(4) The superior officer shall render a decision on a disputed processing or monitoring fee within 30 calendar days of receipt of the written request from the proponent, applicant, or holder. The superior officer's decision is the final level of administrative review. The dispute shall be decided in favor of the proponent, applicant, or holder if the superior officer does not respond to the written request within 30 days of receipt.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The proponent, applicant, or holder is a local, State, or Federal governmental entity that does not or would not charge processing or monitoring fees for comparable services the proponent, applicant, or holder provides or would provide to the Forest Service;

(ii) A major portion of the processing costs results from issues not related to the proposed use or activity;

(iii) The proposal or application is for a proposed use or activity that is intended to prevent or mitigate damage to real property or to mitigate hazards or dangers to public health and safety resulting from an act of nature, an act of war, or negligence of the United States;

(iv) The application is for a new special use authorization to relocate facilities or activities to comply with public health and safety or environmental laws and regulations that were not in effect at the time the existing special use authorization was issued;

(v) The application is for a new special use authorization to relocate facilities or activities because the land is needed by a Federal agency or for a Federally funded project for an alternative public purpose; or

(vi) The proposed use or activity will provide, without user or customer charges, a valuable benefit to the general public or to the programs of the Secretary of Agriculture.

(2) A proponent's, an applicant's, or a holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraphs (f)(1)(i) through (vi) of this section apply.

(g) *Exemptions from processing or monitoring fees.* No processing or monitoring fees shall be charged when the proposal, application, or authorization is for a:

(1) Noncommercial group use as defined in § 251.51;

(2) Water system authorized by section 501(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761(c));

(3) Use or activity conducted by a Federal agency that is not authorized under title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1772); the Mineral Leasing Act of 1920 (30 U.S.C. 185); the National Historic Preservation Act of 1966 (54 U.S.C. 300101 *et seq.*); or the Act of May 26, 2000 (16 U.S.C. 460*l*–6d); or

(4) Recreation residence as defined in the Forest Service's directive system (36 CFR 200.4) and requires 64 hours or less for Forest Service personnel to process or monitor.

* * * * *

Dated: February 22, 2023.

Meryl Harrell,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 2023–04180 Filed 3–8–23; 8:45 am]

BILLING CODE 3411–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 02–6, 96–45, 97–21; FCC 23–10; FR ID 128840]

In the Matter of Schools and Libraries Universal Support Mechanism, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) seeks comment on ways to further improve E-Rate program rules and encourage greater Tribal participation in the E-Rate program. The Commission also seeks comment on whether there are other small or rural non-Tribal applicants that face similar barriers that impact their equitable access to the E-Rate program.

DATES: Comments are due on or before April 24, 2023, and reply comments are due on or before May 23, 2023.

ADDRESSES: All filings should refer to CC Docket Nos. 02–6, 96–45, and 97–21. Comments may be filed by paper or by using the Federal Communications Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- Electronic Filers: Comments and replies may be filed electronically by using the internet by accessing ECFS: *https://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 45 L St, NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Federal Communications 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.
- *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 & Governmental Affairs Bureau at (202) 418–0530.
- *Availability of Documents:* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS.

FOR FURTHER INFORMATION CONTACT: Johnny Roddy, Wireline Competition Bureau, (202) 418–7400 or by email at *Johnny.Roddy@fcc.gov.* The Commission asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in CC Docket Nos. 02–6, 96–45, and 97–21; FCC 23–10, adopted February 16, 2023 and released on February 17, 2023. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the

general public until further notice. 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.* The full text of this document is available at the following internet address: *https://www.fcc.gov/document/fcc-encourages-greater-tribal-participation-e-rate-program-0.*

Ex Parte Rules—Permit but Disclose. Pursuant to § 1.1200(a) of the Commission's rules, this Notice 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* presentation 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 filings 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 rule § 1.1206(b). In proceedings governed by rule § 1.49(f) 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.

In light of the Commission's trust relationship with Tribal Nations and its commitment to engage in government-to-government consultation with them, it finds the public interest requires a limited modification of the *ex parte* rules in this proceeding. Tribal Nations, like other interested parties, should file comments, reply comments, and *ex parte* presentations in the record to put facts and arguments before the Commission in a manner such that they may be relied upon in the decision-making process consistent with the requirements of the Administrative Procedure Act. However, at the option of the Tribe, *ex parte* presentations made during consultations by elected and appointed leaders and duly appointed representatives of federally recognized Indian Tribes and Alaska Native Villages to Commission decision makers shall be exempt from the rules requiring disclosure in permit-but-disclose proceedings and exempt from the prohibitions during the Sunshine Agenda period. To be clear, while the Commission recognizes consultation is critically important, it emphasizes that the Commission will rely in its decision-making only on those presentations that are placed in the public record for this proceeding.

I. Introduction

1. The E-Rate program provides support to ensure that schools and libraries can obtain affordable, high-speed broadband services and internet equipment to connect today's students and library patrons with next-generation learning opportunities and services. In January 2022, the Commission began an initiative to increase Tribal libraries' access to E-Rate support by first clarifying that Tribal libraries are eligible to participate in the program and later launching its Tribal Library Pilot Program to ensure Tribal library institutions have equitable access to the E-Rate program. To continue to address the underrepresentation of Tribal libraries in the E-Rate program, the Commission seeks comment on ways to further improve program rules and encourage greater Tribal participation in the program. The Commission also seeks comment on whether there are other small or rural non-Tribal applicants that face similar barriers that impede their equitable access to the E-Rate program.

II. Discussion

2. The Commission seeks comment on several ways to simplify the E-Rate program rules to make it easier for Tribal applicants to participate in the program without contravening congressional directives or increasing the risk of waste, fraud, or abuse. For example, through the Commission's outreach to Tribal libraries this past year, the Commission recognized that Tribal libraries still encounter barriers that limit access to the E-Rate program, and these barriers negatively impact the members of the Tribal communities that they serve. The Commission seeks comment on a number of these issues to determine whether changes or clarifications would help Tribal applicants access E-Rate support and better serve their communities. The Commission also seeks comment on any other ways that the Commission can help enable more Tribal applicants to participate in the E-Rate program. Finally, the Commission seeks comment on whether there are other small or rural non-Tribal schools and libraries that face similar barriers that impede their equitable access to the E-Rate program and whether similar reforms may be needed to encourage their participation.

3. The Commission anticipates that any revisions to its rules or procedures implementing the E-Rate program would benefit from Tribal consultation. The Commission therefore directs the Office of Native Affairs and Policy (ONAP), in coordination with the Wireline Competition Bureau (Bureau), to conduct government-to-government consultation as appropriate with Tribal Nations about the topics the Commission raises in this Notice of Proposed Rulemaking. Tribal Nations may also notify ONAP of their desire for consultation via email to *native@fcc.gov.*

A. Tribal College Libraries

4. In order to develop a complete record, the Commission seeks comment on whether to modify § 54.501(b)(2) of its rules to allow Tribal college libraries that serve a dual role by servicing the Tribal community as a public library to be eligible for E-Rate support. Under present rules, ''[o]nly libraries whose budgets are completely separate from any schools'' are eligible for E-Rate funding. The Commission adopted these safeguards in part to protect limited universal service funds from being diverted to institutions of higher education. However, there may be some instances where Tribal college libraries are also serving as the public library for their communities. In comments to the *2021 Tribal Libraries NPRM,* a commenter suggested making ''public serving librar[ies] of a Tribal College or University'' eligible for E-Rate support. According to the Department of Education, there are thirty-two accredited Tribal colleges in the United States. Of these thirty-two Tribal college libraries, at least nineteen have received Institute of Museum and Library

Services (IMLS) grants as direct recipients or subrecipients to provide services to their communities. Many of these Tribal college libraries may be the only library in the community and take on the public library role in addition to being academic libraries.

5. Section 254(h)(4) of the Communications Act of 1934, as amended (Act) excluded certain libraries from eligibility, but did not define libraries. In adopting the E-Rate program rules, the Commission barred college and university libraries from eligibility, finding this could result in otherwise ineligible institutions draining a substantial amount of universal service support from schools and libraries and is therefore inconsistent with section 254(h)(5), which limited support to elementary and secondary schools that meet certain criteria. The Commission seeks comment on whether the Commission should reconsider the Commission's bar on the eligibility of Tribal college libraries if they are also acting as a public library in their community, and whether doing so is consistent with section 254(h)(5) of the Act. Would making this eligibility change allow the E-Rate program to provide funding to more libraries serving and connecting Tribal patrons? What types of evidence, if any, should the Commission deem sufficient to demonstrate that a Tribal college library is serving a dual role: *i.e.,* acting both in an academic capacity (serving students in a college) and more broadly as a public library (serving all members of the local community)? Should the Commission deem IMLS grants to a Tribal college library as probative in this regard? Why or why not? Should the Commission consider whether there are other Tribal or public libraries in the community already? The Commission seeks additional data or examples from commenters to help us determine whether Tribal college libraries are serving this dual role, and if so, whether they are unique in this regard; and to understand what other roles Tribal college libraries might serve in their communities. Should any additional requirements be imposed on Tribal college affiliated libraries to qualify for E-Rate support, such as being open a certain number of hours to the public or permitting any member of the public to request and have materials made available to them?

6. The Commission notes that it seeks comment only on the needs of the Tribal college library that is also serving as a public library to its Tribal community, and does not propose to use the E-Rate program to fund the connectivity needs of the Tribal college or university. How can the Commission ensure the Tribal college library is supporting the Tribal community and that E-Rate support is not diverted for other higher education purposes contrary to congressional intent that funding flow to an institution of learning only if it is an elementary or secondary school? Should there be limits on the ability of a Tribal college to establish branch libraries? For example, the Commission in 1997 was concerned a college library could establish branches in dormitories in order to fund services to other college buildings. Here, would limits on branches make sense or could the Commission rely on other measures, like a requirement that the building be open and accessible to the public? Are there any other concerns (*e.g.,* procedural or budgetary) that might present challenges for Tribal college libraries to participate in the E-Rate program? Are there other rural non-Tribal college libraries, similar to the Tribal college libraries, that are also serving a dual role as the academic and public library for their rural community? The Commission also seeks data and information about these college libraries and comment on whether there are administrable ways to expand eligibility to Tribal college libraries providing public library services without reversing the Commission's 1997 decision to only make libraries eligible if their budgets were completely separate from colleges or universities. For example, do Tribal college libraries currently receive funding from sources other than the Tribal college or university because they are also serving the dual role as the Tribal community's public library?

B. Simplifying and Improving the E-Rate Application Process

7. The Commission next seeks comment on ways that it can streamline the application process and make the E-Rate forms simpler. The American Library Association (ALA) and the Association of Tribal Archives, Libraries, and Museums (ATALM) have previously observed in response to the *2021 Tribal Libraries NPRM* that only 12% of Tribal libraries had ever applied for E-Rate funding. Among the reasons cited by those that did not apply was the perceived complexity of the E-Rate application and funding process. The Commission agrees that further simplifying the E-Rate forms and processes could help to increase Tribal library participation in the program. Toward that end, the Commission notes that one of the goals of the Tribal Libraries E-Rate Pilot Program is to gain an understanding of the applicant experience and use the information to streamline the E-Rate program procedures and processes, particularly for Tribal applicants. The Commission expects the pilot program to be useful in determining how to improve the E-Rate program for Tribal libraries and will incorporate that feedback into this proceeding.

8. Here, the Commission seeks comment on how to streamline the FCC forms or change parts of the application process that may be burdensome for Tribal libraries and other small or rural applicants. How could the Commission simplify the language of the FCC forms, or provide guidance about what the terminology used on the forms means? Which terminology is the most challenging for a Tribal entity? To reduce the number of FCC forms for applicants submitting only a small E-Rate funding request that is less likely to attract competitive bids, should the Commission consider providing an additional exemption to the FCC's competitive bidding rules? For example, should the Commission exempt low-cost purchases if the applicant is seeking category two equipment that totals less than a pre-discount cost of $3,600, the level that currently exists for the commercially available high-speed internet access services exemption, or some other level? Does the existing exemption for commercially available high-speed internet access services reduce applicant burden? What would a reasonable pre-discount cost be that would not create an undue risk of waste, fraud, and abuse in the program? Should there be a maximum pre-discount price per entity for each category of service in a single funding year? How could the Commission still ensure that applicants are purchasing cost-effective equipment and services? Is there any publicly available, existing pricing data for frequently purchased equipment and services that the Bureau could use to set ''safe harbor'' price levels for comparable regions, below which competitive bidding would not be required? Would exempting these purchases from competitive bidding encourage additional small and often rural entities, like Tribal libraries and schools, to participate in the program?

9. Would Tribal libraries benefit from having extended or separate application filing windows because of the approval processes that may be needed for their E-Rate eligible procurements and purchases? The Commission understands from speaking with Tribal governments and libraries, for example, that the procurement processes for many Tribal schools are independent from the Tribal government's

procurement processes, but the Tribal library's purchases are often included with the Tribal government's procurements. The Commission seeks comment on whether the procurement processes for Tribal libraries are more complicated and protracted than Tribal schools' E-Rate procurements. Would a longer application filing window work better with the Tribal government or council's procurement requirements? How much additional time may be needed for Tribal libraries to complete their Tribal procurement processes and receive approval for their requested E-Rate eligible purchases and/or contracts? Are there any drawbacks that the Commission should consider in deciding whether to establish an extended or separate application filing window? Could a separate application window delay a Tribal library from timely obtaining broadband services during the funding year or limit the options available to an applicant?

C. Cost Allocation Rules and Procedures

10. The Commission seeks comment on whether and how to simplify the E-Rate program cost allocation rules and procedures. Libraries that share services, equipment, or space with ineligible entities, like an administrative office, are eligible for E-Rate support, but often are required to cost allocate the portion of the cost of the services used by the ineligible entity. Cost allocation is a part of the E-Rate process that can be confusing for all applicants, but especially for Tribal libraries. For instance, some Tribal libraries are located within another Tribal building (*e.g.,* the Tribal library only uses a portion of the building), share a building at different points in the week (*e.g.,* the Tribal library operates four days a week, and the building is used by the Tribal community for other purposes the other three days), and/or share their internet connections with ineligible entities (*e.g.,* the Tribal library obtains internet access as part of the Tribal nation's broader contract). For example, the Navajo Nation has chapter houses that, in addition to housing local government, contain a library that circulates materials and houses book collections for use by their communities. Tribal libraries in these kinds of circumstances may still receive E-Rate funding, but the Commission recognizes the burdens that potential cost allocation requirements may present and the possible deterrent effects of such requirements.

11. The Commission seeks comment on the cost allocation challenges that Tribal libraries may face. Under the current procedures, are there particular challenges for cost allocation that arise because the Tribal libraries are housed in multi-use buildings? For example, as long as a Tribal library meets the conditions set out in the *Sixth Report and Order,* 75 FR 75393 (December 3, 2020), for community use, the library should not need to cost allocate the use of the bandwidth when the library is closed (*e.g.,* from the parking lot), but are there other scenarios that are challenging for multi-use buildings? Are there ways the Commission could provide guidance on how or when Tribal libraries should or should not be required to perform cost allocations? If so, the Commission encourages commenters to provide specific examples of how their library building is used and questions about whether cost allocation would be required. The Commission also seeks comment on whether certain types of potentially ineligible use should be permitted without requiring Tribal libraries to cost allocate to simplify the E-Rate application and invoicing processes. Are there other groups affiliated with the Tribal library (*e.g.,* information technology (IT) departments or governing entities) for which Commission guidance is needed to make cost allocation requirements more manageable? Finally, what are the potential costs of addressing cost allocation challenges? How can the Commission prevent waste, fraud, and abuse in the E-Rate program while making changes in this area?

D. Category Two Discount Rates and Rule

12. While the Commission recognizes the issues of digital equity exist for other entities, in this item, it seeks comment on making changes to the category two discount rates and rules for Tribal entities. The maximum category two discount rate is set at 85%, lower than the 90% maximum discount rate for eligible category one services. While the Commission adopted this 85% discount rate to encourage applicants to find the most cost-effective options, should the maximum category two discount rate be raised to 90% for Tribal schools and libraries to encourage participation and lower costs for these applicants? Commenters are invited to comment on both the benefits and drawbacks of increasing the discount level from 85% to 90% for category two services. The Commission also seeks comment on whether to consider increasing the $25,000 funding floor for Tribal schools and libraries. If so, what funding floor would be appropriate to ensure Tribal schools and libraries have sufficient category two funding to meet their internal connections and Wi-Fi network needs? If the minimum funding floor is increased, should the Commission consider raising it for all applicants or solely for Tribal schools and libraries? What can the Commission do to prevent waste, fraud, and abuse in the program if it raises the minimum funding floor? Should there be any special considerations regarding the category two budgets of Tribal libraries located in multi-use buildings? Are there any other changes or enhancements that can be made to category two rules to help Tribal schools and libraries and encourage their participation in the E-Rate program?

E. Tribal Representation on Universal Service Administrative Company (USAC) Board of Directors

13. To increase Tribal input and representation in the federal universal service programs, the Commission seeks comment on a proposal to increase Tribal representation on the USAC Board of Directors (USAC Board) by adding a Tribal community representative director. In their joint comments to the *2021 Tribal Libraries NPRM,* ALA and ATALM suggested adding a director ''to the USAC board with purview of tribal libraries and other tribal organizations that are beneficiaries of Universal Service Fund programs.'' The Commission seeks comment on this proposal and on how to ensure Tribal entities are fairly represented on the USAC Board and its underlying committees. Should the Commission add a director to the USAC Board to represent Tribal interests pertaining to universal service support provided to low-income households, schools, libraries, health care providers, and Tribally owned telecommunications companies? Would the addition of another director result in a governance imbalance on the Board? If so, are there alternatives the Commission should consider? Should the Commission considers other changes to the Commission's rules regarding the USAC Board that would benefit Tribal entities? The Commission seeks comment on these questions and other ways to increase Tribal representation and leadership at USAC and in the federal universal service programs.

F. Other Program Improvements

14. In addition to the specific areas the Commission discussed, it also seeks comment on other measures the Commission should consider to make it easier for Tribal schools and libraries to participate in the E-Rate program. Are there other ways in which the Commission could increase

participation of Tribal schools and libraries or enhance the E-Rate program to help Tribal communities? What are the largest barriers for Tribal libraries that do not currently participate in the E-Rate program? The Commission seeks comment on examples of circumstances or considerations unique to Tribal schools or libraries that hinder or impede their participation in the E-Rate program. The Commission also seeks comment on whether there are other small or rural non-Tribal schools and libraries that face similar barriers that impede their equitable access to or participation in the E-Rate program. Please describe the barriers that these small or rural non-Tribal schools and libraries encounter that hinder or impede their ability to participate in the E-Rate program. Are there ways to leverage the Commission's relationships with other federal agencies to improve outreach and coordination to ensure Tribal entities are knowledgeable about federal options for schools and libraries?

15. Are there any specific issues that Tribal entities encounter using the E-Rate Productivity Center (EPC), the online account and application management system for the E-Rate program? Are there any other rule changes that could specifically help Tribal schools and libraries with the E-Rate application, invoicing, and other administrative processes? Are there types of guidance or clarifications that the Commission or the Bureau could provide to address areas of confusion? How can the Commission better target help to Tribal schools and libraries? As noted above, the Commission launched the Tribal Library E-Rate Pilot Program to provide assistance to Tribal libraries and to receive feedback on E-Rate. Should the Commission consider any additional methods of outreach (*e.g.,* in-person training, one-on-one assistance) to ensure that as many eligible Tribal schools and libraries as possible are aware of the program, understand how the program can help them meet their information technology and connectivity needs, and are prepared to be able to apply and receive support? If so, the Commission seeks comment on what these might be. Finally, should the Commission adopt a definition of ''Tribal'' in the E-Rate program rules? Currently, Tribal applicants are encouraged to self-identify as a Tribal school or a Tribal library by checking the Tribal box if ''the majority of students or library patrons served are Tribal members; if the building to receive service is located partially or entirely on Tribal land; if the applicant is a school operated by or receiving funding from the Bureau of Indian Education (BIE); or if the applicant is a school or library operated by a Tribal Nation.'' Would adopting a definition in the rules make it easier to measure Tribal progress toward program goals? Is this the appropriate definition of ''Tribal'' for the E-Rate program? Should the Commission modify it? Are there Tribal schools or libraries that are located off of Tribal land? If so, should the Commission also define ''Tribal lands'' or other terms to make the definition more inclusive of such entities? The Commission further notes that checking whether ''the majority of students or library patrons served are Tribal members'' may be fact-intensive and burdensome to administer. The Commission therefore seeks comment on whether it should remove that language from the existing Tribal definition and rely instead on other means to define ''Tribal.''

G. Digital Equity and Inclusion

16. Finally, the Commission, as part of its continuing effort to advance digital equity for all, including Indigenous and Native American persons, 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

17. *Paperwork Reduction Act.* This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

18. *Regulatory Flexibility Act.* 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 the Schools and Libraries Universal Support Mechanism, et al., Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments in the Notice of Proposed rulemaking. The Commission will send a copy of the Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**.

19. The Commission's E-Rate program, formally known as the schools and libraries universal service support mechanism, provides support to schools and libraries allowing them to obtain affordable, high-speed broadband services and internal connections, which enables them to connect students and library patrons to critical next-generation learning opportunities and services. In the Notice of Proposed Rulemaking, the Commission's primary objectives are to address the underrepresentation of Tribal applicants and increase participation of Tribal libraries. To achieve these objectives, in the Notice of Proposed Rulemaking the Commission explore ways to further simplify the E-Rate program rules, reduce program barriers and burdens, and encourage greater Tribal participation and community representation.

20. The Commission's efforts to simplify the E-Rate program include a request for comment on ways to improve the E-Rate application process, such as by simplifying E-Rate forms, providing an additional exemption to the competitive bidding rules, and whether creating an extended or separate application filing window for Tribal libraries would be beneficial to align with the applicable Tribal procurement requirements and approval processes. The Commission also seeks comment on modifying section 54.501(b)(2) of the Commission's rules to allow Tribal college libraries to become eligible for E-Rate funding if they are serving a public library function in their Tribal community, and on whether and how to simply the E-Rate program cost allocation rules for

Tribal applicants. Additionally, the Commission seeks comment on increasing the category two minimum funding floor for Tribal applicants, and increasing the highest category two discount rate for Tribal applicants to 90 percent.

21. In the Notice of Proposed Rulemaking, the Commission discusses and seeks comment on a proposal to increase Tribal perspective and representation on federal universal service programs by creating a seat on the USAC Board of Directors for a Tribal community representative. The Commission also seeks comment on how to ensure the fair representation of Tribal entities on the USAC board and its underlying committees, and other ways to increase Tribal representation and leadership at USAC and in the federal universal service programs. In addition, the Commission seeks comment on other options the Commission should consider which would make it easier for Tribal schools and libraries to participate in the E-Rate program and other ways to improve the E-Rate program process for Tribal applicants.

22. The proposed action is authorized pursuant to sections 1 through 4, 201–202, 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.

23. 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 rules, 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).

24. *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, 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 Small Business Administration's (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 32.5 million businesses.

25. 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 2020, there were approximately 447,689 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.

26. 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 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.''

27. Small entities potentially affected by the proposed rules herein include Schools, Libraries, Wired Telecommunications Carriers, All Other Telecommunications, Wireless Telecommunications Carriers (except Satellite), Wireless Telephony, Wired Broadband internet Access Service Providers (Wired ISPs), Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs), internet Service Providers (Non-Broadband), Vendors of Infrastructure Development or Network Buildout, Telephone Apparatus Manufacturing, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.

28. The potential rule changes discussed in the Notice of Proposed Rulemaking if adopted, could impose some new or modified reporting, recordkeeping or other compliance requirements on small entities. However, since the purpose of the Notice of Proposed Rulemaking is to streamline and simplify procedures, and improve the E-Rate program processes, the Commission anticipates that the rule modifications that may result from the matters upon which the Commission is seeking comment should reduce the economic impact of current compliance obligations on small entities. For example, the Commission seeks comment on a specific proposal to simplify the E-Rate program by reducing the number of required forms for entities making low-cost purchases, which would exempt such purchases from the E-Rate competitive bidding process. The Commission also seeks comment on whether to modify the application filing window for Tribal libraries providing a longer filing window in light of the approval processes that may be needed for their E-Rate eligible procurements and purchases. Additionally, in the Notice of Proposed Rulemaking the Commission inquires whether there are other rule changes to the application, invoicing, or other administrative processes in the E-Rate program that could be made to specifically help Tribal schools and libraries, and whether and how to simplify the E-Rate program cost-allocation rules and procedures for Tribal and non-Tribal applicants and seek comment. In response to comments, the Commission may simplify and change the forms that applicants use to apply for the E-Rate program as well as modify filing and other administrative requirements, which should ease reporting, recordkeeping, and other compliance requirements for small entities.

29. In assessing the cost of compliance for small entities, at this time the Commission cannot quantify the cost of compliance with any of the potential rule changes that may be adopted. Further, the Commission is not in a position to determine whether, if adopted, the proposals and matters upon which the Commission seeks comment in the Notice of Proposed Rulemaking will require small entities to hire professionals to comply. However, consistent with the Commission's objectives to streamline and simply the E-Rate program processes and procedures for Tribal schools and libraries, the Commission does not anticipate that small entities will be required to hire professionals to comply with any rule modifications it adopts. The Commission expects the information it received in comments

including where requested, cost information, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result from potential changes discussed in the Notice of Proposed Rulemaking.

30. 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.''

31. In the Notice of Proposed Rulemaking, the Commission has taken steps to minimize the economic impact on small entities from the changes to the E-Rate program on which the Commission seeks comment. Based on outreach with Tribal applicants, the Commission has learned that there are areas that may create burdens for Tribal entities and it seeks comment on how to reduce or eliminate those burdens. The Commission seeks comment on creating a competitive bidding exemption for low-cost funding requests which has the potential to reduce the number of forms for small entities requiring smaller amounts of E-Rate support. Both the competitive bidding exemption and the reduction of the number of necessary forms would reduce the associated costs for these activities for small entities. The Commission seeks comment on these matters. The Commission also seeks to update program rules and administration processes for applicants and service providers that participate in the E-Rate program which may reduce costs for small entities. More specifically, the Commission explores whether and how the E-Rate program cost-allocation rules and procedures for Tribal libraries can be made simpler.

32. Further, the Commission inquired in the Notice of Proposed Rulemaking whether to increase the maximum category two discount rate from 85% to 90% for Tribal schools and libraries to increase participation and lower costs for these applicants, and whether the Commission should consider increasing the $25,000 funding floor for Tribal schools and libraries. If increased, the Commission asked what funding floor would be appropriate to ensure Tribal schools and libraries have sufficient category two funding to meet their internal connections and Wi-Fi network needs. The Commission also considered if the funding floor is increased, whether the Commission should raise it for all rural applicants or just for Tribal schools and libraries; whether there should be any special considerations involving category two budgets of Tribal libraries located in multi-use buildings; whether there are any other changes or enhancements that can be made to category two rules to help Tribal schools and libraries and increase their participation in the E-Rate program and invited commenters to submit comments on both the benefits and drawbacks of increasing the discount level from 85% to 90% for category two services.

33. Additionally, the Commission invited commenters to suggest other measures the Commission should consider to make it easier for Tribal schools and libraries to participate in the E-Rate program. This may result in proposals from small entities that lessen the economic impact of, and increase their participation. The Commission expects the information it receives in comments to allow it to more fully consider ways to minimize the economic impact, and explore additional alternatives to improve and simplify opportunities for small entities to participate in the E-Rate program.

IV. Ordering Clauses

34. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–202, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 202, 254, 303(r), and 403, this Notice of Proposed Rulemaking *is adopted.*

List of Subjects in 47 CFR Part 54

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

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Proposed Regulations

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend part 54 of title 47 of the Code of Federal Regulations as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority 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, 1601–1609, and 1752, unless otherwise noted.

■ 2. Amend § 54.500 by adding in alphabetical order the definition for ''Tribal'' to read as follows:

§ 54.500 Terms and definitions.

* * * * *

Tribal. An applicant is considered ''Tribal'' if the building to receive service is located partially or entirely on Tribal land, if the applicant is a school operated by or receiving funding from the Bureau of Indian Education (BIE), or if the applicant is a school or library operated by a Tribal Nation.

* * * * *

■ 3. Amend § 54.501 by revising paragraph (b)(2) and adding paragraph (b)(4) to read as follows:

§ 54.501 Eligible recipients.

* * * * *

(b) * * *

(2) Except as provided in paragraph (b)(4) of this section, a library's eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

* * * * *

(4) A Tribal college or university library that acts as a public library by having dedicated public library staff, regular hours, and a collection for public use in its community shall be eligible for discounts.

■ 4. Amend § 54.503 by revising paragraph (e) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(e) *Exemption to competitive bidding requirements.* (1) An applicant that seeks support for commercially available high-speed internet access services for a pre-discount price of $3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

(i) internet access, as defined in § 54.5, is eligible for this exemption only if the purchased service offers at least 100 Mbps downstream and 10 Mbps upstream.

(ii) The Chief, Wireline Competition Bureau, is delegated authority to lower the annual cost of high-speed internet access services or raise the speed threshold of broadband services eligible

for this competitive bidding exemption, based on a determination of what rates and speeds are commercially available prior to the start of the funding year.

(2) A Tribal applicant that seeks support for category one or category two services for a total pre-discount price of $3,600 or less per school or library annually is exempt from the competitive bidding requirements in paragraphs (a) through (c) of this section.

■ 5. Amend § 54.505 by revising paragraph (c) and adding paragraph (g) to read as follows:

§ 54.505 Discounts.

* * * * *

(c) *Matrices.* Except as provided in paragraphs (d), (f), and (g) of this section, the Administrator shall use the following matrices to set discount rates to be applied to eligible category one and category two services purchased by eligible schools, school districts, libraries, or consortia based on the institution's level of poverty and location in an ''urban'' or ''rural'' area.

* * * * *

(g) *Tribal Category Two Discount Level.* For the costs of category two services, Tribal schools and libraries at the highest discount level shall receive a 90 percent discount.

■ 6. Amend § 54.703 by revising paragraphs (b), (b)(12), and (13), and by adding new paragraph (b)(14) to read as follows:

§ 54.703 The Administrator's Board of Directors.

* * * * *

(b) Board composition. The independent subsidiary's Board of Directors shall consist of twenty (20) directors:

* * * * *

(12) One director shall represent state consumer advocates;

(13) One director shall represent Tribal communities; and

(14) The Chief Executive Officer of the Administrator.

* * * * *

■ 7. Amend § 54.705 by revising paragraphs (a)(2)(iv) and (v) and adding new paragraph (a)(2)(vi) to read as follows:

§ 54.705 Committees of the Administrator's Board of Directors.

(a) * * *

(2) * * *

(iv) One Tribal community representative;

(v) One at-large representative elected by the Administrator's Board of Directors; and

(vi) The Administrator's Chief Executive Office

* * * * *

[FR Doc. 2023–04751 Filed 3–8–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0165; FF09E21000 FXES1111090FEDR 234]

Endangered and Threatened Wildlife and Plants; Petition Finding for Joshua Trees (Yucca brevifolia and Y. jaegeriana)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list Joshua trees (*Yucca brevifolia* and *Y. jaegeriana*) as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that listing Joshua trees as endangered or threatened species is not warranted. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Joshua trees or their habitat at any time.

DATES: The finding in this document was made on March 9, 2023.

ADDRESSES: This finding is available on the internet at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0165. Supporting information that we developed for this finding, including the species assessment form, species status assessment report, and peer review, are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0165 and on the Service's website at *https://www.fws.gov/office/carlsbad-fish-and-wildlife/library.* Supporting information is also available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Ecological Services Field Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008. Please submit any new information, materials, comments, or questions concerning this finding to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Scott Sobiech, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Ecological Services Field Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008; telephone 760–431–9440. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

On September 29, 2015, we received a petition from Taylor Jones (representing WildEarth Guardians), requesting that *Yucca brevifolia*—either as a full species (*Y. brevifolia*) or as two subspecies (*Y. b. brevifolia* and *Y. b. jaegeriana*)—be listed as threatened and, if applicable, critical habitat be designated. On September 14, 2016, we published a 90-day finding in the **Federal Register** (81 FR 63160) concluding that the petition presented substantial information indicating that listing the Joshua tree may be warranted. On August 15, 2019, we published a 12-month finding (84 FR 41694) concluding that listing either *Y. brevifolia* or *Y. jaegeriana* was not warranted. On November 4, 2019, WildEarth Guardians filed a complaint in the Central District of California challenging the analyses and listing decisions. The court vacated and remanded the listing decisions back to the Service (*WildEarth Guardians* v. *Haaland,* 2021 WL 4263831 (C.D. Cal. September 20, 2021)), ordering us to reconsider whether the two species of Joshua tree should be listed under the Act.

The Service has reassessed its August 2019 12-month finding and revised the species status assessment (SSA) report. This document complies with the September 20, 2021, court-ordered remand of the August 2019 ''not warranted'' 12-month findings for the two species of Joshua tree (*Yucca brevifolia* and *Y. jaegeriana*) and constitutes our new 12-month findings on the September 29, 2015, petition to list the Joshua tree species under the Act.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for Joshua trees (*Yucca brevifolia* and *Y. jaegeriana*). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report and the information