

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

In the Matter of )  
 )  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
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 )

**FURTHER NOTICE OF PROPOSED RULE MAKING AND ORDER**

**Adopted:** April 26, 2001

**Released:** April 30, 2001

**Comment Date:** 15 days after publication in Federal Register

**Reply Date:** 22 days after publication in Federal Register

By the Commission:

**I. INTRODUCTION**

1. In this Further Notice of Proposed Rulemaking (Notice), we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year. With many schools and libraries having already benefited from several years of discounts for internal connections under the existing mechanism, we conclude that it is appropriate to reconsider the rules of priority to ensure that discounts continue to go to those most in need.

2. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline. These minor administrative modifications should provide applicants with greater flexibility without compromising program integrity. Finally, on our own motion, we waive the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

## II. BACKGROUND

3. Under the schools and libraries universal service support mechanism pursuant to section 254 of the Act,<sup>1</sup> eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounted eligible telecommunications, Internet access, and internal connections services.<sup>2</sup> In the *Fifth Order on Reconsideration*, the Commission adopted revised rules of priority for the schools and libraries universal service support mechanism.<sup>3</sup> The Commission reasoned that these new rules would ensure that schools and libraries with the greatest level of economic disadvantage would have priority for support, consistent with the policy adopted in the *Universal Service Order*.<sup>4</sup>

4. The existing rules of priority provide that requests for telecommunications services and Internet access for all discount categories shall receive first priority for the available funding (priority one services).<sup>5</sup> The remaining funds are allocated to requests for support for internal connections (priority two service), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix (*i.e.*, schools and libraries eligible for a 90 percent discount).<sup>6</sup> To the extent funds remain after discounts are awarded to entities eligible for a 90 percent discount, the rules provide that the Universal Service Administrative Company (USAC or the Administrator) shall continue to allocate funds for discounts to applicants at each descending single discount percentage.<sup>7</sup> Further, section 54.507(g)(1)(iv) of the Commission's rules provides that if sufficient funds do not exist to grant all requests within a single discount percentage, the Administrator shall allocate the remaining

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<sup>1</sup> 47 U.S.C. § 254.

<sup>2</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>3</sup> See *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14815 (1998) (*Fifth Order on Reconsideration*). In the *Eleventh Order on Reconsideration*, the Commission added a clarifying note to § 54.507(g). *Changes to the Board of Directors of the National Exchange Carrier Association, Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, FCC 99-49 (rel. May 28, 1999) (*Eleventh Order on Reconsideration*).

<sup>4</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

<sup>5</sup> 47 C.F.R. § 54.507(g)(1)(i); *see also Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>6</sup> 47 C.F.R. § 54.507(g)(1)(ii); *see also Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>7</sup> 47 C.F.R. § 54.507(g)(1)(iii)(note); *see also Eleventh Order on Reconsideration*, at para. 6.

support on a pro rata basis over that single discount percentage level.<sup>8</sup>

5. In a letter dated April 17, 2001, the Administrator notified the Common Carrier Bureau that the estimated demand for Funding Year 4 (July 1, 2001 to June 30, 2002) is \$5.195 billion,<sup>9</sup> well above the \$2.25 billion funding cap.<sup>10</sup> The Administrator based the demand estimate on the funding requests in 37,188 applications received or postmarked by January 18, 2001, the close of the Form 471 filing window for Funding Year 4.<sup>11</sup> The Administrator estimates that after funding priority one services, there will be about \$900 million dollars available for priority two requests. Schools and libraries eligible for a 90 percent discount have requested funding for internal connections in excess of the \$900 million for Funding Year 4.<sup>12</sup>

### III. DISCUSSION

#### A. Funding Priority for Internal Connections

6. The Commission did not envision demand for the schools and libraries universal service support mechanism at the level we are currently experiencing. In the *Fifth Order on Reconsideration* and the *Eleventh Order on Reconsideration*, the Commission anticipated that the fund would provide full support for telecommunications services and Internet access, and would provide support for internal connections for the neediest applicants.<sup>13</sup> In Funding Year 4, however, the Administrator estimates that there will not be enough funding for the neediest applicants, who are eligible for a 90 percent discount. The Commission is committed to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. Therefore, we believe it is appropriate to reconsider the Commission's rules of priority to ensure that support goes to the neediest applicants. The Commission seeks comments

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<sup>8</sup> 47 C.F.R. § 54.507(g)(1)(iv); see also *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938, para. 36.

<sup>9</sup> Letter from Kate L. Moore, President, Universal Service Administrative Company, Schools and Libraries Division, to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, dated April 17, 2001 (*USAC Letter*).

<sup>10</sup> 47 C.F.R. § 54.507(a). See *Universal Service Order*, 12 FCC Rcd at 9054, para. 529; *Federal-State Joint Board on Universal Service*, Twelfth Order on Reconsideration in CC Docket No. 96-45, FCC 99-121, para. 9 (rel. May 28, 1999).

<sup>11</sup> *USAC Letter* at 1.

<sup>12</sup> *USAC Letter* at 3.

<sup>13</sup> See *Fifth Order on Reconsideration*, 13 FCC Rcd at 14938-14939, paras. 36-37; *Eleventh Order on Reconsideration*, at para. 6. In the previous three funding years, SLD granted all approved requests for discounts on priority one services to eligible schools and libraries. With regard to discounts for internal connections, SLD granted all approved requests for internal connections down to the 70 percent discount level for applicants that submitted applications during the initial Funding Year 1 filing window period. In Funding Years 2 and 3 (after adoption of the current priority rules), SLD granted approved requests for internal connections at all discount levels in Funding Year 2, and granted approved requests down to the 82 percent discount level in Funding Year 3.

on two options, relating to the distribution of support for internal connections. The first option would be to maintain the Commission's rules as currently written, which direct that the remaining funds be prorated by discount band. The second option would be to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

7. Our current rules require that the Administrator allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. The Commission has several concerns about the application of the current rules of priority. If applicants were to receive only a pro rata portion of the support they requested, schools and libraries might not receive sufficient funding to permit completion of a useful system of internal connections. As a result, schools and libraries would be in a position of hiring contractors to perform only a portion of an internal connection project. It is possible that some schools may be unable to complete even part of their internal connection project, because they are unable to finance the additional funding burden. The Commission is also concerned that applicants eligible for 90 percent discounts could receive funding commitments on internal connections for two years in a row, while other schools that are also economically disadvantaged, albeit not to the same degree, could receive no discounts at all. Therefore, some needy schools will get no support, while others receive support for several consecutive years. In light of these concerns, we seek comment on whether we should keep the funding priority rules without modification.

8. The Commission proposes and seeks comment on a second option. For each funding year, starting with Funding Year 4, funding priority would be given to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year in order of discount level. Specifically, for both shared services and site-specific services, the Administrator would examine each application to determine which individual sites within that application had not received funding for internal connections in the prior funding year. These individual sites would be funded in order of discount level. We seek comment on this proposal.

9. By adopting the proposed rule change, we would be able to fund requests for internal connections from many needy schools and libraries that did not receive funding in the previous funding year. As a result, we would be able to better target discounts to schools and libraries that are more in need of discounts. We tentatively conclude that this approach would be more consistent with the Commission's commitment to ensuring that discounts under this support mechanism are targeted to the schools and libraries with the greatest need. While we recognize that some applicants' requests would not be funded during the current funding year, those applicants could apply for discounts for internal connections during the following funding year. We also note that the rule change could be implemented with relative ease, because little or no additional information would be necessary from the applicants. Currently, the necessary information relating to individual schools and libraries is collected as part of Item 22 of the applicant's FCC Form 471.

#### **B. Modification of Implementation Schedule for Non-Recurring Services**

10. We also propose to revise the Commission's rules relating to the implementation

of non-recurring services. In doing so, we note that we have found it necessary to waive the implementation deadline for nonrecurring services for Funding Years 1 and 2.<sup>14</sup> We again find it necessary to waive that rule for Funding Year 3. As noted by the Court of Appeals for the D.C. Circuit, agency rules are presumed valid.<sup>15</sup> The Commission's rules, however, may be waived for good cause shown, where the particular facts make strict compliance inconsistent with the public interest.<sup>16</sup> Waiver of the deadline for implementation of non-recurring services is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation would serve the public interest.<sup>17</sup>

11. Currently, the Commission's rules require schools and libraries to implement services for which discounts have been committed by the Administrator within the funding year the discounts were granted.<sup>18</sup> In Funding Years 1 and 2, we found it necessary to extend this service implementation deadline from June 30 to September 30, thereby allowing schools and libraries to implement non-recurring services in the summer months, when schools were in recess. We find that many schools and libraries have been unable to meet the June 30 implementation deadline in previous years due to a variety of reasons, including delays in funding commitments and events beyond the service provider's control, such as manufacturing delays and natural disasters.<sup>19</sup> For these reasons, we find good cause to waive, on our own motion, the June 30, 2001 deadline for implementation of non-recurring services for all Funding Year 3 applicants and extend the deadline to September 30, 2001.

12. We conclude that the public interest is best served if all schools and libraries receiving Funding Year 3 discounts on non-recurring services have the benefit of an extension of the deadline. Similar to the Commission's actions in Funding Year 1 and Funding Year 2, we also grant Funding Year 3 applicants a limited exemption from the Commission's competitive bidding requirements. Contracts for non-recurring services approved for Funding Year 3 discounts may be voluntarily extended until September 30, 2001.

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<sup>14</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983 (1999); *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 15 FCC Rcd 8064 (Com. Car. Bur. 2000).

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972). (*WAIT Radio*).

<sup>16</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>17</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>18</sup> *Universal Service Order*, 12 FCC Rcd at 9062, para. 544. *See also Fifth Order on Reconsideration*, 13 FCC Rcd at 14921, para. 9; 47 C.F.R. § 54.507(d), (e).

<sup>19</sup> *See Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 00-2444 (Com. Car. Bur., rel. November 1, 2000) (*November 2000 Extension Order*), para. 9; *Request for Waiver of September 30, 2000 Deadline for Implementation of Non-recurring Services by Baldwin County Board of Education*, *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA 01-747 (Com. Car. Bur. rel. March 27, 2001).

13. Based on this record that has necessitated extensions during the last three funding years, we propose to modify our rules relating to the use of funds for non-recurring services. We tentatively conclude that it is appropriate for schools and libraries to have the flexibility of additional time to implement non-recurring services. We propose a rule change that would allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year.<sup>20</sup> We seek comment on this proposal.

14. For certain qualified applicants who are unable to meet the September 30 deadline, we propose to extend the deadline for implementation of non-recurring services. Specifically, we propose to implement a rule to permit qualified applicants to extend the deadline for implementation of non-recurring services if they satisfy one of the following proposed criteria: (1) applicants whose funding commitment decision letters were issued by the Administrator on or after March 1 of the funding year; (2) applicants who received service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year; (3) applicants whose service providers were unable to complete implementation for reasons beyond the service provider's control; or (4) applicants who have their funding disbursements delayed while the Administrator investigates their application for program compliance. Under the proposed rule, if one of the conditions was satisfied before March 1, they would have until the subsequent September 30 to complete implementation. If one of the conditions was satisfied after March 1, applicants would have until September 30 of the following year to complete implementation.<sup>21</sup> We seek comment on this proposal.

15. As noted, in each year of the program, the Commission has ordered a waiver of its rules and extended the deadline for receipt of non-recurring services. Changing the deadline would provide schools and libraries, as well as the Administrator, with the certainty of a deadline that experience has shown is more realistic, based on the needs of the various program participants. We tentatively conclude that the proposed rule change provides clarity to the Administrator and applicants by establishing a deadline for implementation of non-recurring services for schools and libraries that are unable to meet the original deadline due to circumstances beyond their control.<sup>22</sup> Implementation of this policy should ensure schools and

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<sup>20</sup> Under this proposal, schools and libraries receiving funding commitments for non-recurring services in Funding Year 4 would have until September 30, 2002 to implement these services.

<sup>21</sup> March 1 is the key date for calculating the deadline of this extension. If an applicant received authorization for a service provider change on February 27, 2002 (before March 1), the deadline for receipt of non-recurring services would be September 30, 2002. For funding commitments made in April 2001 for Funding Year 2 applications (after March 1), the deadline for receipt of non-recurring service would be September 30, 2002. This encapsulates the desire of the Commission to ensure that schools and libraries are able to schedule installation for non-recurring services during the summer months.

<sup>22</sup> In Funding Year 2, the September 30 deadline was extended for eligible schools and libraries who, through no fault of their own, were unable to complete installation of non-recurring services by the deadline. Specifically, the deadline was extended by an additional year for those applicants: (1) whose Year 2 funding commitment letters were issued by the Administrator on or after April 4, 2000; (2) who received service provider change authorizations or service substitutions from the Administrator on or after April 4, 2000; (3) whose service providers were unable to complete implementation for reasons beyond the service provider's control; or (4) who (continued....)

libraries are not penalized when they are not responsible for missing the installation deadline. Ultimately, these administrative modifications to the rules should allow all schools and libraries to schedule implementation of non-recurring services over the summer months.

16. In addition, we also propose to grant a limited extension of the Commission's competitive bidding rules for contracts for non-recurring services. Under this proposal, contracts for non-recurring services could be voluntarily extended to coincide with the appropriate deadline for implementation. Parties would not, however, be able to extend other contractual provisions beyond the dates established by the Commission's rules without complying with the competitive bidding process. We seek comment on this proposal.

#### **IV. PROCEDURAL MATTERS**

##### **A. Initial Regulatory Flexibility Analysis**

17. As required by the Regulatory Flexibility Act (RFA),<sup>23</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Notice. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided below in section IV.C. The Commission will send a copy of the Further Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>24</sup> In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.<sup>25</sup>

##### **1. Need for, and Objectives of, the Proposed Rules**

18. In this Notice, we propose a revised method for allocating discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Specifically, we seek comment on a proposed rule change to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

19. We also seek comment on proposed administrative modifications to our rules to provide additional time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring

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have their funding disbursements delayed while the Administrator investigates their application for program compliance. *See November 2000 Extension Order*, at paras. 8-9.

<sup>23</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>24</sup> *See* 5 U.S.C. § 603(a).

<sup>25</sup> *See id.*

services. First, we propose to extend the deadline for receipt of non-recurring services from June 30, to September 30 following the close of the funding year. Second, we propose to establish a deadline for the implementation of non-recurring services for certain qualified applicants who are unable to complete implementation by the September 30 deadline.

## 2. Legal Basis

20. The legal basis for this Notice is contained in sections 1 through 4, 201 through 205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 1-4, 201-205, 254, 303(r), and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411.

## 3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

21. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>26</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>27</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>28</sup> A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>29</sup> A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>30</sup> Nationwide, as of 1992, there were approximately 275,801 small organizations.<sup>31</sup> "Small governmental jurisdiction"<sup>32</sup> generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."<sup>33</sup> As of 1992,

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<sup>26</sup> 5 U.S.C. § 603(b)(3).

<sup>27</sup> 5 U.S.C. § 601(6).

<sup>28</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>29</sup> Small Business Act, 15 U.S.C. § 632.

<sup>30</sup> 5 U.S.C. § 601(4).

<sup>31</sup> 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

<sup>32</sup> 47 C.F.R. § 1.1162.

<sup>33</sup> 5 U.S.C. § 601(5).



there were approximately 85,006 such jurisdictions in the United States.<sup>34</sup> This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.<sup>35</sup> The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities.

22. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”<sup>36</sup> A secondary school is generally as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.<sup>37</sup> For-profit schools and libraries, and schools and libraries with endowments in excess of \$50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.<sup>38</sup> Certain other statutory definitions apply as well.<sup>39</sup> The SBA has defined as small entities elementary and secondary schools and libraries having \$5 million or less in annual receipts.<sup>40</sup> In funding year 2 (July 1, 1999 to June 30, 2000) approximately 83,700 schools and 9,000 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA’s definition, we estimate that fewer than 83,700 schools and 9,000 libraries would be affected annually by the rules proposed in this Notice, under current operation of the program.<sup>41</sup>

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

23. The measures under consideration in this Notice would, if adopted, result in no additional reporting.

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<sup>34</sup> U.S. Dept. of Commerce, Bureau of the Census, “1992 Census of Governments.”

<sup>35</sup> *Id.*

<sup>36</sup> 47 C.F.R. § 54.500(b).

<sup>37</sup> 47 C.F.R. § 54.500(j).

<sup>38</sup> 47 C.F.R. § 54.501.

<sup>39</sup> *See id.*

<sup>40</sup> 13 C.F.R. § 121.201, SIC Codes 8211, 8231.

<sup>41</sup> The number of small entities affected by these rules may also be affected by a determination of which entities may make the required certification, which is an issue on which this Notice seeks comment, see ¶ 8. For example, if a school district may certify on behalf of all of its schools, that district may well have annual receipts in excess of \$5 million and therefore would not be a small entity under SBA’s definition, whereas an individual school in that district might be a small entity with annual receipts of less than \$5 million, and thus would be affected by these rules.

## 5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.<sup>42</sup>

25. The Commission seeks comment on two alternatives relating to the allocation of discounts to schools and libraries under the federal universal service mechanism when there is insufficient funding to support all requests for internal connections. Under the Commission's current rules, the Administrator would allocate the available funds among applicants in the 90 percent discount level on a pro rata basis, so that each applicant would receive only a portion of the amount requested. If applicants were to receive only a pro rata portion of the support they requested, we are concerned that less affluent schools and libraries would be unable to finance the additional funding burden. We seek to minimize the impact on schools and libraries with less resources and propose to give funding priority to requests for internal connections made by individual schools and libraries that did not receive funding commitments for internal connections during the previous funding year.

26. In addition, the Commission seeks comments on two proposals relating to the deadline for implementation of non-recurring services. First, the Commission proposes to extend the deadline for implementation of non-recurring services from June 30 of each funding year to September 30. Second, the Commission proposes to establish and extended deadline for certain qualified applicants who are unable to meet the September 30 deadline. Under these proposals, we aim to provide schools and libraries with additional time to complete installation and minimize the harm that may affect small entities due to the shorter deadline.

## 6. Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rules

27. None.

### B. Comment Due Dates and Filing Procedures

28. We invite comment on the issues and questions set forth in the Further Notice of Proposed Rulemaking and Initial Regulatory Flexibility Analysis contained herein. Pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's rules,<sup>43</sup> interested parties may comment on or before 15 days after this Notice is published in the Federal Register,

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<sup>42</sup> See 5 U.S.C. § 603.

<sup>43</sup> 47 C.F.R. §§ 1.415, 1.419.

and reply comment on or before 22 days after this Notice is published in the Federal Register. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

29. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

30. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also should send three paper copies of their filing to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554.

31. Parties who choose to file by paper should also submit their comments on diskette to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street, S.W., Room 5-B540, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM-compatible format using Microsoft Word 97 for Windows or a compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read-only" mode. The diskette should be clearly labeled with the commenter's name, proceeding, including the lead docket number in the proceeding (CC Docket No. 96-45), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ("Disk Copy Not an Original.") Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

## V. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1-4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 254, 303(r), 403, and sections 0.91, 0.291, 1.3, and 1.411 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 1.411, this FURTHER NOTICE OF PROPOSED RULEMAKING and ORDER IS ADOPTED, as described herein.

33. IT IS FURTHER ORDERED that the deadline for the implementation of non-recurring services in Funding Year 3 of the schools and libraries universal support mechanism for all applicants is extended from June 30, 2001 to September 30, 2001.

34. IT IS FURTHER ORDERED that applicants in Funding Year 3 may extend existing contracts for non-recurring services until September 30, 2001, without having to comply with the Commission's competitive bidding requirements.

35. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary