



February 21, 2019

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Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: CC Docket No. 02-6, Schools and Libraries Universal Service Support Mechanism and WC Docket No. 13-184, Modernizing the E-rate Program for Schools and Libraries Release of E-Rate Category 2 Funding Report and Future State of Category 2 Funding

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Dear Ms. Dortch:

The Schools, Health & Libraries Broadband (SHLB) Coalition commends the Commission's decision to release the Wireline Competition Bureau's Category 2 Funding Report (Category 2 Report)<sup>1</sup> to E-rate stakeholders. The Report provides valuable information and insight with respect to the benefits and shortfalls of the Category 2 budget approach compiled from data during the five-year test period established by the Commission. Under the leadership of Chairman Pai and the Commission, the agency has made great strides in establishing more transparency, openness, and stakeholder input. We encourage the Commission to continue that tradition.

Given that the Category 2 budget approach expires after the FY 2019 funding year and that the former "2 in 5" rule will automatically come back in effect unless the Commission acts to continue the budget approach, SHLB urges the Commission to issue a Notice of Proposed Rulemaking on the Category 2 rules right away. It is vital that the Commission proceed expeditiously to articulate the rules governing internal connections funding for FY2020 and beyond,<sup>2</sup> and to allow applicants to understand the Category 2 budget and funding rules in

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<sup>1</sup> *Report, Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184 (Feb. 11, 2019) (Category 2 Funding Report).

<sup>2</sup> Among the many pending questions are (1) whether beneficiaries, who began using their Category 2 budgets after the first year of the program, will continue to have a full five years to use their funding, even if the five-year period stretches beyond FY 2019; (2) whether the process will continue in a budget format and, if so, whether the budgets will be administered at the beneficiary level rather than the building level;

advance of the FY2020 FCC Form 470 being made available. If history is our guide, the Year 2020 E-rate Form 470 filing window will open on or about July 1, 2019. Therefore, we respectfully urge the Commission to act swiftly and create a fast-tracked Notice of Proposed Rulemaking and to issue a final decision to resolve the uncertainty over the Category 2 budget rules no later than the end of this summer.<sup>3</sup>

Equally as important, we seek immediate clarification from the Commission regarding the implementation of the current 5-year Category 2 budget. Specifically, E-rate stakeholders have received conflicting guidance from USAC with respect to the current Category 2 budget cycle as set forth in the 2014 *E-rate Modernization Order*<sup>4</sup> and *Second E-rate Modernization Order*.<sup>5</sup> At times, the USAC Client Service Bureau has stated applicants may obtain Category 2 funding for five years from the first funding year that Category 2 services are sought. For example, under Scenario 1, if an applicant obtained Category 2 funding in 2017, it would have until the end of the FY 2021 funding year to use its Category 2 budget. At other times, USAC has advised that Category 2 funding under the current 5-year budget would expire after the end of the FY 2019 funding year, in essence, requiring the applicant to use all of its Category 2 budget by FY 2019 or forfeit any remaining funding.

In the recent Category 2 Funding Report, the Bureau seemed to indicate that the 5-year budget commenced in the funding year when Category 2 services were first sought, referred to as Category 2 budget cycle, in accord with the example in Scenario 1 above. More specifically, the Bureau indicated that the percentages of school budgets may continue to rise, because “all schools have at least one additional funding year to use their budgets, and approximately more than 45,000 schools have two or more years remaining.”<sup>6</sup>

Given the conflicting interpretations, SHLB respectfully urges the Commission to take immediate action by issuing correct and clarifying guidance with respect to exactly when the 5-year budget expires. We believe that issuing this clarification does not need to wait for a rulemaking proceeding, since it is simply a clarification of the existing rule. In the absence of immediate FCC clarification, E-rate applicants are facing great uncertainty as to how to apply

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and (3) whether MIBS and maintenance will continue after FY 2019. It should be noted that some state procurement agencies will begin their statewide master contract procurements for internal connections equipment even before July of 2019 and, therefore, would be aided by the FCC's guidance on the future regulations governing Category 2 funding as soon as possible.

<sup>3</sup> The SHLB Coalition also supports the letter submitted by the State E-rate Coordinators' Alliance (SECA) which also asks the Commission to move promptly on this matter. See, [https://ecfsapi.fcc.gov/file/102190661501015/SECA%20C2%20Letter%20\(2019\\_02\\_19\).pdf](https://ecfsapi.fcc.gov/file/102190661501015/SECA%20C2%20Letter%20(2019_02_19).pdf).

<sup>4</sup> *Order and Further Notice of Proposed Rulemaking, Modernizing the E-rate Program for Schools and Libraries*, WC Docket No. 13-184, 29 FCC Rcd 8870, ¶ 76 (2014) (“*E-rate Modernization Order*”).

<sup>5</sup> *Second Report and Order and Order on Reconsideration, Modernizing the E-rate Program for Schools and Libraries*, WC Docket Nos. 13-184, 10-90, ¶¶ 82-83 and 88 (“*Second E-rate Modernization Order*”) (establishing three additional funding years for the test period for Category 2 budgets through FY2019).

<sup>6</sup> *Category 2 Funding Report*, ¶ 26, footnote 36; *see also E-rate Modernization Order*, ¶ 107 (establishing a 5-year budget and adopting a rolling funding cycle of five years for category two services).

for Category 2 funding.

We look forward to the opportunity to work with you regarding both the NPRM on Category 2 rules for FY 2020 and beyond, and on the immediate clarification of the five-year budget cycle. We share the Commission's desire to ensure the continued availability of sufficient funding for critical Category 2 equipment and services. We appreciate your attention to these matters and would be happy to discuss further if it would be helpful. Please let us know if you have any questions.

Sincerely,



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cc: The Honorable Ajit Pai, Chairman  
The Honorable Michael O'Rielly, Commissioner  
The Honorable Brendan Carr, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Geoffrey Starks, Commissioner  
Radha Sekar, USAC CEO