



USET

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Transmitted Electronically

April 24, 2023

Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: USET SPF Comments to the FCC on a Notice of Proposed Rulemaking to Revise Regulations of the E-Rate Program, CC Docket Nos. 02-6, 96-45, and 97-21

Dear Chairwoman Rosenworcel,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Federal Communications Commission (FCC, or Commission) to revise regulations of the E-Rate Program. Commonly referred to as the 'schools and libraries' program, the E-Rate Program provides support for these institutions to access affordable, high-speed broadband services and internet equipment. We appreciate the Commission's renewed focus to simplify the E-Rate Program rules and examine changes to the rules to increase opportunities for Tribal schools and libraries to gain access to E-Rate funds. USET SPF recommends that the Commission adopt rule changes that simplify the E-rate application process, increase technical assistance for Tribal Nations to apply for the program, reexamine the cost allocation rules to support Tribal libraries located within our community centers and other multi-service type buildings, and increase Tribal Nation representation on the Board of Directors of the Universal Service Administrative Company (USAC).

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

^[1] USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Simplify the E-Rate Application Process and Adopt an Exemption to the FCC's Competitive Bidding Rules for Tribal Nations and Libraries

The application process to access E-Rate funds is well-known for being notoriously difficult and complicated to complete without technical assistance support from staff at the FCC and USAC. In the NPRM, the FCC referenced comments submitted by the American Library Association and the Association of Tribal Archives, Libraries, and Museums in response to the *2021 Tribal Libraries NPRM*, which stated that, “only 12% of Tribal libraries had ever applied for E-rate funding”, and, “among the reasons cited by those that did not apply was the perceived complexity of the E-Rate application and funding process.” In response, the FCC established a *Tribal Libraries E-Rate Pilot Program* in October 2022 to gather information on how to streamline the application procedures and processes for Tribal Nations.

While we defer to the experiences and input provided by Tribal Nations and libraries participating in the E-Rate Pilot Program, USET SPF recommends that the FCC adopt an exemption to the FCC's competitive bidding rules, as posited under paragraph 15 of the NPRM. Under the Commission's current rules, E-Rate applicants are required to seek competitive bids for eligible services they want to purchase using E-Rate awarded funds. This is done by requiring the applicant to submit an FCC Form 470 to be posted on USAC's website for the purposes of soliciting bids from service and equipment entities to provide E-Rate eligible services. The applicant is required to describe the solicited services with ‘sufficient specificity’ to ensure potential service providers can submit bids for these services. Once the applicant considers all submitted bids and the prices of eligible equipment and services, the applicant can enter into a contract for the E-Rate eligible services and then request support by submitting an FCC Form 471 application to USAC. However, as a way of simplifying the E-Rate process and encouraging smaller schools and libraries to obtain these services, the Commission adopted a rule in 2014 to exempt commercially available internet access services that cost \$3,600 or less per year from the competitive bidding rules. This exemption enables applicants to request these services without filing the FCC Form 470. The Commission has inquired whether an additional exemption should be adopted to its competitive bidding rules on low-cost purchases if the applicant is seeking category two equipment that totals less than a pre-discount cost of \$3,600, which is the level that currently exists for the commercially available high-speed internet access services exemption.

Regardless of the amount of a Tribal Nation or library's E-Rate funding request, we firmly assert that a general exemption should be adopted to the FCC's E-Rate Program competitive bidding rules. As with all federal funding, USET SPF has consistently advocated that competitive funding models and mechanisms, especially in the federal grantmaking space, do not honor and uphold the federal government's trust and treaty obligations to Tribal Nations. These solemn obligations were established by the U.S. Constitution, treaties, federal statutes, and judicial decisions by federal courts. They exist in perpetuity and all branches of government, including those independent agencies and entities within the Executive Branch, have a moral and legal obligation to support Tribal Nation sovereignty, self-determination, and Nation rebuilding. This legal doctrine was established with Tribal Nations due to the exchange of our vast landholdings and resources, oftentimes by political and/or military force. As a member of the federal family, the FCC has trust and treaty obligations to support Tribal Nation self-determination and Nation rebuilding, regardless of its standing as an independent agency. Adopting a general exemption to the E-Rate competitive bidding rules for Tribal Nations adheres to the FCC's own [2000 Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes](#). Furthermore, adopting a general exemption for Tribal Nations and libraries to the E-Rate competitive bidding rules would streamline the application process and address issues with the limited access to internet services on Tribal Lands. It would also address the issues of the limited procurement options for internal connections and equipment available to Tribal Nations. The current global disruption of the supply chain and rising inflation costs for critical infrastructure and equipment are all

contributing factors to the challenges facing our Tribal Nations, especially those in rural and geographically and economically challenging to serve areas. These issues further necessitate innovative and considerate rule changes to the application and award process of the E-Rate program.

Increase Access to FCC and USAC Staff to Provide Technical Assistance and Training for Tribal Schools and Libraries

As the nation continues to recover and reopen following the COVID-19 pandemic, we strongly recommend that staff from the FCC's Office of Native Affairs and Policy (ONAP) and relevant bureaus and offices, as well as USAC's Tribal Liaison begin to increase outreach and education efforts following conclusion of this regulatory proceeding. We have noted that ONAP has recently renewed its in-person workshop and training meetings. In the past, ONAP has invited staff from other FCC bureaus and offices to participate in these workshops and trainings so Tribal attendees could gain more knowledge about E-Rate, Lifeline and Link Up, the High Cost Fund, and the Rural Health Care Program. ONAP has also previously invited staff from the U.S. Department of Agriculture, the National Telecommunications and Information Administration, the Department of the Interior, and the USAC Tribal Liaison to serve as resources and provide technical expertise to Tribal attendees at its in-person workshops and training.

USET SPF recommends a renewed focus on these efforts to increase Tribal knowledge of the various Universal Service Fund (USF) programs as well as provide training to Tribal personnel on how to complete and appropriately submit applications for E-Rate and the other USF programs. Similarly, inviting staff from other federal agencies to participate in these workshops and trainings can also increase coordination for leveraging federal resources for broadband infrastructure deployment, maintenance, and adoption, as well as identify policy and regulatory barriers to these efforts. Furthermore, USAC has always been a relatively unknown entity to Tribal Nations. Until USAC established a Tribal Liaison position over a decade ago, its engagement with Tribal Nations was minimal at best, with the FCC acting as the primary point of contact on all matters regarding USF proceedings. Further education and engagement are required from USAC for Tribal Nations to gain a better understanding of its role in administering the USF and how it interacts with the FCC's rulemaking processes to accomplish this task. In addition, since USAC plays an integral role in working with the FCC to manage the USF programs, it would benefit both USAC and Tribal Nations to have a better understanding for how these decisions affect FCC policies and regulations for broadband deployment, maintenance, and adoption on Tribal Lands. In regard to the E-Rate program specifically, USET SPF recommends that USAC and the FCC first collaborate on establishing a separate, extended E-Rate application filing period for Tribal Nations and libraries to ensure we have adequate time and assistance in completing the E-Rate application process.

Revise the E-Rate Program Cost Allocation Rules to Provide Support to Tribal Libraries Housed in Multi-Service Tribal Administration, Cultural Centers, and Community Service Buildings

Under paragraphs 17 and 18 of the NPRM, the FCC has posited if the E-Rate cost allocation rules should be simplified for Tribal libraries that may share space and/or services with non-eligible entities, and how the Commission should provide guidance to E-Rate applicants. The FCC is aware that oftentimes a Tribal library can be co-located in a Tribal administrative building, cultural resource center, or community service center, which are structures that are ineligible for E-Rate services. Tribal libraries may share services, equipment, or space with these E-Rate 'ineligible structures' and are therefore required to identify the portion of the cost of services used by the ineligible entity. This cost allocation part of the E-Rate application process is confusing for Tribal libraries because shared use of spaces within these facilities may not be confined to the 'Tribal library' section of the building, and the interconnected/networked use of internet services and equipment can contribute to the difficulty in identifying the cost allocation of services used by the library and other facilities within a building. Although the Commission is seeking comment

under paragraph 18 of the NPRM of the potential development of guidance on these cost allocation requirements, USET SPF asserts that no cost allocation should be imposed on a Tribal administrative building, cultural center, or community service center that also houses what a Tribal Nation has defined as a 'library' under Section 54.500 of the Commission's rules.

Increase Tribal Nation Representation on the Board of Directors for the Universal Service Administrative Company

As aforementioned in these comments, USAC is a relatively unknown entity to Indian Country. However, its responsibilities for administering the USF and its coordination with the FCC contributes significantly to decisions rendered regarding proposed caps to USF programs, allocation of USF program resources on Tribal Lands, and the application and reporting processes of USF programs. Governed by nineteen directors, the current composition of the USAC Board of Directors does not include, or have a set-aside position, for representation of Tribal Nations and our interests. This has been long been an issue of concern voiced by Tribal Leaders and Tribal technology experts since the membership of USAC's Board of Directors has included representatives from telecommunications companies, schools, libraries, and the consumer sector. Under paragraph 18, the Commission is seeking comment on a proposal to increase Tribal representation on the USAC Board of Directors by adding a Tribal community representative. USET SPF supports this proposal, however, we strongly recommend that additional Tribal representatives be added to the USAC Board of Directors. In addition to providing representation on E-Rate matters, the additional Tribal representatives should also ensure that Tribal Nations have a voice in matters related to the other USF programs, such as Lifeline and Link Up, the High Cost Fund, and the Rural Health Care Fund. Furthermore, these Tribal representatives can participate in USAC's three committees responsible for administering specific USF support mechanisms—the Schools and Libraries Committee, the Rural Health Care Committee, and the High Cost & Low Income Committee. The FCC should identify the application processes and criteria for Tribal representatives to apply for the USAC Board of Directors through consultation with Tribal Nations.

Conclusion

The reportedly low rates of Tribal libraries applying for the E-Rate program is inextricably tied to the program's complicated application processes. The rurality and geographic and economic challenges with deploying internet services to Tribal Lands further compounds issues for Tribal Nations and Tribal schools and libraries to fulfill the program's application requirements. In addition, the FCC's competitive cost bidding process for soliciting bids from service providers and equipment retailers adds burdensome requirements in the procurement process, especially considering the current global disruption to supply chains and rising inflation costs. In revising the regulations for the E-Rate Program, the Commission must adopt rules that simplify and streamline the application processes while empowering Tribal Nations to exercise our sovereignty and self-determination to utilize E-Rate funds in support of our educational institutions without interference from the competitive cost bidding rules.

Moving forward, the Commission and USAC have an opportunity to address the lack of Tribal Nation input in all matters related to the Universal Service Fund's (USF) programs by establishing several director positions for Tribal representatives on USAC's Board of Directors. This has been a recommendation that has been advanced by Tribal Nations for decades and the decision to establish these positions on USAC's Board is long overdue. We are hopeful that in reexamining its rules and regulations for management of E-Rate and the other USF programs, the Commission and USAC will be forward thinking and considerate of adopting regulations that uphold the federal government's trust and treaty obligations. We look forward to our continued dialogue on these important matters and recommend ongoing consultation with Tribal Nations to further improve USF program and service delivery on Tribal Lands. Should you have any

questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at L.Malerba@usetinc.org or 615-838-5906.

Sincerely,

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Kirk Francis
President

A handwritten signature in black ink, appearing to read 'K. A. Carroll', with a long horizontal stroke extending to the right.

Kitcki A. Carroll
Executive Director