

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

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

**REPLY COMMENTS OF  
THE SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

**IN SUPPORT OF PETITIONS FOR RECONSIDERATION  
SUBMITTED BY**

**STATE E-RATE COORDINATORS' ALLIANCE**

**AND**

**INFINITY COMMUNICATIONS AND CONSULTING, INC.**

**CONCERNING THE CATEGORY TWO ORDER (FCC 19-117)**

The Schools, Health & Libraries Broadband Coalition (“SHLB”) supports both the Petition for Reconsideration submitted by the State E-rate Coordinators’ Alliance (“SECA”) and the Petition for Reconsideration submitted by Infinity Communications and Consulting, Inc. (“Infinity”).<sup>1</sup> Each Petition addresses an important concern of the December 3, 2019 Category Two Order that sets forth the regulations for the permanent Category Two budget program.<sup>2</sup> The SECA Petition seeks to reconsider and rescind the cost allocation requirement for shared equipment used by non-instructional facilities (“NIF”). The Infinity Petition asks the

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<sup>1</sup> The comment cycle was established pursuant to legal notice published in 85 F.R. 16605 (March 24, 2020).

<sup>2</sup> Modernizing the E-rate Program for Schools and Libraries, Report and Order, WC Docket No. 13-184, FCC 19-117 (released December 3, 2019)(“Category Two Order”).

Commission to reconsider and continue to allow part-time students to be reflected in the calculation of Category Two budgets. Each Petition will be addressed separately below.

### **SECA Petition for Reconsideration**

SECA explained the burdensome and unnecessary requirement to perform complex calculations to remove the proportional costs associated with a NIF's use of shared equipment. When network equipment is used or shared by all buildings within a school district or library system, some of those buildings may be stand-alone NIFs. Typically, the NIF's use of the equipment is negligible or ancillary to the use of the equipment by the school or library buildings. Yet, the Category Two Order requires that the costs associated with the NIF's use of the equipment must be deducted and excluded from E-rate discount funding.<sup>3</sup>

SHLB concurs that the Commission should rescind this unduly complicated requirement. NIFs historically were determined by the Commission to be ineligible for Category 2 funding based on the concern pre-dating the budget program that there was insufficient funding to meet all Category 2 demand. Since the five year budget test period was established, all Category 2 demand has been met due to the funding limits inherent in the budget system. Arguably, there is no longer any valid reason to perpetuate the restriction against funding site-specific Category 2 equipment for NIFs.

Further, continued enforcement of the NIF cost allocation requirement for shared network equipment is problematic because it makes the 471 application process, billing process and submission of BEARs or SPIs to USAC extraordinarily complex.

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<sup>3</sup> Category 2 Order at ¶51.

Both the applicant and the service provider must be informed of the cost allocation calculations that are initially performed as well as the finally approved calculations as reflected in the funding commitment decision letter. This is essential to ensure that the billing between the parties is consistent with the approved FRN so that the SPI or BEAR can be processed and paid. The cost allocations become another hurdle to overcome during pre-funding commitment PIA review as well as invoice reviews, slowing down the processing of applications and invoices.

Further, the requirement is unnecessary. The Category 2 budget and the requirement to pay the non-discounted share are built-in guardrails to ensure that applicants will purchase shared network equipment that is “right-sized” for their districts or library systems including their NIFs. Removal of this restriction will not alter applicants’ purchasing decisions such as deciding to purchase more expensive equipment simply because the NIF’s share of the costs will be eligible for E-rate funding. Districts and library systems already must purchase shared network equipment with the capability to serve all their respective buildings including NIFs. The existing cost allocation requirement reduces their E-rate funding and increases their out of pocket costs.

Finally, although the SECA petition stopped short of asking that schools and libraries be permitted to use their Category 2 budgets for site-specific equipment at a non-instructional facility, SHLB members encourage the Commission to consider granting this relief. Non-instructional facilities are as vital to the provision of education and library services as any school or library building. In the last two months, perhaps more than in any prior time, our nation has become attuned to understanding the importance of technology in educating our students.

The artificial distinction between buildings with or without classrooms in a school district is irrelevant when it comes to remote online instruction. Clearly the instruction that is currently

being provided online is not being accomplished through broadband connections to a student's physical classroom in a school building. The only individuals inhabiting school buildings on a regular basis are school officials who are performing essential tasks to ensure continuity of education. It should make absolutely no difference whether the school official is located inside a school or NIF to determine whether their Internet connectivity is sufficient. Yet under the current FCC restrictions, NIFs are not eligible for E-rate and therefore applicants do not have the same resources available to ensure sufficient Internet connectivity inside those buildings. With the notion of the physical school classroom now being immaterial, this is the appropriate time to revisit and update the rules concerning NIF eligibility for Category 2 and clarifying that the definition of educational purpose extends to these buildings for Category 1 funding in addition to the Category 1 funding that these buildings already are eligible to receive.

SHLB respectfully encourages the Commission to revise its rules and allow applicants to go beyond the SECA petition which only sought to rescind the requirement to perform a cost allocation for the NIF usage of shared equipment, and allow schools and libraries to use their Category 2 budgets in the manner that is best to accomplish their educational goals, including purchasing site-specific equipment for non-instructional facilities.

For these reasons SHLB encourages the FCC to reconsider its Category Two Order and grant SECA's Petition for Reconsideration.

### **Infinity Petition for Reconsideration**

Infinity's Petition highlights the disparate impact facing schools that have sizeable part-time enrollments. Beginning with E-rate Funding Year 2021, according to the Category 2 Order, part-time students will no longer qualify to be counted in the calculation of Category Two

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budgets. This restriction has the potential to disenfranchise all vocational and other similar schools whose enrollments are heavily weighted with part-time students. These schools will have little or no Category 2 budget unless the FCC clarifies that these schools are permitted to count their part-time student enrollments.

SHLB agrees with SECA's initial comments to the Infinity Petition for Reconsideration in which SECA recommended that whenever a school has 51% or more of its students are part-time, these students should be added to the number of students counted for the school's Category Two budget. Adoption of this suggestion will alleviate the unfair impact that would arise from the total exclusion of all part-time students in the Category Two budget calculations.

### **Conclusion**

The Schools, Health & Libraries Broadband Coalition respectfully asks the Commission to adopt an Order consistent with these reply comments.

Sincerely,



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