



## **Framing Paper**

### **FCC Tribal Consultation and Listening Session: “2023 Tribal E-Rate Notice of Proposed Rulemaking”**

*May 19, 2023*

**Topic:** Notice of Proposed Rulemaking to address barriers to Tribal Nations participating in the FCC’s Schools and Libraries (E-Rate) program (“Tribal E-Rate NPRM”).

**Summary:** The E-Rate program provides discounts in the form of funding to schools and libraries across the nation to obtain broadband services and equipment to connect students and library patrons to the Internet. Since the program began in 1996, E-Rate support has helped libraries afford these services and provide free, public Internet access to their communities. However, Tribal libraries have often faced barriers to participation. This situation exacerbates enduring inequities, as Tribal libraries often serve as a critical source of Internet access in underserved areas across the nation. To address these inequities, in January 2022, the Commission first amended its E-Rate rules to clarify that Tribal libraries are eligible to participate in the program. To continue to encourage greater Tribal participation in E-Rate, on February 16, 2023, the Commission also adopted a [Notice of Proposed Rulemaking](#), which seeks public comment on proposed solutions to address these barriers to participation for Tribal applicants, including:

- Whether the Commission should allow Tribal college libraries that serve as a public library in their communities to be eligible for E-Rate support;
- Ways to improve the E-Rate application process, and ways to simplify the E-Rate cost-allocation rules and procedures, or provide guidance to applicants on the parts of cost-allocation that create the most confusion;
- Changes to the maximum discount rate and to the funding floor for category two services for Tribal applicants;
- Whether a Tribal community representative should be added to the USAC’s Board of Directors; and
- Whether to adopt a definition of “Tribal” for use in the E-Rate program, and whether any other measures could be adopted to make it easier for Tribal and other small non-Tribal applicants to access and participate in the E-Rate program.

**E-Rate Background:** The E-Rate program has long provided funding to eligible schools and libraries for the purchase of Internet services and equipment. Elementary and secondary schools are eligible, while higher education institutions are not. In January 2022, the Commission amended its rules to clarify that Tribal libraries are eligible to participate in E-Rate. Libraries must have a budget completely separate from any school to be eligible, making higher education libraries ineligible.

The E-Rate program’s eligible equipment and services are divided into category one services (high-speed Internet connectivity to the schools and libraries) and category two services (connectivity within the schools and libraries, such as Wi-Fi access points, cabling, and routers). For category one equipment and services, eligible applicants can receive funding for 20% to 90% of the pre-discount price of eligible equipment and services. For category two equipment and services, eligible applicants can receive funding for 20% to 85% of the pre-discount price of eligible equipment and services.



For category one equipment and services, the Commission did not set a budget per applicant. For category two equipment and services, the Commission set a five-year, pre-discount budget per school or library, for each applicant. The Commission set a funding floor of \$25,000 over five years, but applicants can have a higher budget based on the size of their school(s) or library(ies). Libraries can receive \$4.50 per square foot, so any library larger than 5,556 square feet will have a higher category two budget than the minimum \$25,000 budget. Schools can receive \$167 per student, so any school with more than 150 students will have a higher category two budget than the minimum \$25,000 budget.

Some E-Rate eligible equipment or services may have components that are ineligible for E-Rate funding or can be used for ineligible purposes. Applicants are required to remove the costs of (or cost allocate) the ineligible portions of the services or equipment from their E-Rate funding requests. Schools and libraries are permitted to allow community members to use their E-Rate funded equipment and services during hours of non-operation and while on their property (this is also known as “Community use”). However, applicants must not request more funding than necessary for educational purposes, applicants cannot charge for the use of such equipment and services, and schools cannot permit community use during operating hours.

E-Rate applicants are required to seek competitive bids for the equipment and services that they are seeking E-Rate funding for, to ensure that they are informed of available choices and receive the best prices. The competitive bidding process requires applicants first to submit an FCC Form 470 to the FCC’s program administrator, the Universal Service Administrative Company (USAC), describing the requested services. Applicants are then required to consider all submitted bids, with price being the primary factor in their bid evaluation. Applicants must then wait at least 28 days from the date they submitted their FCC Form 470 to USAC before selecting and entering into a contract with a service provider. Applicants seeking high-speed Internet service that costs \$3,600 or less per year are exempt from the competitive bidding process.

After entering into a contract for E-Rate eligible equipment and/or services, applicants request support by submitting an FCC Form 471 funding application to USAC. The funding year begins on July 1 and runs through the following June 30 (e.g., funding year 2023 will run from July 1, 2023 through June 30, 2024). Funding applications must be submitted on annual basis during the FCC Form 471 filing window, which generally opens in January and closes in March, before the start of the funding year (e.g., for funding year 2023, the application filing window opened on January 18, 2023, and closed on March 28, 2023).

USAC administers the universal service fund programs, including the E-Rate program. The USAC Board of Directors is made up of one permanent director and eighteen directors representing a range of telecommunications and information services providers, rural health care providers, schools, libraries, low-income consumers, state telecommunications regulators, and state consumer advocates.

**Tribal E-Rate NPRM Questions:** As a starting point before the conversation, please consider the following questions, discussed in the Tribal E-Rate NPRM:

**No. 1: Should the Commission revise its eligibility rules to allow Tribal college libraries that serve as a public library in their communities to be eligible for E-Rate support?**

**No. 2: Should the Commission improve the E-Rate application process by:**

- **Simplifying E-Rate forms? If yes, please include any suggestions or examples for how to simplify.**



- **Providing an additional exemption to the competitive bidding rules for low-cost services and equipment? It is currently set at \$3,600 per year. What amount would be needed on an annual basis to fund low-cost Internet services and related equipment on Tribal lands?**
- **Creating an extended or separate application filing window for Tribal libraries?**

**No. 3: Should the Commission simplify the E-Rate cost-allocation rules and procedures, and how should the Commission provide guidance to applicants?**

**No. 4: Should the Commission make the following changes to category two rules:**

- **Increase the maximum discount rate level for category two services from 85% to 90% for Tribal schools and libraries?**
- **Increase the category two \$25,000 funding floor for Tribal schools and libraries? If so, what amount should the category two funding floor be increased to for Tribal applicants?**

**No. 5: Should the Commission add a Tribal community representative to USAC’s Board of Directors?**

**No. 6: Should the Commission adopt a definition of “Tribal” for use in the E-Rate program? If so, how should “Tribal” be defined?**

**No. 7: What other measures should the Commission adopt to make it easier for Tribal and other small non-Tribal applicants to access and participate in the E-Rate program?**

**Directions for Submitting Comments:** Please join us for a consultation and listening session on Friday May 19, beginning at 2:00 p.m. EDT, and/or submit any written comments to [TribalE-RateNPRM@fcc.gov](mailto:TribalE-RateNPRM@fcc.gov) or by filing comments in CC Docket Nos. 02-6, 96-45, and 97-21 in the FCC’s Electronic Comment Filing System (ECFS) at <https://www.fcc.gov/ecfs/filings/standard>. Please see detailed instructions about how to submit comments via ECFS at <https://www.fcc.gov/consumers/guides/how-comment>. You can also submit express comments at <https://www.fcc.gov/ecfs/filings/express>. Written comments are due on Tuesday, May 23, 2023. Interested parties are welcome to submit information for this proceeding after the May 23, 2023 deadline, if additional time is needed.

**Ex Parte Rule Exemption:** The Administrative Procedure Act requires all individuals that meet with the Commission to discuss an open proceeding to submit a written summary of the conversation into the public record of that proceeding. This rule is important because the Commission can only rely on statements that are submitted in the public record to reach its decisions. For the Tribal E-Rate NPRM, official Tribal leaders and their proxies are exempt from the requirement to submit a summary of their statements made during the consultation into the public record. However, to ensure this feedback may be relied upon as part of the decision-making process, FCC staff will prepare a written summary of the consultation discussion and submit the summary into the public record. Tribal leaders or their proxies may tell the FCC, prior to or during the consultation, that they request that their statement(s) be excluded from the public record. Other participants remain subject to the Commission’s ex parte requirements. For this consultation and listening session, their statements will also be included in the summary prepared by FCC staff for submission into the public record for this proceeding.