EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
*	*	*	*	*
10–5.390	Control of Emissions from the Manufacturing of Paints, Varnishes, Lacquers, Enamels and Other Allied Surface Coating Products.	9/30/2020	[Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule].	
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[FR Doc. 2022–01502 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 282

[EPA–R03–UST–2021–0715, FRL 8879–01–R3]

District of Columbia: Final Approval of State Underground Storage Tank Program Revisions, Codification, and Incorporation by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Solid Waste Disposal Act of 1965, as amended (commonly known as the Resource Conservation and Recovery Act (RCRA)), the Environmental Protection Agency (EPA) is proposing to approve revisions to the District of Columbia's Underground Storage Tank (UST) program submitted by the District of Columbia. This action is based on EPA's determination that these revisions satisfy all requirements needed for program approval. This action also proposes to codify EPA's approval of the District of Columbia's state program and to incorporate by reference those provisions of the District of Columbia's regulations and statutes that we have determined meet the requirements for approval. The provisions will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA Subtitle I and other applicable statutory and regulatory provisions. In the ''Rules and Regulations'' section of this issue of the **Federal Register**, EPA is approving this action by a direct final rule. If no significant negative comment is received, EPA will not take further action on this proposed rulemaking, and the direct final rule will be effective 60 days from the date of publication in this **Federal Register**. If you want to comment on EPA's proposed approval of District of Columbia's revisions to its state UST program, you must do so at this time.

DATES: Send written comments by February 28, 2022.

ADDRESSES: Submit any comments, identified by EPA–R03–UST–2021–0715, by one of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: thompson.khalia@epa.gov.*

Instructions: Direct your comments to Docket ID No.EPA–R03–UST–2021–0715. EPA's policy is that all comments received will be included in the public docket without change and may be available online at *https://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov,* or email. The federal website, *https://www.regulations.gov,* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. EPA encourages electronic submittals, but if you are unable to submit electronically, please reach out to the EPA contact person listed in the notice for assistance. If you need assistance in a language other than English, or you are a person with disabilities who needs a reasonable accommodation at no cost to you, please reach out to the EPA contact person by email or phone.

FOR FURTHER INFORMATION CONTACT: Khalia Thompson, (215) 814–3348, *thompson.khalia@epa.gov,* RCRA Programs Branch; Land, Chemicals, and Redevelopment Division; EPA Region 3, 1650 Arch Street (Mailcode 3LD30), Philadelphia, PA 19103–2029.

SUPPLEMENTARY INFORMATION: EPA has explained the reasons for this action in the preamble to the direct final rule. For additional information, see the direct final rule published in the ''Rules and Regulations'' section of this issue of the **Federal Register**.

Authority: This proposed rule is issued under the authority of section 9004 of the Solid Waste Disposal Act of 1965, as amended, 42 U.S.C. 6991c.

Adam Ortiz,

Regional Administrator, EPA Region 3.

[FR Doc. 2022–01433 Filed 1–26–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–455; FCC 21–124; FRS 64970]

Promoting Fair and Open Competitive Bidding in the E-Rate Program

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes a change to the E-Rate program targeted at several goals: Streamlining program requirements for applicants and service providers, strengthening program integrity,

preventing improper payments, and decreasing the risk of fraud, waste, and abuse. Specifically, the Commission seeks comment on a proposal to implement a central document repository (*i.e.,* bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, the Universal Service Administrative Company (USAC), instead of directly to applicants.

DATES: Comments are due on or before March 28, 2022, and reply comments are due on or before April 27, 2022.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 21–455, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *www.fcc.gov/ecfs.*
- *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 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.

- 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.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to Federal Communications Commission, 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

People with Disabilities. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Cara Voth, Office of Managing Director, at *Cara.Voth@fcc.gov* or 202–418–0025, or Joseph Schlingbaum, Telecommunications Access Policy Division, Wireline Competition Bureau, at *Joseph.Schlingbaum@fcc.gov* or 202–418–0829.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 21–455, adopted on December 14, 2021 and released on December 16, 2021. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-looks-promote-fair-open-competitive-bidding-e-rate-program-0.*

Ex Parte Presentations—Permit-But-Disclose. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 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* 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 filing 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 consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules 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.

Comments, reply comments, and *ex parte* submissions will be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. When the FCC Headquarters reopens to the public, these documents will also be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

I. Introduction

1. For over two decades, schools and libraries have relied on the Federal Communications Commission's E-Rate program to secure affordable telecommunications and broadband services to provide connectivity for schools and libraries and connections for students and library patrons. In recent years, the Commission has kept pace with a changing digital landscape and adapted the E-Rate program to meet program participants' growing demand for broadband and more equitable access to funding for Wi-Fi networks and other internal connections. And, to address the daunting challenges that schools and libraries have faced in enabling and facilitating remote learning for students and virtual library services for library patrons during the coronavirus (COVID–19) pandemic, Congress and the Commission have provided flexibility and funding to support remote learning.

2. At the same time as the Commission has provided enhanced access to funding and flexibility in meeting evolving public needs, it has been mindful of the need to protect E-Rate funds, requiring them to be committed for eligible services and equipment provided to eligible entities, for eligible purposes, and in accordance with program rules. Inherent in maintaining good stewardship of program funds is the Commission's commitment to protect against waste, fraud, and abuse and ensure that funds are properly disbursed and used for appropriate purposes. Last year, an audit completed by the Government Accountability Office (GAO) identified opportunities to misrepresent

compliance with competitive bidding requirements as an underlying fraud risk for the E-Rate program. Similarly, the Commission's Office of Inspector General (OIG) has recommended safeguards to protect the E-Rate program, including establishing a central repository for the submission of competitive bidding documents and a holding period, so that bids are not released to applicants until after the closing of a 28-day bidding window.

3. Taking into account these recommendations, the Commission proposes a change to the E-Rate program targeted at several goals: Streamlining program requirements for applicants and service providers, strengthening program integrity, preventing improper payments, and decreasing the risk of fraud, waste, and abuse. Specifically, the Commission seeks comment on a proposal to implement a central document repository (*i.e.,* bidding portal) through which service providers would be required to submit bids to the E-Rate program administrator, USAC, instead of directly to applicants. The Commission seeks comment on requiring USAC to temporarily withhold submitted bids from applicants for a stated minimum period of time. In addition, the Commission seeks comment on whether to revise its rules to require applicants to submit competitive bidding documentation that is not captured in the bidding portal. Finally, the Commission seeks comment on any potential benefits and burdens that the adoption and implementation of a bidding portal and these associated changes would have on E-Rate program participants and the public as well as any required rule modifications needed to effectuate these changes.

II. Discussion

4. The Commission proposes changes to the competitive bidding process for the E-Rate program to enhance program integrity and administrative efficiency. Specifically, the Commission proposes to require prospective service providers to respond to applicant requests for services and equipment by uploading bids into a bidding portal managed by USAC, rather than by submitting bids directly to applicants. The Commission also seeks comment on establishing timeframes on when applicants should be able to review the bids that service providers submit in the portal. Further, the Commission seeks comment on requiring applicants to submit bidding selection documentation, such as bid comparison matrices and related contract documents, at the time applicants request funding for eligible services. The Commission seeks comment on these program changes to guide and assist E-Rate program participants in complying with the Commission's competitive bidding rules, provide transparency and promote fair and open competitive bidding processes, and minimize potential fraud risk for the E-Rate program.

5. The 2020 GAO E-Rate Report highlights that USAC does not have a proactive way to monitor the bidding information submitted by bidders and must rely on requesting such information from applicants or service providers after the culmination of the bidding process. The Report identifies opportunities to misrepresent compliance with the competitive bidding rules and processes as an underlying key fraud risk and notes that such an opportunity exists because of the lack of visibility into the competitive bids that applicants receive. The GAO also references the OIG's previous recommendation that the Commission direct USAC to implement an online competitive-bidding repository. The OIG had asserted that ''[s]ubmission of service provider bids prior to bid selection . . . [would] prevent[] a service provider or applicant from submitting an altered bid or contract to USAC during its Program Integrity Assurance (PIA) review to create the appearance of compliance with [p]rogram rules.'' In response to these concerns, the Commission recognizes that a bidding portal could provide better insights for USAC in an effort to strengthen the integrity of the E-Rate program.

6. The Commission proposes to require service providers to submit bids responsive to FCC Forms 470 through a bid portal managed by USAC, rather than by sending bids directly to the applicant. The Commission anticipates that requiring service providers to submit bids for requested E-Rate services and equipment through a bidding portal will improve USAC's and the Commission's ability to ensure that all entities participating in the E-Rate program conduct a fair and open competitive bidding process. The Commission expects that, in addition to other benefits, a portal that stores E-Rate service providers' bids could prevent certain improper payments and compliance findings related to applicants' failures to produce bid documentation when such documentation is requested by USAC in the pre-commitment and post-commitment stages of application review. Moreover, because the bidding portal will track and store bids and related communications, the portal could save time and increase efficiencies for both applicants and USAC with regard to competitive bidding reviews and audits. The Commission seeks comment on whether a bidding portal would help to promote fair and open competitive bidding and reduce fraud. The Commission also seeks comment on how great the risk is that applicants or service providers may alter or ignore qualified bids to affect the bidding process. Would a bidding portal complement or supplement existing rules and procedures to reduce bid collusion and the risk of fraud in the competitive bidding process? Are there solutions other than a bidding portal or changes to the competitive bidding rules that could likewise reduce bid collusion and the risk of fraud? Commenters are invited to address the feasibility, necessity, and cost effectiveness of implementing a nationwide bidding portal. Are there any other benefits or burdens the Commission should consider, either to stakeholders or the broader public, in deciding whether to implement its competitive bidding proposal?

7. The Commission recognizes that requiring bid responses to be submitted to USAC through a bidding portal would change how service providers submit and share bids with applicants. While these changes may streamline documentation submission and the competitive bidding procedures for applicants and service providers, as well as increase transparency for USAC and the Commission into the bidding process, they also may present obstacles for applicants and service providers. Therefore, the Commission seeks comment on the impact of this proposed requirement on E-Rate program participants, particularly smaller schools and libraries. Should service providers submit their bids directly through the bidding portal or by some other method? Would the requirement to use a central bidding portal discourage participation by applicants and service providers in the E-Rate program? Would applicants be more inclined to hire consultants if a bidding portal is imposed? How would these changes benefit or burden E-Rate program participants? For example, would requiring bids to be uploaded to a central repository managed by USAC help applicants comply with the Commission requirement to retain documentation demonstrating compliance with E-Rate program requirements? Commenters are requested to quantify benefits and burdens, both in terms of time and money. Do these changes promote any

cost and resource efficiencies for E-Rate program participants because they provide ''automated'' assistance with USAC's efforts to seek competitive bidding compliance documentation during Program Integrity Assurance and program audit reviews? Are there any other alternatives the Commission should consider to ensure that applicants and service providers comply with competitive bidding rules?

8. The Commission also seeks comment on whether service providers should be required to submit information in a manner that enables applicants to compare competing bids. Do applicants face difficulty in comparing bids because service providers have submitted their bid responses in a variety of formats? Are there other changes the Commission should consider that could reduce burdens related to competitive bidding for applicants and service providers in using a bidding portal? In some cases, applicants do not receive any bids or receive bids that are not responsive to their requests for service during the specified bidding period. The Commission proposes that the portal allow applicants in these situations to extend their competitive bidding periods as needed and seeks comment on this proposal. Alternatively, could the Commission treat the bidding portal as a repository for bids, that would permit applicants to upload bids received after the fact, but would not require service providers to submit bids through the portal? The Commission seeks comment on the potential benefits and drawbacks of using the bidding portal in this manner.

9. *Bid Holding Period.* E-Rate program rules currently require applicants wait at least 28 days from the posting of their FCC Form 470 before entering into an agreement with a service provider. Actual deadlines for bids to be submitted vary by applicant and are not set by Commission rules or E-Rate program requirements. Applicants are permitted to post FCC Forms 470 as soon as USAC releases the form. Currently, applicants are able to review submitted bids from service providers as they are received which may introduce risk into a fair and open competitive bidding process. In the 2017 OIG Report, the OIG recommended that USAC hold service provider bids in a bid repository for a ''28-day bidding window'' to ensure that service providers were competing on a ''level playing field.''

10. The Commission seeks comment on requiring applicants to wait a specified amount of time before they can access bids submitted in response to their FCC Form 470 service requests. Is 28 days an appropriate length of time to withhold bids? Is a shorter or longer period appropriate in general or for specific circumstances? Should the withholding period be tied to a specific event such as the posting of an applicant's FCC Form 470? If applicants are required to wait before they can access bids submitted in response to their FCC Form 470 service requests, how would the timing variability of their procurements be impacted by such a proposal? Would a minimum bid holding period assist an applicant in complying with § 54.503(c)(4) because it would not be able to view bids for at least four weeks and would presumably be prevented from entering into agreements until that time? If the Commission requires applicants to wait a specified amount of time before accessing bids, should it also preclude service providers from sharing bids directly with applicants during this time period? The Commission seeks comment on these questions.

11. In some cases, for a variety of reasons, applicants file their FCC Forms 470 toward the end of E-Rate application filing window closing date, leaving little time remaining to wait a minimum of 28 days, select service providers, and seek funding. If the Commission is to require applicants to wait a specified length of time before accessing bids, are there safeguards it can implement to help applicants better align their timelines? For example, should the ability to file an FCC Form 470 be closed for a certain period of time before the FCC Form 471 window closes to allow for both a minimum number of days (*e.g.,* a 28-day waiting period) plus additional time (*e.g.,* two weeks) for applicants to review bids and make service provider selections? Are there processes that would be disrupted by withholding bid responses from applicants for a minimum period of time? The Commission seeks comment on this or other proposals that would allow any waiting period it may adopt to align with applicants' need for time for bid analysis and provider selection. To better understand the potential impact on applicants, the Commission also seeks information on the reasons why some applicants post FCC Forms 470 to initiate the competitive bidding process near the end of the FCC Form 471 filing window.

12. The Commission seeks comment on any overall program benefits these proposals may offer to applicants, including the prevention of inadvertent errors that lead them to run afoul of the E-Rate competitive bidding requirements. What other compliance issues with the Commission's competitive bidding requirements might their proposals help applicants and service providers avoid? Should the Commission consider changes to the training and outreach that USAC offers to applicants and service providers to address issues relating to competitive bidding and document retention, as SECA suggests? Are there other aspects of the competitive bidding rules that are confusing, burdensome, or vague that may lead to inadvertent, but not necessarily fraudulent, competitive bidding violations? If so, what are they and what modifications might the Commission make to resolve any confusion and provide clarity around these rules?

13. *System Issues.* The Commission seeks comment on how best to leverage the existing web-based account and application management portal, known as the E-Rate Productivity Center or EPC in implementing a bidding portal. Are there specific administrative burdens or benefits that the Commission should consider if the bidding portal is integrated with EPC? Conversely, what administrative burdens or benefits are associated with using a separate system for this purpose? Is there a risk of applicant confusion and technical difficulty if applicants are asked to use two systems to store documentation for the E-Rate program? Or does it matter to applicants, so long as the user experience is not compromised? Can any obstacles be overcome with user testing and outreach?

14. *Interaction with State and Local Procurement Rules.* E-Rate applicants are required to comply with all applicable state and local procurement rules, in addition to the E-Rate competitive bidding rules. What are the existing state procurement laws, local procedures and best practices that promote fair and open competition? Would the creation of a bidding portal conflict with these state and local procurement requirements? Would adopting an E-Rate bidding portal require service providers submitting bids in certain jurisdictions to submit bids in more than one way because of existing state or local requirements? If so, the Commission seeks more information on the specific circumstances in which service providers are required to submit their bids for eligible services through other mechanisms. If, for example, certain state or local requirements mandate that service providers submit bids directly to applicants such as through email, or through another online platform that would allow applicants to view bids before they would be permitted to under

any new E-Rate requirements, how might that impact the usefulness of a USAC-administered portal? Other state law requirements may include a mini-bid process when selecting vendors from a multiple award state master contract. Would the bidding portal interfere with applicants who use a state master contract that requires a mini-bid process? In addition, some states may have requirements relating to public disclosure of bids, prequalification of bidders and treatment of proprietary or confidential information. How should the Commission take those requirements into account in establishing a bidding portal? Although the current E-Rate competitive bidding requirements apply in addition to state and local competitive bidding requirements and are not intended to preempt such state or local requirements, the Commission seeks comment on how to address any apparent conflicts with the goals the Commission is attempting to achieve through the proposals stated herein. Additionally, the Commission is aware that certain state, local or other requirements, as well as other factors, may dictate varying procurement timeframes and processes for different applicants in the E-Rate program. The Commission seeks comment on how the use of the proposed E-Rate competitive bidding portal or an imposed waiting period could impact procurement timing for these applicants.

15. *Other Bidding Portal Considerations.* Are there potential obstacles the Commission should examine? For example, or pose technical challenges? The Commission also seeks comment on the impact of these proposals on applicants' bidding processes, including their timing for review and selection of providers.

16. The use of the bidding portal would not be required for the procurement of services that have been granted a competitive bidding exemption per the Commission's rules. Are there any other scenarios in which E-Rate participants should not be required to use the bidding portal? Are there any functions of the bidding portal that should be used by applicants with exemptions to help USAC review and ascertain compliance with competitive bidding rules? For example, for those applicants using state master contracts, is there documentation that applicants should be required to upload into the portal to demonstrate compliance with the E-Rate rules? The Commission seeks comment on any additional considerations that may impact applicants' and service providers' use of the bidding portal.

17. E-Rate program applicants and the Rural Health Care (RHC) program applicants currently submit different information to USAC at different points in their respective application processes. E-Rate applicants routinely submit bidding and contract documentation if requested by USAC or auditors as part of pre-commitment reviews (*e.g.,* standard PIA questions concerning bidding or special compliance competitive bidding reviews); during post-commitment comprehensive audits; and, during payment quality assurance reviews for computing the percentage of improper payments that must be reported annually to Congress. By contrast, in the RHC program, applicants are required to ''submit documentation to support their certifications that they have selected the most cost-effective option'' at the time a funding request is submitted to USAC. RHC program applicants must also submit contract documentation with their funding requests.

18. The Commission proposes to align the competitive bidding documentation requirements of the E-Rate program with RHC program rules. Under this proposal, E-Rate applicants would similarly be required to submit documentation demonstrating compliance with the competitive bidding rules and requirements at the time they submit their FCC Forms 471 to seek funding in the E-Rate program. The Commission seeks comment on this proposal. Should applicants in the E-Rate program be required to submit the same competitive bidding documentation with their funding requests as required in the RHC program? Is such a requirement appropriate and necessary? Is more or less information needed from E-Rate applicants to demonstrate program compliance? For example, are the bidding materials the portal would already capture, such as the bids and related communications, plus the applicant submission of its bid comparison documentation, sufficient for compliance review? Or, should the Commission consider requiring the submission of additional documentation? For example, if applicants do not receive any bids in response to their posted requests, should applicants be required to provide other documentation explaining how they selected their selected service provider? Would requiring applicants to provide contracting documents help applicants demonstrate compliance and help protect the program from fraud, waste and abuse? Are there other factors to take into consideration, such as the size of the applicant or the amount of their new contracts?

19. The Commission also seeks comment on whether there could or should be controls in the process to prevent applicants from proceeding with filing their FCC Forms 471 before submitting required competitive bidding and contract documentation. For example, should there be a system-implemented control put in place and should applicants not have access to file FCC Forms 471 in EPC until required documents are uploaded into the portal? Or, would it be less burdensome on both applicants and USAC to direct USAC to not process FCC Forms 471 until the required documentation has been filed?

20. The Commission seeks to facilitate greater transparency for USAC and them into the bidding process to help minimize fraud risk. The lack of transparency in the bidding process makes it more challenging for USAC and the Commission to ascertain compliance with E-Rate program rules. When applicants are not able to provide bidding documentation to show compliance with the Commission's rules upon request, USAC must render the request as non-compliant and deny funds, or if findings regarding lack of competitive bidding documentation are made pursuant to audit, and funds have been disbursed, these are deemed improper payments and funding must be returned. Similarly, when applicants submit bidding documentation after the fact, there is less certainty about the validity of the bidding process. The Commission seeks comment on its proposal to align E-Rate rules with RHC obligations by requiring applicants to submit competitive bidding documentation to demonstrate compliance with the Commission's rules.

21. Section 54.516 requires applicants to retain bids and other documentation related to E-Rate-supported services for at least 10 years after the later of the last day of the applicable funding year or the service delivery deadline, and to produce that documentation at the request of USAC, the Commission, or state or other federal agencies.

22. After the competitive bidding process is complete, the Commission anticipates that all documentation associated with the FCC Form 470 Service Request (*e.g.,* bids, bidder questions and related correspondence, selection documentation, contract documentation) could be securely stored in the bidding portal. Using the portal as a repository of these documents could serve to minimize the need for outreach and improve process efficiencies for USAC and E-Rate

program participants. The Commission seeks comment on the use of the portal as a repository of documents and how this might serve the public interest by placing fewer burdens on participants in the program. Are there any alternatives the Commission should consider?

23. The Commission seeks comment on how the use of the bidding portal for document storage relates to the Commission's E-Rate recordkeeping requirements, codified at § 54.516 of the Commission's rules. Should E-Rate participants be exempt from certain recordkeeping requirements if participants properly submitted the documents into the portal? Should applicants and service providers be permitted access to their stored competitive bidding documents for a period long enough to be able to comply with recordkeeping requirements? Also, if E-Rate program participants retain access to their records, should this access be afforded to them in a way to permit them to produce the records at the request of any representative (including any auditor) appointed by a state education department, USAC, the Commission, or any local, state or federal agency with jurisdiction over the entity, as is required by § 54.516(b)? The Commission seeks comment on whether there are any legal or other barriers to having E-Rate program participants comply with documentation and recordkeeping requirements by operation of using the bidding portal to store their competitive bidding records.

24. Recognizing that E-Rate competitive bidding can be an iterative process, the Commission seeks comment on how it can best use the portal to accommodate related steps of the process. How can the portal replicate or enhance the typical activities that can and do occur during the competitive bidding process and are necessary for successful bidding outcomes for applicants? For example, during procurement periods service providers are typically able to submit questions about requests for service in FCC Forms 470 and Requests for Proposals (RFPs) and receive answers from the applicants. All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process as required by the Commission's rules. Likewise, applicants may have questions about bid responses for service providers that lead to clarifications about bids. The Commission seeks comment on whether these activities should be required to occur in the portal. If so, the Commission proposes that questions and answers about service requests and RFPs be anonymously made available and viewable to the applicants and all interested bidders for the requested services, and the portal should be used to track and store this correspondence. The Commission seeks comment on this proposal. Also, the Commission seeks comment on how the portal should handle clarifications sought by applicants about bids that have been submitted and made available for review.

25. The Commission seeks comment on what other types of communications between service providers and applicants and procurement activities should be captured in the portal, and how to implement this in a way that is streamlined and easy to use for E-Rate program participants. Are there other types of functionality that should be considered for the bidding portal, and how should these functions be implemented in a way that will help support fair and open competitive bidding?

26. The Commission also seeks comment on those procurement processes that facilitate bidding in stages, potentially including initial and subsequent rounds of bidding (*e.g.,* requests for best and final offers). Because these are procurement steps that effectively extend the competitive bidding period, how should they be captured in the bidding portal and how would this impact the proposal in this document to implement a time period when bids are withheld from applicants? How could these processes be replicated and captured in the bid portal in a way that maintains anonymity and refrains from bid disclosure yet promotes transparency? Would the use of a bidding portal interfere with a multi-stage procurement process and if so, how?

27. Implementation of a competitive bidding portal would require significant development and implementation resources, from the Commission, USAC, and E-Rate stakeholders. If adopted, the Commission proposes that USAC, working with the Wireline Competition Bureau (Bureau) and the Office of Managing Director (OMD), initiate technical development of a competitive bidding portal as soon as possible, with a goal of making it available for funding year 2024. The Commission further proposes E-Rate stakeholder outreach and engagement to ensure that the bidding portal meets the needs of applicants and service providers and facilitates a smooth transition. To the extent necessary, the Commission proposes delegating authority to the Bureau and OMD to address implementation details that may arise, consistent with any rules that are ultimately adopted. By engaging stakeholders and empowering the Bureau and OMD to resolve technical and logistical implementation issues, the Commission anticipates that a competitive bidding portal could be completed efficiently and effectively. The Commission seeks comment on these proposals, including the proposed implementation timeframe. Would launching the portal so that it would be operational for the start of the funding year 2024 competitive bidding period be feasible in light of the technical and logistical challenges involved? The Commission notes that the bidding portal would need to be completed and live by July 1, 2023, the first day to initiate competitive bidding processes for funding year 2024. Is there sufficient time to design, develop, and implement a bidding portal by July 1, 2023? If the portal opens on July 1, 2023, will this allow enough time for applicants and service providers to receive training on how to use the portal to be able to successfully submit and receive bids for funding year 2024? Are there any other issues that may arise if the Commission shifts from the current approach to a centralized competitive bidding portal? Commenters are invited to raise any operational, legal, logistical, or administrative concerns that the Commission has not already identified.

28. The Commission proposes amending § 54.503 of the Commission's rules to require service providers to submit bids responsive to FCC Forms 470 in a bidding portal. The Commission seeks comment on other related rule changes, including the proposal for USAC to withhold bids from applicants for a minimum period and to require applicants to submit competitive bidding compliance documentation at the time they seek E-Rate funding by submitting FCC Forms 471. The Commission seeks comment on this proposed rule, and whether there are other conforming rule changes that the Commission should consider. Relatedly, the Commission seeks comment on any impacts these changes, if adopted, would or should have on existing E-Rate program forms and the certifications to those forms.

29. Finally, the Commission proposes to make an additional minor amendment to § 54.503(b) of the Commission's rules which incorrectly indicated that the exemption to the E-Rate competitive bidding requirements is in § 54.511(c) when instead it is referenced in § 54.503(e). Are there other rule changes that may be needed

as a result of the Commission's proposals?

30. *Digital Equity and Inclusion.* Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

III. Procedural Matters

A. Paperwork Reduction Act

31. This proposed rule may contain new or modified information collection(s) subject to the Paperwork Reduction Act (PRA) of 1995. If the Commission adopts any new or modified information collection requirements, they will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) 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 Modernizing the E-Rate Program for Schools and Libraries Program, et al, NPRM. Written comments are requested on this IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. Responsive comments must be identified as responses to the IRFA and must be filed on or before 30 days from publication of this item in the **Federal Register**. Reply comments to the IRFA must be filed on or before 60 days from publication of this item in the **Federal Register**.

33. The rules the Commission proposes in this proposed rule are directed at improving the competitive bidding process for the E-Rate program. The new requirements, if adopted, would require service providers to submit bids in response to requests for services into a bidding portal managed by USAC. The requirements, if adopted, may also require an applicant to wait for a period of time before it can review service providers' responsive bids. The proposed regulations would also require E-Rate applicants to submit competitive bidding documentation into the bidding portal to help demonstrate compliance with the rules, *e.g.,* bid comparison documentation. One of the objectives of the proposed rule changes and implementation bidding portal is to assist applicants in complying with the competitive bidding requirements and related documentation requirements.

34. The legal basis for this proposed rule is contained in sections 1 through 4, 201, 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, 254, 303(r), and 403.

35. 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 regulations, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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).

36. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. 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 Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

37. 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.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

38. 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.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

39. Small entities potentially affected by the proposed regulations herein include Schools and Libraries, Telecommunications Service Providers, Internet Service Providers, and Vendors of Internal Connections.

40. The proposal under consideration would require service providers that seek to bid on requests for services in the E-Rate program, bid in a portal. An additional proposal would require E-Rate program applicants to submit bidding documentation into the bidding portal before they seek funding for eligible services to demonstrate compliance with program rules for competitive bidding. The records that would be requested for submission into the portal are the same records that program participants must retain and must produce upon request to the Commission, USAC, and other entities with authority over the participants.

41. 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.

42. In this proposed rule, the Commission seeks comment on a reform to the E-Rate program. The Commission seeks to update program rules and administration for applicants and service providers that participate in the E-Rate program and therefore must follow the E-Rate competitive bidding requirements. The Commission recognizes that its proposed regulations would impact small entities. The rules the Commission proposes may decrease recordkeeping burdens on small entities and may increase reporting burdens on small entities.

43. *Service providers required to submit bids on services in bidding portal.* By requiring bidding to take place in the portal, the portal would capture and save the bids, as well as any related applicant and service provider correspondence. While this may not eliminate recordkeeping requirements, it should serve to make compliance with these requirements less burdensome.

44. *Compliance burdens.* Service providers currently bid to provide services in the E-Rate program in a variety of ways, and the bidding portal requirement may be in addition to bidding requirements that may exist outside of universal service program rules. Implementing the Commission's proposed regulations may also impose some burden on small applicant entities by requiring them to submit competitive bidding compliance documentation in the portal before seeking funding for requested services.

B. Ordering Clauses

45. Accordingly, *it is ordered,* that, pursuant to the authority found in sections 1 through 4, 201, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

46. *It is further ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM on or before 60 days from publication of this document in the **Federal Register**, and reply comments on or before 90 days from publication of this document in the **Federal Register**.

List of Subjects in 47 CFR Part 54

Communications common carriers, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications,.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer, Office of the Secretary.

Proposed Regulations

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, and 1601–1609, unless otherwise noted.

■ 2. Amend § 54.503 by revising paragraphs (b) and (c)(4), and adding paragraphs (c)(5) and (6) to read as follows:

§ 54.503 Competitive Bidding Requirements.

* * * * *

(b) *Competitive bid requirements.* Except as provided in paragraph (e) of this section, an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under § 54.502. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(c) * * *

(4) After posting on the Administrator's website an eligible school, library, or consortium FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. Providers of services shall not respond to a request for services directly to the requesting entity and shall not reveal responses to other parties, including other providers of services, but shall submit responses through a secured website portal (''bidding portal'' or ''bid portal'') managed by the Administrator. The requesting entity shall then wait at least 28 days from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(5) Service providers shall respond to requests for services through a secured website portal (''bidding portal'' or ''bid portal'') managed by the Administrator, by uploading bids into the portal. Service providers will not have access to the bids of other service providers. Service providers may anonymously submit questions or other inquiries to applicants through the bidding portal, to which applicants must respond during the competitive bidding process. No communication between service providers and applicants related to the competitive bid or the competitive bidding process is permitted outside of the bidding portal during the competitive bidding process. All potential program bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.

(6) After making commitments with the selected providers of services, and prior to submitting an FCC Form 471 seeking to receive discounts on eligible services, eligible schools, libraries, or consortia shall upload the following to the bidding portal:

(i) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have carefully considered and selected the most cost-effective bid with price being the primary factor considered, including the bid evaluation criteria, and the following documents (as applicable, and to the extent not already captured and stored as part of competitive bidding process): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated the bids (along with their title/role/relationship to the applicant), memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with the service providers prior to and during the competitive bidding, evaluation, and award phase of the process.

(ii) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.,* if services are not being provided on a

month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated after the Allowable Contract Date (ACD) by the applicant. If the services are provided by another legally binding agreement or on a month-to-month basis, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

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