

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

In the Matter of )
Schools and Libraries Universal Service ) CC Docket No. 02-6
Support Mechanism )
Request for Clarification and Waiver by )
Lower Yukon School District )

DECLARATORY RULING

Adopted: August 29, 2024

Released: August 29, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. The E-Rate program provides support to schools and libraries across the nation to obtain affordable high-speed broadband services, which are essential for students and library patrons to learn, study, take tests, and access all other educational materials in this digital age.1 Here, the Lower Yukon School District (Lower Yukon), which serves a unique population of students who reside in 10 remote, impoverished villages in a part of rural Alaska with an extremely harsh climate, seeks clarification that broadband service to and within on-campus teacher housing owned by the school district is eligible for E-Rate funding.2 In this Declaratory Ruling, the Wireline Competition Bureau (Bureau) finds that the district-owned on-campus housing provided for Lower Yukon teachers is a non-instructional facility in which the use of broadband service meets the definition of an educational purpose, and thus such service is eligible for category one and category two E-Rate support. We take this action to further the Commission’s goal towards ensuring broadband access for unique student and teacher populations.

II. BACKGROUND

2. The Commission has a long history of providing support for the provision of broadband services for schools and libraries through the E-Rate program, formally known as the schools and libraries universal service support mechanism. The E-Rate program was authorized by Congress as part of the Telecommunications Act of 1996 and created by the Commission in 1997 to, among other things, enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms and libraries.3 The E-Rate program allows eligible schools, libraries, and consortia of eligible schools and libraries, to request universal service support for telecommunications services, which

1 47 U.S.C. § 254(b)(6) (“Elementary and secondary schools and classrooms ... should have access to advanced telecommunications services as described in subsection (h).”); Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8780, para. 1 (1997) (First Universal Service Order).

2 Request for Clarification and Waiver by Lower Yukon (Alaska) School District, CC Docket No. 02-6, at 7 (filed Sept. 27, 2023), https://www.fcc.gov/ecfs/search/search-filings/filing/1092764404084 (Lower Yukon Request). See also Letter from Gina Spade, Counsel for Lower Yukon Public Schools, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-6 (filed Mar. 22, 2004) (Lower Yukon Ex Parte). Lower Yukon’s request to waive E-Rate program rules to permit E-Rate support for off-campus student and teacher housing remains pending.

3 47 U.S.C. § 254(h)(2)(A); First Universal Service Order, 12 FCC Rcd at 9008-15, paras. 436-49.

provide connectivity for eligible schools and libraries.

3. Section 254(h)(1)(B) of the Communications Act of 1934, as amended, (Communications Act) provides that E-Rate discounts be applied to services and equipment used for “educational purposes.”<sup>4</sup> In the *Schools and Libraries Second Report and Order* in 2003, the Commission defined “educational purposes” as “activities that are integral, immediate, and proximate to the education of students.”<sup>5</sup> In the *Schools and Libraries Sixth Report and Order* in 2010, the Commission adopted E-Rate program rules to allow residential schools that serve unique populations—schools on Tribal lands; schools designed to serve students with medical needs; schools designed to serve students with physical, cognitive, or behavioral disabilities; schools where 35 percent or more of their students are eligible for the national school lunch program; or juvenile facilities—to receive E-Rate funding for supported services provided in the residential areas of those schools.<sup>6</sup>

4. In adopting this rule revision, the Commission recognized that schools that provide residential facilities to meet the needs of these unique student populations often require funding for services to non-instructional facilities in order to effectively do so.<sup>7</sup> Generally, non-instructional facilities are “school buildings without classrooms and library buildings without public areas, such as administrative buildings and data centers.”<sup>8</sup> Moreover, the Commission found “that, because these schools also serve as residences to the students, the supported E-[R]ate services will be used primarily, if not exclusively, for educational purposes, and thus support is consistent with our rules and within the purposes of section 254.”<sup>9</sup> The Commission amended the E-Rate program rules to “permit [category two] discounts for internal connections in non-instructional buildings of a school or school district where the Commission has found that the use of those services meets the definition of educational purpose.”<sup>10</sup>

5. On September 27, 2023, Lower Yukon filed a Request for Clarification and Waiver, in which it asked the Commission to confirm that broadband Internet access for the on-campus housing that the district owns and provides for its teachers is eligible for E-Rate support under the Commission’s rules or, in the alternative, requested a waiver of the rules to the extent necessary to permit E-Rate support for

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<sup>4</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>5</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 9202, 9208-9209, paras. 17-19 (2003) (*Schools and Libraries Second Report and Order*).

<sup>6</sup> *Schools and Libraries Universal Service Support Mechanism; A National Broadband Plan For Our Future* CC Docket No. 02-6 and GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762, 18778, para. 31 (2010) (*Schools and Libraries Sixth Report and Order*). In 1997, in the *Universal Service Fourth Order on Reconsideration*, the Commission clarified that E-Rate support is “not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings. *Federal-State Joint Board on Universal Service*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*). The 2010 *Schools and Libraries Sixth Report and Order* revised those rules for residential schools that serve unique populations.

<sup>7</sup> *Schools and Libraries Sixth Report and Order*, 12 FCC Rcd at 18778, at para. 30.

<sup>8</sup> *Schools and Libraries Universal Service Support Mechanism*, CC Docket Nos. 02-06, 96-45, 97-21, Report and Order and Further Notice of Proposed Rulemaking, 38 FCC Rcd 6842, 6845, para. 7 (2023).

<sup>9</sup> *Schools and Libraries Sixth Report and Order*, 12 FCC Rcd at 18779, at para. 31. *See also* 47 CFR § 54.500(b) (stating that activities that occur on school property “are presumed to be integral, immediate, and proximate to the education of students”).

<sup>10</sup> *Schools and Libraries Sixth Report and Order*, 12 FCC Rcd at 18779, para 31 (amending 47 CFR § 54.502(a)(4)(i) as provided in Appendix A). The language of 47 CFR § 54.502(a)(4)(i) is now found in 47 CFR § 54.502(d)(6).

this on-campus, district-owned teacher housing.<sup>11</sup> Lower Yukon asserts that allowing support to be used in this manner would be consistent with the Commission’s *Schools and Libraries Sixth Report and Order* and its precedent on residential facilities for schools serving unique populations.<sup>12</sup>

6. Lower Yukon indicates that it serves 10 remote villages spread across 22,000 square miles in western rural Alaska, most of which is off-road and only accessible by plane. Lower Yukon is considered remote even by Alaskan standards.<sup>13</sup> Lower Yukon explains that its school district endures a harsh climate, including, but not limited to, sub-zero temperatures, regularly occurring blizzards, and flooding, forcing school buildings to close often.<sup>14</sup> In addition, Lower Yukon states that access to the Internet throughout the school year is crucial for students and teachers, because these harsh environmental conditions makes school closures far more common than elsewhere.<sup>15</sup> Lower Yukon concludes that the harsh environmental conditions require teachers, students, or both to frequently remain home, during what would otherwise be a school day. Therefore, Lower Yukon argues that this connectivity is necessary to ensure that teachers can “teach and support their students” during the school day, even when the school buildings are closed.<sup>16</sup>

7. Lower Yukon serves a unique student population. Approximately 2,000 students attend Lower Yukon schools and nearly all of these students are Yupik, a minority native Alaska population.<sup>17</sup> Lower Yukon receives a 90 percent category one discount rate in the E-Rate program.<sup>18</sup> Due to special circumstances that few school districts experience, Lower Yukon explains that it provides on-campus housing to its teachers. This is because most teachers are not local, and recruitment would be even more challenging without on-campus housing because “few if any off-campus rental properties . . . offer the bare minimum standards of plumbing, electricity, and sanitation.”<sup>19</sup> Lower Yukon also notes that teachers must return to or stay in the school building after school hours to complete their work when Internet access is required. However, leaving the school late or returning to the school is “burdensome, even potentially dangerous” for teachers due to Alaska’s harsh climate and dark winters.<sup>20</sup> Lower Yukon asserts that teachers need broadband service in their on-campus housing because, as Lower Yukon explains, broadband Internet access in the teachers’ on-campus housing is necessary to facilitate remote learning, which is essential for the teachers to continue to educate their students during the frequent unfavorable and dangerous weather conditions, and thus serves an educational purpose.<sup>21</sup>

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<sup>11</sup> Lower Yukon Request at 2, 9-10.

<sup>12</sup> *Id.* at 8-9.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> *Id.* For a school to receive a 90 percent category one discount rate, 75 to 100 percent of the student population must be eligible for the national school lunch program. *See* 47 § CFR 54.504(c).

<sup>19</sup> Lower Yukon Request at 8-9.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.* (explaining that the lack of Internet access in on-campus teacher housing means that teachers “need to stay in the school building after school or come back later in the evening” to complete their work, which is burdensome and may be dangerous in “Alaska’s harsh climate and dark winters”); *id.* at 13 (asserting that “[r]emote learning capability is essential to the success of the Lower Yukon’s students given their unique challenges that the District’s remote location, long winter, and harsh and unpredictable weather presents”).

### III. DISCUSSION

8. The Bureau may issue a declaratory ruling to terminate a controversy or remove uncertainty.<sup>22</sup> Consistent with the Commission's determination in the *Schools and Libraries Sixth Report and Order*, we find that Lower Yukon's district-owned, on-campus teacher housing is a non-instructional facility in which the use of broadband service serves the educational purposes of a unique student population, and thus, such service is eligible to receive E-Rate category one and category two support.

9. Consistent with the *Schools and Libraries Sixth Report and Order*, we find that Lower Yukon serves a unique school population and thus support may be available for category two services to a school's residential areas.<sup>23</sup> The school population has great need, serving students at the highest discount rate in the E-Rate program, with at least 75 percent of Lower Yukon's student population qualifying for free and reduced lunch. Lower Yukon further explains that nearly all of its 2,000 students are Yupik, a native Alaskan population.<sup>24</sup>

10. We also conclude, consistent with the Commission's findings in the *Schools and Libraries Sixth Report and Order*, that the use of broadband in Lower Yukon's on-campus teacher housing serves an educational purpose. Not only does Lower Yukon serve a unique student population with certain needs specific to the school district, it also faces exceptional challenges caused by Alaska's extreme weather and harsh climate.<sup>25</sup> The transportation, accessibility, and climate challenges in Lower Yukon make it difficult for teachers to live in off-campus housing. As a result, as a practical matter, on-campus teacher housing in this circumstance is a necessity, both because it allows Lower Yukon to recruit teachers, and because its teachers otherwise often would not be able to reach the school campus. In addition, in many instances the weather is so harsh that teachers are effectively confined to their on-campus housing. The dark winters, combined with the freezing temperatures and frequent blizzards, occasionally prevents teachers from safely leaving their on-campus housing to go to the school building during and after school hours. Lower Yukon thus must not only provide on-campus housing for its teachers to meet the uniquely extreme weather conditions faced in this remote school district, but those same conditions require that the teachers have access to broadband service to perform their jobs.<sup>26</sup>

11. We further find that the Lower Yukon students would not have their educational needs met if the teachers did not have access to on-campus housing.<sup>27</sup> Teachers' access to broadband in their on-campus residences provides teachers with the ability to educate their students, access learning materials, and fulfill their teaching responsibilities during the days that the school buildings are inaccessible because of the extreme and harsh Alaskan weather conditions.<sup>28</sup> Thus, as explained by Lower Yukon, broadband access for teachers in on-campus housing is essential for the school district's students' educational success.<sup>29</sup> Moreover, Lower Yukon can connect its district-owned, on-campus teacher housing with minimal cost. Lower Yukon explains that the costs to the E-Rate program would

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<sup>22</sup> 47 CFR § 1.2(a); *accord* 5 U.S.C. § 554(e).

<sup>23</sup> *Schools and Libraries Sixth Report and Order*, 12 FCC Rcd at 18779, para. 31 (explaining that a school where 35 percent or more of the students are eligible for the national school lunch program qualifies as a unique student population).

<sup>24</sup> Lower Yukon Request at 5.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 8-9.

<sup>27</sup> *See id.* at 13.

<sup>28</sup> *Id.* at 8-9.

<sup>29</sup> *Id.* at 13.

consist of one-time costs to connect the teacher housing and ongoing costs associated with inside wiring.<sup>30</sup>

12. This Declaratory Ruling concludes that E-Rate service to Lower Yukon's on-campus teacher housing is necessary for Lower Yukon's unique student population to receive an education because Lower Yukon's severe weather conditions and remote geography prevents students from having their educational needs met during the unusually frequent on-campus school closures. Finally, in determining that broadband service for Lower Yukon's district-owned, on-campus teacher housing facilities is eligible to receive E-Rate support in accordance with 47 CFR § 54.502(d)(6), we emphasize that this finding is limited to Lower Yukon and the unusual factual scenario at issue here. This finding does not alter the obligation of the E-Rate participant to fully comply with all E-Rate rules and procedures.

#### IV. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED that, pursuant to sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 254, sections 0.91(b), 0.291, and 1.2 of the Commission's rules, 47 CFR §§ 0.91(b), 0.291, 1.2, and section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), the Declaratory Ruling IS ADOPTED.

14. IT IS FURTHER ORDERED that this Declaratory Ruling and the obligations set forth therein ARE EFFECTIVE upon release of this document.

FEDERAL COMMUNICATIONS COMMISSION

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>30</sup> Lower Yukon Request at 9; *see also* Lower Yukon *Ex Parte* at 2.