-effective offering for the shared equipment (e.g., a district switch) without regard for the NIF’s use, we agree that the applicant should not be required to cost allocate the *NIF’s use* of the shared equipment. *In recognition of this, we now amend our rules to no longer require cost allocation to remove the costs associated with the NIFs’ use of the shared equipment in NIFs and related-library administrative buildings.* Removing these requirements will permit applicants to forego these complex cost-allocation procedures as they seek to equip their schools and libraries with the category two equipment they need to serve their students and library patrons. (Footnotes deleted; emphasis added).

The first three highlighted phrases state that cost allocation is not required for the NIF in which the equipment is located. The status of other NIFs that use the shared equipment is not addressed and by omission could be construed to be excluded from this relief. The language in Paragraph 29 is too narrow because it could be read to require the continued cost allocation by all other NIFs that use shared equipment whenever the equipment is not physically located in the NIF.

The same principle that relieves NIFs housing the shared equipment from cost allocation should apply to all other NIFs associated with a school, district or library. Since the Category 2 budget is capped the applicant should be allowed to make their own decisions as to how to use those limited funds. Also, given that NIFs serve vital educational purposes, all of these buildings should be permitted to benefit from the use of the shared network equipment without requiring a deduction for their respective share of the costs.

For example, when the core network switch is installed in the network operations building (a NIF), and there is a separate administration building (also a NIF) that uses the core network switch, both NIFs should not have to cost allocate the costs associated with their use of the network switch. Both buildings have an educational purpose, and the only difference is that one building houses and uses the

equipment whereas the other building uses the equipment.

This is the approach SECA advocated in the Joint Comments filed in this proceeding as well as its earlier filed Petition for Reconsideration Regarding Shared NIF Equipment Cost Allocation Requirement, WC Docket No. 13-184, (filed Jan. 21, 2020). In fact, the Commission dismissed the Petition for Reconsideration based on the rule change to 47 C.F.R. §54.504(d)(6).

The *Tribal E-Rate Order* revised the applicable regulation, 47 C.F.R. §54.502(d)(6), to state:

(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 within a non-instructional school building or library administrative building, the applicant shall not be required to deduct the cost of the non-instructional building's use of the category two services or equipment.

The last sentence allows for Category 2 funding to be provided for eligible services *within* a NIF or library administrative building. This may or may not be applicable to all NIFs or it may be limited to the particular NIF in which the equipment is physically installed. But, as explained above, the operative consideration is not where the equipment is located but rather which buildings **use** the equipment.

We therefore request that this ambiguity be resolved and the Order and regulation unequivocally state that Category 2 support is available for eligible services and equipment located in or used by **any** NIF and the location of the equipment is not a determining or limiting eligibility factor.

To implement the requested relief, SECA requests the Commission to revise the above regulation to state:

(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 **provided to** or within a non-instructional school building or library administrative building, the applicant shall not be

required to deduct the cost of ~~the~~ a non-instructional buildings' use of the category two services or equipment.

This modest clarification and rule revision is essential to fulfill the Commission's objective to streamline the need for cost allocations for all NIFs' use of Category 2 shared equipment. Without it, the outcome could be quite illogical, in that NIFs where shared equipment is installed do not have cost allocate their share of costs but all other NIFs that use the same equipment must still engage in the tedious and complex cost allocations. We hope the Commission will agree that this result should not be allowed to stand and needed to be addressed.

### **Cost Allocation of Ineligible Internet Service**

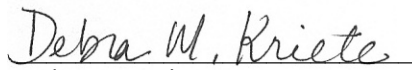
Another streamlining measure in the *E-rate Tribal Order* is the establishment of a 90% safe harbor for eligible Internet service. This eliminates the requirement to deduct or cost-allocate ineligible Internet service when the ineligible usage is no greater than 10% of the applicant's E-Rate funded Internet usage. *E-Rate Tribal Order*, ¶26. SECA seeks to confirm that the Commission's intention is to include both bundled and unbundled Internet access service within the safe harbor provision. In other words, this cost allocation safeguard should apply to all Category 1 data transmission and Internet access services.

The FCC Form 470 refers to "Internet access without data transmission service" and "Internet access and data transmission service." These choices recognize that applicants may purchase Internet bundled with transport as an end-to-end service or may purchase Internet and transport separately. When purchased separately, the ineligible services that the safe harbor is intended to address will traverse both the data transmission service and the Internet service.

To ensure that all applicants can benefit from the safe harbor, whether they buy Internet on a bundled or unbundled basis, all Category 1 data transmission and internet services should be subject to the safe harbor presumption. This will remove any confusion or doubt that the safe harbor governs ineligible services that traverse either the transport service and/or Internet service.

In conclusion, SECA respectfully requests the FCC to issue an Order granting clarification and/or reconsideration consistent with the recommendations herein.

Respectfully submitted.



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