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

In the Matter of	)	
	)	
Modernizing the E-Rate Program for Schools and Libraries	)	WC Docket No. 13-184
	)	
	)	

Joint Initial Comments to Notice of Proposed Rulemaking (FCC 19-58) Submitted by State E-rate Coordinators' Alliance and Schools, Health & Libraries Broadband Coalition

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE CATEGORY 2 BUDGET PROGRAM SHOULD BECOME PERMANENT, SUBJECT TO INCREASES IN THE PER-STUDENT AND MINIMUM BUILDING AMOUNTS AND OTHER MODIFICATIONS TO IMPROVE ITS EFFICIENCY AND EFFECTIVENESS...3

III. THE CATEGORY 2 BUDGETS SHOULD BE ADMINISTERED AT THE BEN/APPLICANT LEVEL, NOT THE BUILDING LEVEL, TO PROMOTE SIMPLICITY, EFFICIENCY, AND PREDICTABILITY............7

IV. APPLICANTS' CATEGORY 2 BUDGETS SHOULD BE SET EVERY FIVE YEARS BEGINNING IN FY 2020 AND SHOULD REMAIN CONSTANT THROUGHOUT THE FIVE-YEAR PERIOD. 13

V. IMPLEMENTATION OF THE PERMANENT, NEW AND IMPROVED CATEGORY 2 BUDGET PROGRAM SHOULD BEGIN IN FY 2020 AND NOT BE DELAYED TO FY 2021................................19

VI. ALL BUILDINGS ASSOCIATED WITH AN ELIGIBLE SCHOOL OR LIBRARY, INCLUDING NON-INSTRUCTIONAL FACILITIES, SHOULD QUALIFY FOR CATEGORY 2 FUNDING. 21

VII. ELIGIBLE SERVICES LIST MODIFICATIONS SHOULD BE MADE TO MEET THE NEEDS OF APPLICANTS AND PROMOTE PROGRAM EFFICIENCY. 24

A. MIBS and a modified form of maintenance may become part of the permanent Eligible Services List, but all service and equipment must be combined into one single menu on the Form 470 Application in order to eliminate a competitive bidding trap for applicants...........24

B. Filtering should be eligible. 27

VIII. CONCLUSION...29

I. INTRODUCTION AND SUMMARY

The State E-rate Coordinators' Alliance ("SECA")[1] and the Schools, Health & Libraries Broadband Coalition ("SHLB")[2] have joined together to establish a consensus platform of recommendations for implementing a permanent Category 2 budget initiative in the E-rate program. Together SECA and SHLB ("Stakeholders") applaud the Federal Communications Commission ("FCC" or "Commission") for issuing the Notice of Proposed Rulemaking (FCC 19-58) ("NPRM"). This proceeding creates the opportunity for the FCC to resolve current problems with the five-year pilot program, and to issue permanent rules that enable all applicants to procure and offer sufficient, robust and cost-effective broadband connectivity to all students and library patrons across the country.

The Stakeholders, whose members include state E-rate Coordinators, applicants, service providers and state broadband agencies, all believe that the Category 2 pilot program initiated

[1] SECA accomplishes its work through its members who provide statewide E-rate coordination activities in 46 states and 2 U.S. territories. Representatives of SECA typically have daily interactions with E-rate applicants to assist them with all aspects of the program. SECA provides face-to-face E-rate training for applicants and service providers. As state E-rate coordinators, members serve as intermediaries between the applicant and service provider communities, the Administrator, and the Federal Communications Commission. SECA members typically provide hundreds of hours of E-rate training workshops annually to E-rate applicants and service providers. In addition to the formal trainings, SECA members spend thousands of hours offering daily E-rate assistance to individual applicants through calls and e-mails. We do not have any administrative staff and rely full time on our members' volunteer activities. Several members of SECA also work for and apply for E-rate on behalf of large, statewide networks and consortia that further Congress' and the FCC's goals of providing universal access to advanced telecommunications services to schools and libraries across the nation.

[2] The SHLB Coalition is a broad-based coalition of organizations that share the goal of promoting open, affordable, high-quality broadband for anchor institutions and their communities. SHLB Coalition members include representatives of schools, libraries, health care providers and networks, state broadband offices, private sector companies, state and national research and education networks, and consumer organizations. See http://shlb.org/about/coalition-members for a current list of SHLB Coalition members.

in E-rate funding year 2015 has enabled all applicants, regardless of their place on the E-rate discount matrix, to receive funding for broadband equipment and services inside their school and library buildings. Applicants have appreciated and benefited from this tremendous opportunity, so much so, that there is a groundswell of interest and concern about the fate of the Category 2 budget program. E-rate stakeholders welcome the FCC's NPRM and strongly support the FCC's proposed continuation of the program and their conclusory findings that the five-year budget program has been successful and effective.

The regulatory and procedural foundation established in the initial five-year pilot has enabled applicants and service providers to gain experience with the new approach. This foundation has provided the opportunity for E-rate stakeholders to identify several areas where the Program rules are needlessly complicated and confusing, and to propose solutions and adjustments to rectify and clarify these issues.

The permanent five-year Category 2 budget program should be established as a fixed five-year period beginning in FY 2020. The budget amount per student and per library square foot as well as the minimum floor for each building should be fixed for the entire five-year period with inflation being calculated and included in these amounts. For FY 2020, the per-student amount should be increased to $250 and the minimum floor per building should be set at $30,000.

The budgets should be administered on a consolidated basis for all of the applicants' buildings and no longer managed by individual building. Applicants need the flexibility to purchase equipment and services based on their own individual needs. All buildings including non-instructional facilities should be eligible to receive the benefits of Category 2 funding.

Once the budgets are computed and verified by the administrator, applicants should have the option of relying on those budgets for the entire five-year cycle. They should not be mandated to update enrollment and NSLP numbers each year but may choose to do so.

The permanent Category 2 budget program should begin in FY 2020 and not be delayed until FY 2021. The administrator may need to reprogram its systems in the future, but the current system is capable of accepting applications that reflect the recommended changes that the Stakeholders propose in these initial comments.

Maintenance and managed internal broadband services should be included in the permanent eligible services list. The submenus for Category 2 service requests in the Form 470 and Form 471 applications need to be eliminated because they are unnecessary and create unnecessary barriers for applicants' successful applications. Cybersecurity protective measures such as filtering, network monitoring and intrusion detection should be added to the eligible services list.

II. THE CATEGORY 2 BUDGET PROGRAM SHOULD BECOME PERMANENT, SUBJECT TO INCREASES IN THE PER-STUDENT AND MINIMUM BUILDING AMOUNTS AND OTHER MODIFICATIONS TO IMPROVE ITS EFFICIENCY AND EFFECTIVENESS.

The Stakeholders wholly support the FCC's proposed permanent establishment of the Category 2 budget program because the program has propelled additional broadband availability inside school and library buildings during the past five years. The five-year pilot has allowed for experience to be gained and analyzed but has identified certain anomalies that impede the full realization of the benefits of the program. The Commission can implement these improvements and modifications to better realize and identify the goals of efficiency, simplicity, and effectiveness. Some of the Stakeholders' recommendations will improve not only the efficiency of the Category 2 Program but the overall efficiency of application submission and processing as will be explained in more detail below.

The Wireline Competition Bureau's ("Bureau") February 19, 2019 E-rate Category 2 Report[3] identified four areas in which the Category 2 budget approach is more effective than the previous two-in-five approach. We agree with the Bureau's findings which we quote below:

- More funding was committed during the first four years of the budget pilot than in prior years; overall funding was sufficient to meet demand; and, the demand for funding was levelized.[4]
- More schools and libraries per year have received category two funding commitments, and a higher percentage of schools and libraries requested category two discounts than previously.[5]
- The distribution of category two funding requests under the category two budget approach more closely approximates the composition of participating schools and libraries in the E-Rate program overall than under the two-in-five rules approach.[6]
- The category two budget approach appears to provide more flexibility to applicants to plan for the deployment and maintenance of their networks in a way that best suits their needs, particularly for school districts[7] with certain improvements and modifications.

However, we do not concur with the Report's conclusion that these factors establish that the current budget allocation measures for the per-student, per-square-foot and minimum building amounts are sufficient for all applicants but rural libraries.[8] The analysis in the Report

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[3] *Modernizing the E-Rate Program for Schools and Libraries*, WC Docket No. 13-184, Report (DA 19-71) (released February 11, 2019) ("Report").
[4] Report, ¶ 8.
[5] Report, ¶ 9.
[6] Report, ¶10.
[7] Report, ¶11.
[8] Report, ¶12.

was based on four of the five years of pilot data (since the Report was required to be completed before the start of the fifth year of the pilot). Many additional applicants used Category 2 funding in FY 2019; therefore, the Commission should update the record and rely on parties' comments in response to this NPRM to further consider the sufficiency of these measures.

Further, there are several reasons as to why an applicant may not have used its full Category 2 budget during the pilot period, before concluding the current budget measures are sufficient:

- Due to the per-building basis of allocating funding during the pilot, the funding was available for buildings in which it was not needed, but not available in buildings where it was needed;
- Applicants needed funding for Wi-Fi equipment or related services that are not currently eligible and had to use their local funding to purchase these items and did not have sufficient funds to pay the non-discounted share for E-rate eligible equipment;
- Applicants may have recently updated their Wi-Fi equipment before the five-year budget program began and did not need to make such purchases during the pilot period; and,
- Applicants unknowingly may not have utilized all available funding because they were unable to accurately calculate their budgets due to the overly complex number of variables that must be considered in the calculation.

The Commission also should consider the percentage of applicants that used their entire Category 2 budget and whether the funding was sufficient to meet their needs. The current Form 471 application does not capture this information, because applicants are not asked to provide their total Wi-Fi project cost and then allocate available funding. Rather, applicants are required to apply for specific components per each line item and must restrict their funding requests to fit within their budgets. Because the budget amounts are capped, it is reasonable to conclude that for the percentage of applicants that reached their caps, the amount of funding was insufficient to meet their needs. Each year, because of the difficulties of accurately computing their remaining Category 2 budgets per eligible building and to limit their applications to meet or fall below their building budgets, some applicants inadvertently apply for funding that exceeds building budgets. During PIA review, USAC must contact each applicant that exceeded any of their building budget caps and work with them to reduce their requests to fall within the caps. USAC should have this information available to share with the FCC regarding the percentage of applicants that applied for funding in excess of their budget caps as well as the number of denied applications due to the applicant's failure to reduce their funding requests to fall within their budget caps. This information is expected to provide further evidence to establish the need to increase the budget caps.

Specifically, the Stakeholders support an increase in the per-student amount to $250.00 for the new five-year budget cycle to begin in FY 2020 and the new minimum building amount of $30,000. Funds for Learning, LLC filed its "2019 E-rate Trends Report" on August 1, 2019 in which 49% of responding applicants indicated that they need $250 per student to fund all of their five-year Category 2 needs.[9] Only 22% or less than one fourth of the respondents advised that the current amount, which is $159.67, is sufficient. An additional 28% of the respondents indicated that they needed a higher amount above $250 per student. Based on this information, the Stakeholders recommend that an increase of the funding cap to $250 per student, at a minimum, should be adopted, which according to the responding applicants of the Funds for Learning annual survey, will meet the needs of 71% of the applicants.

[9] https://www.fcc.gov/ecfs/filing/108010655418094 (filed August 1, 2019).

The Stakeholders further believe that the minimum building amount needs to be raised to $30,000 to adequately address the needs of smaller buildings.[10] The current amount of approximately $9,793.00 is insufficient. The minimum floor amount should be considered as the base or fixed costs of retrofitting any building, regardless of size, with adequate Wi-Fi equipment. Based on the feedback and experience of the vast array of organizations and individuals comprising the Stakeholders, the Stakeholders have concluded that the capped amount of the minimum floor for small buildings should be increased to $30,000.[11]

In conclusion, the Category 2 regulations should be finalized but modified to ensure that the program empowers applicants to decide how best to direct the use of the funds, and to be more effective, equitable and predictable to all schools and libraries.

III. THE CATEGORY 2 BUDGETS SHOULD BE ADMINISTERED AT THE BEN/APPLICANT LEVEL, NOT THE BUILDING LEVEL, TO PROMOTE SIMPLICITY, EFFICIENCY, AND PREDICTABILITY.

The single most important modification that the Commission should adopt is the use of a consolidated Category 2 budget that is administered at the school district and library system level for applicants that have multiple buildings. The current program requires each school or library building to manage a separate Category 2 budget that is needlessly complicated and frustrates applicants' ability to effectively use the funding.

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[10] NPRM, ¶ 20. There the Commission noted that schools with an enrollment of 190 students or more participate at an 80% rate, which corresponds to a pre-discount budget of approximately $30,000, compared to the lower participation rate of 48% for schools at the funding floor.

[11] The Stakeholders reserve the right to examine any additional evidence of need that may be submitted in the initial comments of other parties and may recommend a higher increase in the replies to comments.

Consider the following situation that happens routinely for school districts (or libraries) with multiple schools (or libraries). In this example a school district has two schools. The first school, School A, has Category 2 funding available but does not need the entire budget for the school. The second school, School B, needs E-rate funding to purchase equipment but has already exhausted its Category 2 budget. Consequently, the school district must pay for the equipment for the second school completely with local funds and is unable to leverage E-rate funding.

A second example of the effect of this inflexibility is:

- School A's C2 budget is $20,000.00.
- School B's C2 budget is $10,000.00.
- **School A needs 5 switches that cost $5,000.00 each = $25,000.00**
- **School B needs only 1 switch = $5,000.00**

School A is 'short' $5,000.00 and School B has $5,000.00 'left over' but the available funding in School B cannot be shared with School A for the needed purchases. The current FCC rules provide no resolution for this problem, resulting in the applicant foregoing the use of E-rate funding available for School B.

As the NPRM noted, when the Bureau released its Public Notice on September 22, 2017 seeking comment on the Category 2 budget approach, several parties representing the views of thousands of applicants filed comments supporting the use of applicant-wide consolidated Category 2 budgets.[12] The evidence compiled during the five years of the pilot

[12] NPRM, ¶ 22; CoSN, EducationSuperHighway, & Funds for Learning Public Notice Comments at 8; Pennsylvania Department of Education Public Notice Comments at 4; SECA Public Notice Comments at 5-8; Council of the Great City Schools Public Notice Comments at 5; Florida E-Rate Team Public Notice Comments at 2.

makes a compelling case in support of applicant-wide (school district or library system) budgets.[13]

First, at the local level, school districts and library systems manage their overall budgets outside of E-rate on a consolidated basis, not by building. Schools and libraries have governing boards that are responsible for allocating all kinds of resources to individual buildings, including technology. FCC rules that require schools and libraries to manage the budgets of individual buildings conflicts with their customary budgeting practices and are extremely onerous and burdensome on the applicants. These rules, too, are in conflict with the goal of the *2014 E-rate Modernization Order* to simplify and streamline the E-rate Program.

Second, the FCC already recognized the simplicity and efficiency benefits of administering another aspect of the E-rate program, the method of calculating E-rate discounts. In the July 2014 Report and Order and Further Notice of Proposed Rulemaking, the Commission found, "[t]he record demonstrates that E-rate applicants find the current building-by-building discount calculation approach to be confusing, time-consuming, and

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[13] The budget calculation needs to continue to account for small buildings that trigger the minimum floor amount per building. To accomplish this, each building budget would be set, as is done under the current pilot program. Under the district-wide proposal, these individual building budgets would be added together to arrive at the total Category 2 budget for each applicant. The difference between the current pilot program and proposed approach is that when the total budget for the applicant is computed, the applicant is able to choose to purchase eligible equipment and services provided that the purchase is within the total applicant budget rather than having to manage each building budget separately.

fraught with the potential for errors."[14] The same holds true with respect to administering Category 2 budgets at the building level.

The accounting for Category 2 budgets by building is one of the most complex areas of the E-rate program. Applicants have a fundamental challenge identifying how much Category 2 funding is available from year to year. They must perform complex calculations to determine their current budgets based on their current enrollment per building and then multiply by the current inflation-adjusted per-student amount. Then they must deduct all funding already committed for each building and deduct any unused funds returned to a building's budget via submission of a Form 500. When they return funds via Form 500, they must identify the amount to be credited back to each building. Then they must figure out the price of the equipment that they can afford to purchase with E-rate funding per building. This often results in the claiming of the partial costs of equipment in order to maximize the E-rate benefits, or opt to forego funding and not claim the partial costs of equipment, because the downstream administrative responsibilities such as invoicing or maintaining the asset registry for partially funded equipment is too time-consuming and burdensome. All of these steps are similarly imposed on the administrator to verify the accuracy and process the relevant forms and/or post-commitment change requests such as service substitutions and Form 500 changes.

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[14] *Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-99 (Order released July 23, 2014) at ¶210 (footnote omitted).

Allocating the costs of network equipment that supports and is used by multiple buildings is especially challenging. Core network equipment such as a core router, switch or wireless controller is used by multiple buildings and its cost must be allocated to a portion of each building's Category 2 budget. The E-rate filing system only will automatically calculate an equal assignment of costs of shared equipment based on the number of school or library buildings. Yet this is often not an accurate measure, because larger buildings with more students may use more of the shared equipment resources, yet the same amount of funding would be assigned to each building regardless of their relative size. Smaller buildings, therefore, are discriminately assigned a disproportionate amount of funding to their detriment. The only way to allocate the costs of shared equipment on some other basis is for the applicant to perform a complex series of calculations on their own, to compute the percentage of students in each building compared to the total number of students in all buildings sharing in the use of the equipment, and then multiplying each percentage by the total cost of the shared equipment to arrive at the amount of funding to be assigned to each building.

The FCC can rectify this extremely burdensome requirement of having to allocate partial costs of equipment per building for either site specific equipment or shared equipment by adopting a district-wide and library system-wide basis of administering the Category 2 budget. Each applicant would be able to identify the total costs of the eligible equipment that it needed to purchase during each funding year.

It would no longer be necessary to allocate costs per building on the Form 471 application which would greatly reduce the complexity of completing the Form. Indeed, applicants already are required to maintain equipment records that include references to vendor bills, USAC invoices, serial numbers, and current physical locations.[15] Thus, it should not even be necessary to require applicants to indicate on their Form 471 applications which buildings will be recipients of the equipment.

Likewise, SLD's review of applications will be streamlined. The administrator will continue to review and verify that the total proposed purchases of Category 2 equipment and services are within the total, consolidated Category 2 budget of each applicant rather than having to engage in this review for each individual building that is part of the applicant. This one modification would significantly reduce: (1) the amount of time for applicants to prepare and submit their Form 471 applications, (2) SLD time allocated to review and process the applications, and (3) the number of funding denials issued when confused applicants do not reduce their building budgets to balance their budgets. Adopting these changes will lead to faster issuance of funding commitment decisions letters, fewer funding denials, faster purchases of the equipment, and more efficient disbursements of committed funds during each funding year.

The efficiency benefits will continue downstream during the post-commitment process. The Form 500 process would be easier to use to return unspent and unused Category 2 funds and would take less time for the administrator to review and process. Also, the requirement to report equipment transfers should be eliminated altogether, which was a

[15] See E-rate Program documentation PDF available at https://www.usac.org/about/about/program-integrity/bcap.aspx (last visited August 6, 2019).

question posed in the NPRM.[16] The equipment reporting rules that were enacted to ensure no abuse of the two-in-five rule would no longer be necessary. Applicants would purchase and install E-rate funded equipment and service in their buildings according to their technology needs. Their asset inventory record would need to be updated whenever there was a move or transfer of equipment so that in the event of an audit, the applicant would be able to validate the existence, location and effective use of the equipment.

IV. APPLICANTS' CATEGORY 2 BUDGETS SHOULD BE SET EVERY FIVE YEARS BEGINNING IN FY 2020 AND SHOULD REMAIN CONSTANT THROUGHOUT THE FIVE-YEAR PERIOD.

Applicants need certainty and clarity about the amount of their Category 2 budget for the duration of their five-year effective period. The predictability of the five-year budget is essential so that they can plan their broadband equipment purchases and procurements and be confident about the amount of E-rate funding available to them and the amount that they must allocate from local resources for their non-discounted share.

The ability of applicants to rely on E-rate funding is also directly related to the Administrator's processing time to review Form 471 applications to confirm compliance with program rules. The uncertainty of when the applicant may receive its funding commitment decisions letter undermines confidence in being able to rely on the predictability of the amount of E-rate funding. Unless and until the applicant receives their annual funding approval, it will be reluctant to purchase and install the equipment and assume the risk of subsequently

[16] NPRM, ¶27.

receiving a funding denial. Further, many applicants must rely on discounted billing, which can only be used once funding approval is received, because the applicant may be unable to pay in full for the equipment upfront and seek reimbursement for the E-rate discount funding after the fact.

The Stakeholders encourage the FCC to remove these barriers and uncertainties by minimizing the variables associated with setting and administering each applicant's budget. Reducing the number of budget variables also will reduce applicants' confusion and the potential for inadvertent errors that may result in the need to undergo protracted pre-funding commitment reviews and potential funding denials.

The three variables that are recommended to be fixed for each five-year budget cycle are: (1) the five-year budget cycle itself; (2) the per-student or library per-square foot amount and the minimum floor amount per building; and, (3) the number of students and number of library square feet. By establishing constant values for these three factors during each five-year cycle, applicants will be able to compute their five-year budgets once and rely on them during the entire cycle. The Administrator will need to verify the budget amount per applicant only once during the five-year cycle, which would occur in the first year that the applicant applied for Category 2 funding. Both applicants and the Administrator will benefit from the simplification of the program requirements by reducing the amount of time required to prepare and submit applications and the time required to review and process applications.

Setting the Category 2 budgets by establishing the same five-year cycle for all applicants will greatly simplify the program and increase the predictability of funding. Each applicant will know ahead of time how much funding will be available, and the five-year period over which it is eligible to use the funds. It may opt to use the funds in any year of the five-year period whenever it is feasible for them. Even if it opts not to use all the funds during that period, the budgets will reset at the end of the five years and another five-year period will begin in FY 2025.

When the pilot was first established, and throughout its duration, there was ongoing confusion about whether the budgets were governed by a set five-year period ending in FY 2019 or whether the budgets were rolling and would end five years after the first year that the applicant began to use the funding. There appeared to be conflicting guidance in that at one point the Commission stated that the five-year period would roll and would begin based on the first year of the applicant use of the budget. At another point, the Commission stated that the pilot was set for five years only and would expire at the end of FY 2019 absent further action. It remained unclear, therefore, whether an applicant that opted to begin using its Category 2 budget in FY 2016 or a later year would have a full five years to use the funding, since the five-year period would continue past the FY 2019 expiration date of the pilot.

Rolling budgets may appear to offer flexibility to applicants, but in reality, they perpetuate confusion and uncertainty. With rolling budgets, applicants as well as the Administrator will constantly have to ascertain which year they are in of their five-year cycle and how much funding is available. A set five-year cycle is a clear cut and easy to understand rule from one year to the next.

The set five-year budget cycle will enable applicants to have sufficient flexibility to use their funding in the years that they wish to make their purchases. It simply puts everyone on the same calendar so that they know when their budgets will be reset. In addition, the set five-year cycle does not create the prospect of a funding demand bubble in the fifth year of the cycle. Experience has shown with the pilot program that applicants will apply for funding only when they need it, even during the last year of the cycle, and they will not make unnecessary purchases even if it means foregoing E-rate funding. Not all applicants may need to use the entire amount of their budget to meet their needs, yet others may need even more funding than is available. In any event, the local match in the form of paying their non-discounted share ensures that their purchases will be limited to only what is necessary to meet their needs.

Another component of resetting the budgets at five-year intervals should be the evaluation of the sufficiency of the per-student and per-square foot measures and the minimum building amounts. The per-student, per-square foot and minimum building amounts then in effect should serve as the starting point for the reviews. Based on historical and predicted future inflation rates, the amounts should be calculated and set to include the anticipated inflation rate for the entire five-year period of the budget and continue in effect for all five years without additional inflation adjustments.

The inflation adjustments have added another layer of confusion and complexity because applicants constantly needed to recalculate their Category 2 budgets using the new annual student and square foot amounts due to the yearly changes. Also, the administrator must update its systems each year, but the timing of these updates causes a delay in the processing of some Category 2 funding applications.

Currently, the sequence of events for implementing the annual inflation adjustments is misaligned with the schedule for processing applications. Each year the inflation adjustment must await the January 31st announcement by the Bureau of Labor and Statistics of the prior year's annual rate of inflation. The FCC must then perform the required calculation to determine the updated per student and per square foot amounts which are typically announced in mid- to late February. Next, the SLD must update its systems to incorporate the new inflation adjusted figures. By the time this occurs, however, the Form 471 filing window has already been open for several weeks or even months. Applicants may have filed their Form 471 applications anticipating the new inflation adjusted amounts. Until the new per-student and per-square- foot budget numbers are incorporated into the administrator's processing system, the administrator cannot tell whether an application has requested funding that exceeds the new budget amounts. Consequently, any application that initially appears to request excess funding could not be processed until the SLD's system was updated with the new inflation adjusted figures. In other words, SLD needs to confirm whether the application falls within the new inflation adjusted budgets before actively reviewing the merits of the application. This considerable delay can be avoided altogether by identifying and incorporating an estimate of the expected inflation increase over the five years in the first year of the five-year cycle and dispensing with annual inflation adjustments thereafter.

The number of enrolled students and number of square feet per library is the third variable in the current budget calculations that may fluctuate, particularly with respect to student enrollments. Each year applicants are required to validate their enrollment numbers during PIA reviews particularly when part-time students are included in their enrollment or when their enrollment numbers are different from the 'state valid file' that most states submit to SLD. Enrollments fluctuate daily and the numbers submitted in the state valid files are a snapshot in time, which may differ from the time period used by the applicant when completing its Form 471 application.

This review is time consuming and further delays the processing of applications and issuance of funding commitments. The current procedures would still require the annual review and validation of the enrollment for the district. The application process would be streamlined considerably by also allowing school applicants to have the option of relying on the same enrollment number and, therefore, the same Category 2 budget that is submitted and approved for the first year that the applicant is approved for Category 2 funding during each five year cycle. This approach also will allow applicants to rely on their Category 2 budget calculations for all five years and enable them to have the predictability of how much funding they can utilize and incorporate into their five-year technology planning. Applicants should be allowed to update their enrollment during the five-year period if they so choose, but it should not be mandatory. In cases where applicants elect to update their enrollment, however, they must also update their NSLP and/or CEP data as well.

By establishing a set five-year budget cycle for all applicants, a set per-student and per-square-foot multiplier and allowing applicants to rely on a set enrollment and square foot quantities during the entire budget cycle, the complexities of the pilot program will be removed. Program controls to ensure that funds are committed and used prudently will remain in place by requiring validation of the five-year budget during the first year that applicants opt to apply for funding. Annual review and verification of the budget is unnecessary unless the applicant modifies the enrollment or square foot quantities. By relying on the same information and data for the five-year budget period, applicants can more confidently file accurate Form 471 applications and the administrator can process them more promptly.

V. IMPLEMENTATION OF THE PERMANENT, NEW AND IMPROVED CATEGORY 2 BUDGET PROGRAM SHOULD BEGIN IN FY 2020 AND NOT BE DELAYED TO FY 2021.

The FCC requested comments on whether the permanent Category 2 budget program should begin in FY 2021 or FY 2020. One option, which the Stakeholders strongly prefer and believe should be adopted, is to start fresh in funding year 2020 and reset all applicant budgets to allow applicants a new opportunity to track their category two budgets and ease the transition's impact on all E-Rate program stakeholders.[17] The other option, which would disadvantage many applications, is to postpone implementation until funding year 2021.[18]

There is no need to delay implementation until funding year 2021, because the calendar allows for issuance of the final Order in this NPRM and for USAC to prepare procedures to administer the new regulations in time to accept Form 471 applications for funding year 2020. Delaying the transition on the other hand would put all applicants that have used their entire five-year budget through FY 2019 – not just those applicants that began using their funding in funding year 2015 -- at a disadvantage because they would be precluded from receiving funding until funding year 2021. Alternatively, another interim mechanism, such as providing for 1/5 of the annual budget just for FY 2020, would be required. This would create yet another complex set of procedures and rules that the Administrator would need to implement, and applicants would need to learn in the same period of time that would otherwise govern the new Category 2 program for FY 2020 only. Then, after the one-year interim procedures were completed, applicants would then need to learn a second set of new procedures and guidelines established for the permanent program that would become effective in FY 2021. There is no identifiable

[17] NPRM, ¶ 35.
[18] NPRM, ¶ 36.

benefit in perpetuating this confusion and in fact there would be an additional burden on the administrator and applicants. Therefore, the Stakeholders encourage the Commission to adopt its recommendations.

The Stakeholders acknowledge that USAC may need to reprogram the online filing system called E-rate Productivity Center ("EPC") and may need to modify its internal processing procedures to accommodate any new FCC regulations and requirements. From a customer-facing perspective, however, the EPC system appears to be capable of incorporating district-wide and library system-wide budgets in its current iteration. Applicants would continue to prepare their Form 471 applications and identify the buildings that receive services and equipment for each line item. But instead of requiring them to identify the specific amount assigned to each building, they can simply use the existing functionality in the system to choose to allocate the costs equally among all buildings.

During review of the applications, the administrator will be able to review the total amount of funding that the applicant requested and compare this amount to the applicant's total budget and determine whether the applicant is within its budget or has exceeded its budget. Only those applicants that have exceeded their total budget would need to be contacted in order to request them to lower its funding requests to fall within their allotted budget. This approach will allow for the applicant to complete its forms using the new district-wide and library-system wide budgets.

In future years, USAC may opt to make structural modifications to the Form 471 application in the EPC system in order to have the applicant's budgets automatically calculated at the district and system wide levels. At the very least for funding year 2020, the current system can be used and there is no reason or need to delay until funding year 2021 the implementation of the permanent Category 2 rules.

VI. ALL BUILDINGS ASSOCIATED WITH AN ELIGIBLE SCHOOL OR LIBRARY, INCLUDING NON-INSTRUCTIONAL FACILITIES, SHOULD QUALIFY FOR CATEGORY 2 FUNDING.

The historical prohibition restricting non-instructional facilities from receiving Category 2 funding is an unnecessary limitation that has outlived its usefulness and should be rescinded. Enacted in 1998 during a period when funding demand nearly always exceeded available funds, this provision served to reduce demand and allow for then Priority 2 funds to be directed to classroom buildings and library buildings used by patrons. In 1998, in the Fourth Order on Reconsideration in CC Docket No. 02-6, the Commission chose *on its own motion* to limit Priority 2 funding to school buildings and publicly accessible library buildings.[19]

Non-instructional buildings housing network equipment used in public school or library buildings have always been exempt from the prohibition, but it has not been altogether clear whether the non-instructional building's use of shared network equipment must be deducted from an E-rate funding request. The guidance from SLD in past years has been to require such cost allocation which is tedious and time consuming even though the shared network equipment is housed in the non-instructional facility and, therefore, dependent upon that facility to have the district or library's network operate effectively.

[19] *Federal-State Joint Board on Universal Service,* Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 63 FR 2094, 2110 (1998). "We take this opportunity to make clear, on our own motion, that the *Order* limits support for internal connections to those essential to providing connections within instructional buildings."

Cost allocations generally are confusing and time consuming; and, they become another potential point of failure during the Form 471 application submission and review process. Applicants must account for deduction of any costs to be allocated to a non-instructional facility for Category 2 shared equipment or service costs, and the administrator must review and verify the cost allocation. This is yet one more step in the processing of applications that needlessly slows down processing and the timely issuance of funding commitment decisions letters.

This rule is no longer needed, because applicants now have a budget cap which will have resolved the concern that demand will exceed available funds and that all applicants, even those with lower discounts, may be unable to access Category 2 funding. Further, applicants should be empowered to decide at the local level how best to use their Category 2 funding.

Further, the non-instructional facility restriction operates inequitably to limit stand-alone administrative buildings from receiving Category 2 funding yet allows administrative portions of buildings with classrooms and publicly accessible library buildings to receive the benefit of these funds by virtue of their physical proximity. Administrative offices of a school or library are vital to the operation of the district or library regardless of whether they are housed in a separate structure or adjacent to classrooms or public access under the same roof. Indeed, when the FCC defined "educational purpose" in connection with verifying the availability of Priority 1 funding to these buildings, the analysis employed stands up over time and further supports the appropriateness of extending Category 2 funding to non-instructional facilities:

> We reiterate our recognition that the technology needs of participants in the schools and libraries program are complex and unique to each participant. We find that, in the case of schools, activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as educational purposes under this program. To guide applicants in

> preparing their applications and to streamline the Administrator's review of applications, *we further establish a presumption that activities that occur in a library or classroom or on library or school property are integral, immediate, and proximate to the education of students or the provision of library services to library patrons.*[20]

As the digital world has expanded and with the advent of cloud-based services, Internet access is vital to all school employees and for all school services regardless of whether the access is from a classroom or public space of a library. Administrators and teachers who may be posting grades to an online portal and whose online activities take place while in a non-instructional facility are just as vital and have as much educational purpose as the same communication that may originate in a classroom or publicly available library.

In sum, schools and libraries are in the best position to decide how and where to allocate Category 2 resources. With the adoption of district or library system wide budgets it should be entirely a local decision for the school or library to determine when E-rate funding should be used to furnish a non-instructional facility or a classroom building or library building with internal connections. The Stakeholders strongly encourage the Commission to adopt all of the recommendations set forth in this Section.

[20] *Schools and Libraries Universal Service Support Mechanism,* Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 02-6, 18 FCC Rcd 9202, 9208, ¶ 17 (emphasis added).

VII. ELIGIBLE SERVICES LIST MODIFICATIONS SHOULD BE MADE TO MEET THE NEEDS OF APPLICANTS AND PROMOTE PROGRAM EFFICIENCY.

A. MIBS and a modified form of maintenance may become part of the permanent Eligible Services List, but all service and equipment must be combined into one single menu on the Form 470 Application in order to eliminate a competitive bidding trap for applicants.

The Managed Internal Broadband Services ("MIBS") and a modified Basic Maintenance of Internal Connections ("BMIC"), as explained herein, should be included in the permanent list of eligible services. If this is done, it is essential that that the submenus in the Form 470 and Form 471 applications be eliminated and there becomes one master menu of all Category 2 services and products for service request choices.

The current menu in the Form 470 and Form 471 applications has three submenus: Internal Connections, MIBS and BMIC. When completing these forms, applicants must first select the correct category in the submenu and then further select the specific function. There is no need, however, for the two-part selection process and it has become an inadvertent 'trap' for applicants who may unknowingly fail to select the correct category in their Form 470 application. Later, upon receipt of proposals from vendors, they may discover that the vendor classifies a service as either MIBS or BMIC, but the applicant may have only chosen the internal connections option from the Form 470 menu. Consequently, the applicant is found to have committed a competitive bidding violation and is then denied funding for the service category mismatch.

The menu should be combined to require applicants to choose the specific equipment or service from one menu, and MIBS and BMIC should be options to choose from the main menu. This modification will resolve this problem and simplify the Form 470 and Form 471 applications.

With the implementation of the EPC system, applying for equipment and services in the proper "bucket" or "sub-category" needlessly has become increasingly important during the PIA review process. Prior to EPC, applicants were not required to select individual categories of internal connections equipment on the Form 470 and then ensure that they matched exactly to their Form 471 funding requests. Since FY 2015, hundreds of funding requests have been denied, due to applicants' attempts to select the correct category that described the service or equipment they were seeking on both the Forms 470 and 471 applications.

Software and licenses to operate equipment, as well as maintenance of eligible equipment, should be considered adjunct to the specific equipment for which bids are requested on the form 470 application. Just like installation and activation of Category 1 services, there should be a check box on the Form 470 for applicants to identify whether they are seeking bids on the software, licenses, and maintenance for the equipment in their service requests. This check box will put vendors on notice that their proposals and price quotes may include these critically important components needed for broadband equipment to operate properly, while at that same time help ensure that applicants are not penalized for inadvertently selecting the wrong service request or failing to include these adjunct categories. It also will help eliminate the guessing game of whether vendors classify their license as internal connections or maintenance.

Further the maintenance definition should be aligned with the MIBS definition. MIBS allows for third party service contracts that include "operation, management, or monitoring of a LAN or WLAN."[21] Yet the current definition of maintenance prohibits network management services including 24-hour network monitoring.[22] This dichotomy is a relic of prior Commission decisions enacted before the allowance of MIBS as an eligible service and should be removed. Although in the past the Commission may have been concerned with the financial impact of expanding the Eligible Services List, such concern was ameliorated with the imposition of Category 2 budget caps. Allowing for network monitoring to be eligible will remove this inconsistency and empower applicants to choose how best to direct their use of Category 2 funds to facilitate their broadband availability throughout their buildings.

Part of network monitoring also should include allowance for network security features and services to protect networks against intrusion and interference. Networks security services are often bundled together with firewalls, but currently, network security features of firewall appliances are not eligible and must be deducted from firewall appliances. Considering how commonplace cyber attacks occur, it is essential that networks be protected against such malicious attacks. It is widespread for schools and libraries to equip themselves with such protection measures, but they must separately bear the burden of these network security costs, because they are ineligible for E-rate funding. This restriction leads to more complex application preparation and processing in order to perform cost allocations to quantify associated costs and remove them from funding requests and for the costs to be borne fully from local budget resources.

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[21] *Modernizing the E-rate Program for Schools and Libraries,* Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-184 (FCC 14-99) (released July 23, 2014) at ¶ 127.
[22] *Modernizing the E-rate Program for Schools and Libraries,* Report (DA 18-1173) (released November 16, 2018) at Appendix B, p. 12.

The last modification needed to reduce the complexity and streamline the E-rate program's eligible services relates to prepayments of multi-year maintenance components. Currently, the program allows for full funding of prepaid multi-year licenses in the first year of purchase, but for pre-paid maintenance funding requests, only the annual costs may be claimed each year. This cumbersome and tedious restriction is unnecessary for software support and license annual updates – the kinds of maintenance service that is eligible at the present time without having to prove that the service was in fact used. While break/fix maintenance requests may need to continue to be requested for funding annually in order to verify that the service was in fact used, the same such restriction is unnecessary and should be lifted from software support and technical assistance services. Of course, the other option is for the FCC to eliminate break/fix maintenance from the Eligible Services List and limit maintenance solely to software support and technical support service. But whatever course of action is selected, the requirement to annually apply for prepaid software updates and technical support should be removed.

All of these recommendations are designed to more accurately define the service and equipment necessary to effectively use broadband and Internet access services inside buildings. Applicants should be provided the flexibility of purchasing the service or equipment they need and obtain E-rate discount funding for these purchases subject to their Category 2 budget caps.

B. Filtering should be eligible.

The Children's Internet Protection Act requires any E-rate recipient of Category 2 funding or Internet access funding to have filtering measures in place. Yet, the E-rate Program historically has been unwilling to cover filtering as an eligible service. The Stakeholders believe there is no legal restriction against deeming filtering to be an eligible service and that the time has come to include it on the Eligible Services List. When the CIPA statute was first enacted, the Act included language that stated there was no associated appropriation for filtering.[23] We believe this language has been incorrectly construed to mean that the FCC lacks authority to include filtering on the Eligible Services List. We believe that such an interpretation is incorrect, and that is simply means that when the CIPA statute was enacted there was no Congressional funding or appropriation to defray the costs of compliance in the statute. However, that language does not preclude the FCC from including filtering as an eligible service and allowing applicants to choose to use their Category 2 budget to purchase filtering hardware or software.

[23] Consolidated Appropriations Act, 2001. (PL 106-554). Title XVII – Children's Internet Protection; Subtitle B -- Universal Service Discounts; Section 1721(g). (https://www.govinfo.gov/content/pkg/PLAW-106publ554/pdf/PLAW-106publ554.pdf.) ""No other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title."

VIII. CONCLUSION

The Stakeholders request the FCC to adopt an Order consistent with the recommendations set forth above in these Comments.

Respectfully submitted,

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