

**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)	

NOTICE OF PROPOSED RULEMAKING

Adopted: July 25, 2008

Released: July 31, 2008

Comment Date: (30 days after publication in the Federal Register)

Reply Comment Date: (45 days after publication in the Federal Register)

By the Commission:

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we seek comment on whether certain services should be designated as eligible for funding under the schools and libraries universal service support mechanism, also known as the E-rate program. We seek comment on whether, beginning in Funding Year 2009, the Eligible Services List (ESL) should include filtering software, a broader classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications.¹ In addition, we seek comment on whether to retain interconnected Voice over Internet Protocol (interconnected VoIP) as an eligible service for future funding years.² During the pleading cycles established for the Funding Years 2007 and 2008 ESLs, numerous parties commented on the need to make these services eligible for E-rate program discounts.³ We now seek comment on whether these services may be supported and whether support for these services will encourage access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.⁴

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.⁵ Section 254 of the Communications Act of 1934, as amended (the Act), gives the Commission the authority to designate “telecommunications services” and certain additional services

¹ Funding Year 2009 will start on July 1, 2009, and end on June 30, 2010.

² The 2008 ESL includes interconnected VoIP service. See Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2008, http://www.usac.org/res/documents/sl/pdf/els_archive/2008-eligible-services-list.pdf, at 21 (retrieved July 25, 2008) (2008 ESL).

³ A list of commenters is attached as Appendix A.

⁴ 47 U.S.C. § 254(c); 47 U.S.C. § 254(h)(2)(A).

⁵ 47 C.F.R. §§ 54.502, 54.503, 54.517.

eligible for support under the E-rate program.⁶ The Commission has also determined that it has the authority to designate services eligible for schools and libraries support as part of its authority to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms and libraries.⁷

3. Since the initial implementation of the E-rate program in 1998, the Universal Service Administrative Company (USAC) has developed various procedures and guidelines, consistent with the Commission's rules and requirements, for applicants to ensure that funding is provided only for eligible services.⁸ Initially, the Commission directed USAC, in consultation with the Commission, to determine whether particular services fell within the eligibility criteria established under the 1996 Act and the Commission's rules and policies.⁹ Applicants or service providers could appeal to the Commission a determination by USAC that a given service was ineligible for discounts only after a requested service was rejected.¹⁰

4. USAC began to update, on an annual basis, and to post to its website, a list of services eligible for funding.¹¹ In consultation with the Wireline Competition Bureau, USAC updated the ESL to reflect any changes in rules that had occurred during the previous year and to address issues that arose in the application review process. The ESL indicates whether specific products or services are eligible to receive discounts under the E-rate program.¹² The ESL is divided into several categories – telecommunications service, Internet access, internal connections, basic maintenance of internal connections, and miscellaneous.

5. On December 23, 2003, the Commission adopted section 54.522 of its rules, formalizing the process for updating the ESL for the E-rate program.¹³ Specifically, section 54.522 requires the Commission to seek comment on USAC's proposed ESL and to issue a Public Notice attaching the final ESL for the upcoming funding year at least 60 days prior to the opening of the funding window for the E-

⁶ 47 U.S.C. § 254(c)(1), (c)(3).

⁷ 47 U.S.C. § 254(h)(2)(A); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9008-9015, paras. 436-449 (1997) (*Universal Service Order*), *aff'd in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 440-42 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds); see also 47 U.S.C. § 254(c)(3).

⁸ USAC is an independent, not-for-profit corporation designated as the administrator of the federal Universal Service Fund (USF) by the Commission. See *Changes to the Board of Directors of the National Exchange Carrier Association*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25063-66, paras. 10-14 (1998); 47 C.F.R. § 54.701(a).

⁹ See *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Second Report and Order and Further Notice of Proposed Rule Making, 18 FCC Rcd 9202, 9213, para. 31 (2003) (*Schools and Libraries Second Report and Order*); see also 47 U.S.C. § 254; Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

¹⁰ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9213, para. 31.

¹¹ See USAC website, Eligible Services List, <http://www.usac.org/sl/tools/eligible-services-list.aspx> (retrieved July 25, 2008).

¹² *Id.*

¹³ See 47 C.F.R. § 54.522; see *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Third Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 26912, 26929, para. 40 (2003) (*Schools and Libraries Third Report and Order*). Funding Year 2005 was the first funding year for which this process was implemented.

rate program.¹⁴ This process was adopted to provide greater transparency to the development of the ESL, simplify program administration, and facilitate the ability of both vendors and applicants to determine what services are eligible for discounts.¹⁵ It also provides applicants and service providers an opportunity to bring to the Commission's attention areas of ambiguity in the application of program rules in a rapidly changing marketplace.¹⁶

6. Pursuant to the Commission's rules, the Commission released Public Notices seeking comment on USAC's proposed ESL for Funding Years 2007 and 2008.¹⁷ The final 2007 and 2008 ESLs and accompanying Public Notices were released on October 19, 2006 and October 19, 2007, respectively.¹⁸ To facilitate the application processes for Funding Years 2007 and 2008, we authorized USAC to open the annual application filing windows in November and waived, on our own motion, section 54.522 of the Commission's rules requiring publication of the ESL at least 60 days prior to the commencement of the filing windows.¹⁹ We concluded that this action would facilitate the application process for E-rate beneficiaries applying for monies.²⁰ In revising the 2007 and 2008 ESLs, we noted that the proceedings were limited to determining what services are eligible under the Commission's current rules and were not intended to be a vehicle for changing eligibility rules.²¹ Therefore, we indicated that those comments not addressed in the ESLs may be more appropriately filed for the Commission's consideration in the general docket for the E-rate program.²²

III. DISCUSSION

7. In this NPRM, we seek comment on a number of issues raised by the commenters that may not have been addressed as part of the ESL process for 2008 or prior years. Specifically, we seek comment on whether to include interconnected VoIP service, filtering, dark fiber, and other services in

¹⁴ 47 C.F.R. § 54.522.

¹⁵ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26929, para. 40.

¹⁶ *Id.* In the *Universal Service Fund Comprehensive Review NPRM*, the Commission sought comment on, among other things, whether to make changes to the ESL process. *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket Nos. 05-195, 02-60, 03-109, CC Docket Nos. 96-45, 02-6, 97-21, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308, 11323-11326, paras. 34-43 (2005) (*Universal Service Fund Comprehensive Review NPRM*).

¹⁷ *Pleading Cycle Established for Eligible Services List for Universal Service Mechanism for Schools and Libraries*, CC Docket No. 02-6, 21 FCC Rcd 8412, Public Notice (2006) (July 2006 Public Notice); *Comment Sought on Draft Eligible Services List for School and Libraries Universal Service Mechanism*, CC Docket No. 02-6, 22 FCC Rcd 14134, Public Notice (2007) (July 2007 Public Notice).

¹⁸ See Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2007, http://www.usac.org/res/documents/sl/pdf/els_archive/2007-eligible-services-list.pdf, (retrieved July 25, 2008) (2007 ESL); *Release of Funding Year 2007 Eligible Services List for Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Public Notice, 21 FCC Rcd 12310 (2006) (Oct. 2006 Public Notice); 2008 ESL; *Release of Funding Year 2007 Eligible Services List for Schools and Libraries Universal Service Mechanism*, CC Docket No. 02-6, Public Notice, 22 FCC Rcd 18751 (2007) (Oct. 2007 Public Notice).

¹⁹ See Oct. 2006 Public Notice; Oct. 2007 Public Notice; see also 47 C.F.R. § 1.3 (providing that the Commission's rules may be waived for good cause).

²⁰ See Oct. 2006 Public Notice at 1; Oct. 2007 Public Notice at 2.

²¹ See Oct. 2006 Public Notice at 1; Oct. 2007 Public Notice at 2.

²² See Oct. 2006 Public Notice at 1; Oct. 2007 Public Notice at 2. As noted above, during the pleading cycles established for the ESLs, numerous parties commented on the need to make certain services eligible for E-rate program discounts. We incorporate the comments filed into this proceeding, as well as comments filed in prior years that relate to the issues addressed in this NPRM.

the ESL, in future funding years. We also seek comment on which rules, if any, would need to be amended to effectuate any changes made as a result of this NPRM. For instance, sections 54.502 and 54.503 describe services that can be provided by telecommunications carriers while section 54.517 describes what services can be provided by non-telecommunications carriers. Should we reorganize or restructure the rules relating to the eligible services and the ESL to better inform applicants of which services are supported?

A. Interconnected VoIP Service

8. Interconnected VoIP service is defined as a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.²³

9. The Commission has addressed interconnected VoIP services in various contexts other than E-rate eligible services in recent years. For example, in May 2005, the Commission adopted the *VoIP 911 Order* in the *IP-Enabled Services* proceeding.²⁴ Declining to determine the statutory classification of interconnected VoIP services at that time, the Commission asserted its ancillary jurisdiction under Title I of the 1996 Act to require interconnected VoIP service providers to supply 911 emergency calling capabilities to their customers.²⁵ Subsequently, in August 2005, the Commission found that the Communications Assistance for Law Enforcement Act (CALEA) applies to providers of interconnected VoIP service.²⁶

10. In June 2006, the Commission established universal service obligations for providers of interconnected VoIP service.²⁷ The Commission required providers of interconnected VoIP services to contribute to the Universal Service Fund (USF) on an interim basis in order to sustain the USF.²⁸ Again, the Commission did not classify interconnected VoIP service as either a telecommunications service or an information service.²⁹ It did, however, for purposes of finding permissive authority under section 254(d) of the Act, find that interconnected VoIP providers are providers of interstate telecommunications.³⁰ In 2007, the Commission also extended local number portability obligations to interconnected VoIP

²³ 47 C.F.R. § 9.3. See *IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36, 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10257-58, para. 24 (2005) (*VoIP 911 Order*) (defining "interconnected VoIP service"), *aff'd sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

²⁴ See generally *VoIP 911 Order*, 20 FCC Rcd 10245.

²⁵ *Id.* at 10246, para. 1.

²⁶ See *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 14989, 14991-92, para. 8 (2005) (*CALEA First Report and Order*), *aff'd, American Council on Education v. FCC*, No. 05-1404 (D.C. Cir. June 9, 2006). Based on the independent language of the CALEA statute, the Commission found that providers of interconnected VoIP services satisfy CALEA's definition of "telecommunications carrier" because these services replace significant functions of traditional telephone service, including circuit-switched voice service. See *id.* at 15001, 15003-04, 15009-10, paras. 23, 27-31, 42.

²⁷ *Universal Service Contribution Methodology*, WC Docket No. 06-122, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518 (2006) (*2006 Interim Contribution Methodology Order*).

²⁸ *Id.* at 7536, para. 34.

²⁹ *Id.* at 7537, para. 35.

³⁰ See *id.* at 7538, paras. 38-39.

providers and extended the disability access requirements that currently apply to telecommunications service providers and equipment manufacturers to interconnected VoIP providers.³¹

11. Consistent with these recent Commission actions, interconnected VoIP service was included as an eligible service in the 2007 and 2008 ESLs.³² The Commission has not yet determined if interconnected VoIP services are telecommunications services or information services. Consequently, the 2007 and 2008 ESLs listed interconnected VoIP services under the “Miscellaneous” category.³³ In completing their applications, applicants are permitted to seek support for interconnected VoIP service as an Internet access service.

12. We now find it appropriate to address the issue of the inclusion of interconnected VoIP service in future funding years in the universal service program in the E-rate context. As established by section 254(c)(3) of the Act, the Commission may designate additional services for universal service support.³⁴ Furthermore, the Act also authorizes the Commission to establish competitively neutral rules to enhance access to advanced telecommunications and information services.³⁵ We tentatively conclude that interconnected VoIP service should be designated as a supported service for the E-rate program. In the *2006 Interim Contribution Methodology Order*, the Commission required interconnected VoIP service providers to contribute to the USF.³⁶ The policy of competitive neutrality would support a finding that providers of interconnected VoIP services should also be able to participate in the universal service E-rate program and, consequently, that interconnected VoIP service be included in the ESL.³⁷ We also agree with commenters that the inclusion of interconnected VoIP service as an eligible service enhances the options available to schools and libraries to effectuate meaningful communications among parents, teachers, and school and library administrators.³⁸ Further, as the Commission also noted in the *2006 Interim Contribution Methodology Order*, the use of and revenue from interconnected VoIP services has grown dramatically in recent years.³⁹ The number of interconnected VoIP service subscribers grew from about 150,000 at the end of 2003 to 4.2 million at the end of 2005.⁴⁰ Thus, we believe that schools and libraries could benefit from the same cost efficiencies and service features that have led many consumers to choose this technology. Moreover, because interconnected VoIP components are eligible under the E-rate program as Internal Connections components, schools and libraries might realize cost savings in

³¹ See *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket Nos. 07-243, 07-244, 04-36, CC Docket Nos. 95-116, 99-200, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 (2007); *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, 22 FCC Rcd 11275 (2007).

³² 2007 ESL at 19; 2008 ESL at 21.

³³ 2007 ESL at 19; 2008 ESL at 21.

³⁴ 47 U.S.C. § 254(c)(3).

³⁵ See 47 U.S.C. § 254(h)(2)(A).

³⁶ *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7536, para. 34.

³⁷ See On-Tech Consulting, Inc. Comments at 4 (stating that because the Commission has determined that VoIP providers must pay into the USF as if their service were a telecommunications service, their service should be treated as a telecommunications service when it comes to payments from the USF). All comments cited in the NPRM are comments filed in response to the July 2006 Public Notice unless otherwise identified. See also 47 U.S.C. § 254(h)(2).

³⁸ Nsight Teleservices Comments at 2; SECA Comments at 8.

³⁹ See *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7520, para. 3.

⁴⁰ *2006 Interim Contribution Methodology Order*, 21 FCC Rcd at 7420, para. 3 (citing Telecommunications Industry Association, TIA’s 2006 Telecommunications Market Review and Forecast, 71 (2006) (TIA 2006 Report)).

using interconnected VoIP both for internal connections and external communications, were interconnected VoIP service designated an eligible service.

13. We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service.⁴¹ We seek comment on this tentative conclusion. If interconnected VoIP service is deemed an eligible service, we also seek comment on how USAC would implement this tentative conclusion. For example, is it appropriate for applicants to label interconnected VoIP service as an Internet access service when applying for E-rate program funding? If so, should we require applicants requesting funding for interconnected VoIP services to certify to Children's Internet Protection Act (CIPA) requirements?⁴² All schools and libraries seeking funding for Internet access or internal connections under the E-rate program must have technology that blocks or filters Internet access to obscenity, pornography, and material deemed harmful to minors under the CIPA.⁴³ Applicants seeking funding only for telecommunications services do not have to comply with CIPA.⁴⁴ Should we require applicants requesting funding for interconnected VoIP services to comply with CIPA if the applicant does not also receive E-rate funds for Internet access, Internet service, or internal connections?⁴⁵ As noted earlier, the 2008 ESL identifies interconnected VoIP service under the miscellaneous category.⁴⁶ As the Commission explained in the *VoIP 911 Order*, customers who purchase interconnected VoIP service receive a service that "enables a customer to do everything (or nearly everything) the customer could do using an analog telephone."⁴⁷ We therefore seek comment on whether "Miscellaneous" is the appropriate category for interconnected VoIP services or if another category would be more appropriate. If a commenter believes that another category is more appropriate, we ask that the commenter identify the appropriate category and explain why such category is more appropriate. Finally, we seek comment on the effect, if any, that the removal of interconnected VoIP service from the 2009 ESL would have on the E-rate program or upon applicants that rely on this service.

B. Filtering Software

14. We seek comment on whether stand-alone filtering software should be funded under the E-rate program. Filtering software protects users from inappropriate content by selectively blocking certain words or Internet sites.⁴⁸ Currently, e-mail software or other eligible components that include content filtering as an integral component part are eligible, but a separately priced content filtering module or product is not eligible.⁴⁹ In 2001, the Commission determined that CIPA prohibited the use of E-rate funding for filtering software.⁵⁰ Section 1721(g) of CIPA states that funds from the Elementary and Secondary Act of 1965 or the Library Services and Technology Act may be used to purchase filtering

⁴¹ Priority 1 services are telecommunications services, voice mail, and Internet access pursuant to section 54.507(g)(1)(i) of our rules.

⁴² 47 U.S.C. § 254(h), 254(l). Congress included CIPA as part of the Consolidated Appropriations Act, 2001. Pub. L. No. 106-554 §§ 1731 *et seq.*

⁴³ 47 U.S.C. § 254(h), 254(l).

⁴⁴ 47 U.S.C. § 254(h)(5)(A)(ii), 254(h)(6)(A)(ii).

⁴⁵ *See* 47 U.S.C. § 254(h)(5)(A)(ii), 254(h)(6)(A)(ii).

⁴⁶ *See supra* para. 11; 2008 ESL at 21.

⁴⁷ *See CALEA First Report and Order*, 20 FCC Rcd at 15009, para. 42; *VoIP 911 Order*, 20 FCC Rcd at 10256-57, para. 23 (footnote omitted).

⁴⁸ 2008 ESL at 34.

⁴⁹ *Id.* at 11, 14, 25.

⁵⁰ *See Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8204, para. 54 (2001) (*CIPA Order*).

technology necessary to meet the requirements of CIPA, but “[n]o other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title.”⁵¹ The Commission interpreted this passage to mean that no sources of funds other than those explicitly listed in CIPA, which did not include E-rate program funds, could be used for the purchase of filtering software to comply with CIPA.⁵²

15. We seek comment on the Commission’s prior interpretation of section 1721(g) of CIPA and whether it should be reconsidered. Specifically, parties are asked to comment on whether this provision explicitly prohibits E-rate program funding from being used for filtering software or whether the statute can be interpreted so that the Commission is not precluded from funding filtering software through the E-rate program. Parties should also comment on the legislative history of CIPA. For instance, the Senate Report on CIPA legislation envisioned that universal service subsidies could be used to cover the cost of the software or technology necessary to comply with the bill’s requirements.⁵³ Additionally, we seek comment on whether other sources of federal funding are not sufficient. We also seek comment on whether schools and libraries have an additional need for subsidized filtering services because Congress requires content filtering for the receipt of E-rate funding.⁵⁴ Under the language in the ESL, applicants must determine whether filtering is performed as an ancillary function for an already-eligible function, or whether it is distinct content filtering software.⁵⁵ We further seek comment on whether making filtering eligible may help streamline the application review process by reducing the administrative effort and costs associated with determining whether a school or library is seeking E-rate funding for costs associated with stand-alone filtering services. We also seek comment on whether classifying stand-alone filtering services as eligible for E-rate support would also reduce confusion for applicants.⁵⁶

C. Basic Telephone Service

16. We seek comment on whether the definition of “basic” telephone service should be expanded to include additional services under the E-rate program. The Commission requires participating schools and libraries to base their requests for discounts on an approved technology plan,⁵⁷ unless they are seeking discounts on “basic local, cellular, PCS, and/or long distance telephone service and/or voicemail only.”⁵⁸ The purpose of technology plans is to ensure that applicants make appropriate decisions regarding the services for which they seek discounts.⁵⁹ In the 2008 ESL, the Commission classified

⁵¹ CIPA § 1721(g).

⁵² See *CIPA Order*, 16 FCC Rcd at 8204, para. 54.

⁵³ S. REP. NO. 106-141, at 10, 13, 106th Cong. (1999) (noting that “the Universal Service subsidy may be used to cover the cost of the acquisition of the software or technology necessary to comply with requirements added by the bill”).

⁵⁴ See On-Tech Consulting, Inc. Comments at 3; see also 2008 On-Tech Consulting Inc. Comments at 3 (noting that Congress clearly indicated that content filtering is a necessary part of data distribution for a school or library).

⁵⁵ See, e.g., 2008 ESL at 11.

⁵⁶ See Council of the Great City Schools Comments at 5.

⁵⁷ 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9077, para. 572 (1997) (*Universal Service Order*) (subsequent history omitted).

⁵⁸ 47 C.F.R. § 54.504(b)(2)(iv); 2008 ESL at 3-4; see also *Request for Review of the Decision of the Universal Service Administrator by United Talmudical Academy*, *Federal-State Joint Board on Universal Service*, *Changes to the Board of Directors of the National Exchange Carrier Association*, CC Docket Nos. 96-45, 97-21, Order, 16 FCC Rcd 18812, 18816, para. 11 (Com. Car. Bur. 2001).

⁵⁹ See 47 C.F.R. § 54.504(b)(2)(iii).

Centrex service as “basic” telephone service for purposes of the E-rate program with the intention of eliminating the requirement that applicants file a technology plan for Centrex service.⁶⁰ We now seek comment on whether the classification of basic telephone service should extend beyond Centrex service to include other services, such as a Private Branch eXchange (PBX), key systems, T1 lines, and interconnected VoIP and Primary Rate Interface (PRI) trunk lines connecting a PBX to the Public Switched Telephone Network (PSTN), for purposes of also exempting these services from the technology plan requirement.⁶¹ One commenter specifically notes that “basic” telephone service should include T1 lines since broadband is a basic requirement for cost-effective telecommunications services.⁶² As indicated above, the purpose of technology plans is to ensure that applicants make appropriate decisions regarding the services for which they seek discounts. Therefore, we seek comment on whether applicants will continue to sufficiently align their funding requests with their service needs if we classify these services as “basic” telephone service for purposes of eliminating the technology plan requirement. Further, the Commission has classified PBX and key systems, like most on-premises equipment, as Priority 2 internal connections and not as Priority 1 telecommunications services.⁶³ We seek comment on whether it is appropriate to expand the definition to classify certain Priority 2 services as “basic” telephone service, a Priority 1 service.⁶⁴ Accordingly, commenters should discuss how any changes to the definition of “basic” telephone service to include certain Priority 2 services affect the Commission’s determination that facilities located on an applicant’s premises are presumed to be Priority 2 internal connections.⁶⁵

D. Dark Fiber

17. We seek comment on whether unlit (dark) fiber should be eligible for discounts under the E-rate program.⁶⁶ Dark fiber was conditionally eligible for E-rate discounts prior to Funding Year 2004.⁶⁷

⁶⁰ 2008 ESL at 3; Oct. 2007 Public Notice at 1. Centrex service is a telecommunications service, and thus is classified as Priority 1.

⁶¹ See 2008 E-Rate Central Comments at 1-3; 2008 Wisconsin Department of Public Instruction Comments at 1; 2008 eRate Consulting Services, LLC Comments at 1; 2008 On-Tech Consulting, Inc. Comments at 5. PRI trunk lines are Priority 1 services. See 2008 ESL.

⁶² See 2008 eRate Consulting Services, LLC Comments at 1.

⁶³ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26931, para. 47; *Petition for Waiver by Sprint Corporation, Federal-State Joint Board on Universal Service*, Order, 22 FCC Rcd 5353, 5354, para. 3 (Wireline Comp. Bur. 2007) (*Sprint Petition Order*); see also 47 C.F.R. §§ 507(g)(i), (ii) (noting that telecommunications services, voice mail, and Internet access receive first priority for funding and the remaining funds go to internal connections).

⁶⁴ Prior to December 1, 2003, USAC treated payments for leases of PBX and key systems as payments for part of end-to-end telecommunications service arrangements, *i.e.*, Priority 1 services. *Sprint Petition Order*, 22 FCC Rcd at 5354, paras. 2-3.

⁶⁵ See, *e.g.*, *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator, Request for Review by Integrated Systems and Internet Solutions, Inc., of the Decision of the Universal Service Administrator, Request for Review by Education Networks of America of the Decision of the Universal Service Administrator, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13753-54, paras 37-38 (1999) (*1999 Tennessee Order*); *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26930-31, para. 46.

⁶⁶ The Commission first sought comment on dark fiber in the *Schools and Libraries Third Report and Order*. *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26943-44, paras. 76-77.

⁶⁷ The ESL for Funding Year 2002 stated that “[s]ervice providers can lease fiber capacity that does not include modulating electronics to schools and libraries, if the applicant provides the electronics to modulate the fiber.” See USAC website, 2003 Eligible Services List,

(continued...)

In the *Schools and Libraries Third Report and Order*, released in 2003, however, the Commission found that dark fiber was not eligible for discounts and sought comment on whether dark fiber should be funded under the E-rate program.⁶⁸ We now incorporate that record into this proceeding and ask commenters to refresh the record on whether dark fiber should be included as an eligible service. While the statutory classification of dark fiber remains an open issue, we note that if dark fiber were eligible for E-rate discounts, the service could be supported under the Act as an “additional” service,⁶⁹ rather than as a “telecommunications service.”⁷⁰ As such, we seek comment on whether dark fiber should be classified under the miscellaneous category or some other category of service. We also seek comment on technological or other changes that have occurred since we last sought comment on this issue in 2003. Commenters should address whether these changes alter the Commission’s prior conclusion that only a functioning (lit) fiber optic service provided by a telecommunications service provider or Internet access provider should be eligible for E-rate support. We also seek comment on whether we should permit funding for dark fiber, pursuant to section 254(h), to provide additional flexibility to applicants in meeting their communications needs.⁷¹ Further, we seek comment on whether, if we decide to permit funding of dark fiber, any limitations should be adopted to preclude discounts on the full cost of dark fiber network buildout when the applicant will not be utilizing the full capacity of that network.

E. Other Services

18. We seek comment on whether several individual services—text messaging, firewall, anti-virus/anti-spam software, scheduling services and telephone broadcast messaging—should be eligible for the E-rate program under section 254(c)(3) of the Act.⁷² We seek comment on whether funding these services through E-rate will encourage access to advanced telecommunications and information services for public and non-profit elementary and secondary school classrooms and libraries.⁷³ We also seek comment on how schools and libraries would use these services and whether the use would be for “educational purposes,” as required by our rules.⁷⁴ For the services discussed in this section, we seek

(...continued from previous page)

http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101802.pdf, at 33 (retrieved July 25, 2008).

⁶⁸ *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26943-44, paras. 76-77. The ESL released for Funding Year 2004 stated that “[t]he FCC has not resolved whether unlit dark fiber is a telecommunications service. Pending resolution of this issue, it is not eligible for funding.” See USAC website, 2004 Eligible Services List, http://www.universalservice.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf, at 30 (retrieved July 25, 2008). In other proceedings, dark fiber has been treated differently depending on context. See *Southwestern Bell Tel. Co. v. FCC*, 19 F.3d 1475 (D.C. Cir. 1994) (finding that the Commission had failed to provide a sufficient analysis for concluding that dark fiber service was a common carrier service and suspending the Commission order pending proceedings on remand); Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, March 2006, at 24 (instructing universal service contributors not to include revenues for dark fiber services as telecommunications revenues). *But see Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435, 15473-74, paras. 74-75 and n.189 (2001) (declaring that a dark fiber service with respect to cross-connects is a common carrier service under the second prong of *NARUC II*. See *National Ass’n of Regulatory Util. Comm’rs v. FCC*, 533 F.2d 601,608-609 (D.C. Cir. 1976) (*NARUC II*)).

⁶⁹ 47 U.S.C. § 254(c)(3).

⁷⁰ 47 U.S.C. § 254(c)(1).

⁷¹ See 47 U.S.C. § 254.

⁷² 47 U.S.C. § 254(c)(3).

⁷³ See 47 U.S.C. § 254(h).

⁷⁴ “Educational Purposes” are defined as activities that are integral, immediate, and proximate to the education of students or to the provision of library services to library patrons. See 47 C.F.R. 54.500(b).

comment on how each service, if it is added to the ESL, should be categorized.⁷⁵ Specifically, commenters should indicate whether the service should be categorized as a telecommunications service, Internet access service, and/or listed in the miscellaneous category. Should we require applicants requesting funding for the services discussed in this section to certify to CIPA requirements?⁷⁶ As discussed above, we note that all schools and libraries seeking funding for Internet access or internal connections under the E-rate program must have technology that blocks or filters Internet access to obscenity, pornography, and material deemed harmful to minors under the CIPA.⁷⁷ Applicants seeking funding only for telecommunications services do not have to comply with CIPA.⁷⁸ Should we require applicants requesting funding for the services discussed in this section to comply with CIPA if the applicant does not also receive E-rate funds for Internet access, Internet service, or internal connections?⁷⁹

19. *Text Messaging.* We seek comment on whether text messaging should be an eligible service. Text messaging, known as short message service or SMS, is a service that allows short messages, typically up to 160 characters, to be sent to and from handheld wireless devices.⁸⁰ For example, text messaging service could be used to provide parental notification services and systems, which can be a valuable tool for reaching out to the community in the event of an emergency. Several parties have argued that the ineligibility of text messaging is inconsistent with the treatment of other eligible messaging services, and that this inconsistency creates difficulty for USAC in assessing eligibility and confusion for E-rate applicants, who may consider these services as functionally equivalent.⁸¹ For example, while text messaging has not been included in the ESL, e-mail and paging, two services that also transmit alphanumeric messages electronically between users, are eligible for E-rate support.⁸² Thus, we specifically seek comment on the extent to which SMS is functionally equivalent to e-mail and paging and how the current eligibility of these two messaging services should affect our treatment of text messaging as an eligible service. Because text messaging is often bundled with other eligible telecommunications services, we seek comment on whether including text messaging as an eligible service would reduce the burden and administrative costs for applicants, service providers and USAC.⁸³

⁷⁵ For example, text messaging could be categorized similarly to voice mail, which is listed in the 2008 ESL under the miscellaneous category. 2008 ESL at 22. The provision for voice mail service in the 2008 ESL indicates that, if voice mail is provided by a telecommunications carrier, it should be requested under the telecommunications category of service, and if the voice mail is provided by any provider that is not a telecommunications carrier, it should be requested under the Internet access category of service. *Id.*

⁷⁶ 47 U.S.C. § 254(h), 254(l).

⁷⁷ See para. 13, *supra*; see also 47 U.S.C. § 254(h), 254(l).

⁷⁸ 47 U.S.C. § 254(h)(5)(A)(ii), 254(h)(6)(A)(ii).

⁷⁹ See 47 U.S.C. § 254(h)(5)(A)(ii), 254(h)(6)(A)(ii).

⁸⁰ See <http://electronics.howstuffworks.com/sms.htm> (retrieved July 25, 2008). The 160-character conventional limit is not absolute and may actually vary depending on the network, phone model, and particular wireless carrier. *Id.*

⁸¹ See Council of the Great City Schools Comments at 4; Funds for Learning Comments at 4-5; Kellogg & Sovereign Consulting, LLC Reply Comments at 1-2; 2008 On-Tech Consulting, Inc. Reply Comments at 3; SECA Comments at 5-6; Sprint Nextel Corporation Comments at 3; 2008 Sprint Nextel Corporation Comments at 3-4.

⁸² See 2008 ESL at 3, 6.

⁸³ For example, service providers and USAC must examine wireless telecommunications invoices to identify and remove text messaging charges. As SMS becomes an increasingly popular service and is used in connection with other service offerings, billing may become increasingly complex.

20. *Firewall.* We seek comment on whether separately priced firewall services should be eligible under the E-rate program, as recommended by a number of commenters.⁸⁴ Firewall service is described as “a hardware and software combination that sits at the boundary between an organization’s network and the outside world, and protects the network against unauthorized access or intrusions.”⁸⁵ In the 2007 ESL, the Commission clarified that only basic firewall services that are provided as a standard component of a vendor’s Internet access service are eligible for E-rate program discounts.⁸⁶ Commenters have contended that the eligibility of firewall service is now ambiguous and confusing.⁸⁷ For example, one commenter noted that the current definition of firewall service is vague and does not define what constitutes “basic” firewall protection.⁸⁸ We seek comment on whether a new definition of eligible firewall services should be adopted and whether it should include such technology as intrusion prevention devices, network access control, firewall traversal, and deep packet inspection devices.⁸⁹ Commenters should also identify any technologies other than these that should be considered for funding. We ask commenters to provide a proposed definition and to explain why such definition is appropriate.

21. *Anti-Virus/Anti-Spam Software.* We seek comment on whether we should extend E-rate program eligibility to anti-virus and anti-spam software. Currently, only network operating system software and server-based e-mail and voice mail software are eligible for E-rate funds.⁹⁰ Software that protects computer components from viruses and spam e-mails is ineligible for E-rate support.⁹¹ Commenters note that anti-virus software is now required for the reliable delivery of data and that anti-spam measures are necessary for the effective distribution of e-mail.⁹² Thus, we seek comment on whether the increased prevalence of viruses and spam justify including as an eligible service software that protects equipment at schools and libraries from these threats.

22. *Scheduling Services.* We seek comment on whether to allow scheduling services to be eligible for E-rate support. Scheduling software allows schools and libraries more efficiently to use video conferencing for distance learning by controlling the video linkage between the classrooms and the originating video feed, sometimes coordinating between hundreds of locations.⁹³ Scheduling services

⁸⁴ See E-Rate Service Provider Forum Comments at 5; Funds for Learning Comments at 2-4; 2008 Funds for Learning Comments at 8-11; Kellogg & Sovereign Consulting, LLC Reply Comments at 3; On-Tech Consulting, Inc. Comments at 4.

⁸⁵ 2008 ESL at 34.

⁸⁶ 2007 ESL at 6-7.

⁸⁷ See Funds for Learning Comments at 2-4; 2008 Funds for Learning Comments at 9; On-Tech Consulting, Inc. Comments at 4.

⁸⁸ Funds for Learning Comments at 3; 2008 Funds for Learning Comments at 9.

⁸⁹ See Funds for Learning Comments at 3; 2008 Funds for Learning Comments at 11. According to Funds for Learning, these technologies offer better protection for schools and libraries than a “basic” firewall service. For example, intrusion prevention is a network security technology that makes access control decisions based on the content of a data stream, providing substantially better data protection than traditional firewalls. Funds for Learning Comments at 3. *But see* 2008 On-Tech Consulting, Inc. Reply Comments at 4 (noting that these systems should not yet be eligible because they are not standard network security components).

⁹⁰ 2008 ESL at 8.

⁹¹ *Id.* at 15.

⁹² 2008 eDimension Consulting Comments at 2; On-Tech Consulting, Inc. Comments at 3; 2008 On-Tech Consulting, Inc. Comments at 3.

⁹³ Wisconsin Department of Administration & Wisconsin Department of Public Instruction Comments at 3.

were explicitly made ineligible in Funding Year 2006.⁹⁴ Many commenters, however, have noted that scheduling software is a necessary component of distance learning,⁹⁵ which is eligible as a digital transmission service in the telecommunications services category.⁹⁶ Thus, we seek comment on whether video and voice conferencing services, which are eligible services, require scheduling software as an essential component of the services. We seek comment on how scheduling software is similar or different from other telecommunications components that are eligible.

23. *Telephone Broadcast Messaging.* We seek comment on whether telephone broadcast messaging should be eligible for E-rate support. Telephone broadcast messaging allows pre-recorded messages to be sent over phone lines to individuals concerning school delays or closures, reported absences, upcoming activities and events, and emergencies.⁹⁷ For example, telephone broadcast messaging service could be used to provide parental notification services and systems, which can be a valuable tool for reaching out to the community in the event of an emergency. We seek comment on a proposal to include broadcast telephone messaging in the ESL.⁹⁸ We note that broadcast telephone messaging is not a component part of telephone service and is not a “custom calling feature” or other service component typically associated with an eligible telecommunications service. We thus ask commenters to address how this may affect our analysis in considering broadcast telephone messaging as eligible for E-rate support.

24. *Wireless Internet Access Applications.* We seek comment on whether certain wireless Internet access applications should be eligible for E-rate support. Currently, wireless Internet access service that is used for an educational purpose is eligible in the same manner that wired Internet access is eligible.⁹⁹ The Commission has determined that, to qualify as an educational purpose under the E-rate program, an activity must be integral, immediate, and proximate to the education of students in the case of schools, or integral, immediate, and proximate to the provision of library services to library patrons in the case of libraries.¹⁰⁰ Activities that occur on library or school property are presumed to be integral, immediate, and proximate to the education of students or the provision of library services to patrons.¹⁰¹ Although the Commission has previously found that wireless services used on library or classroom property are presumed to be eligible, we seek comment on various technologies that are used away from the library or school property.¹⁰² Specifically, commenters note that wireless Internet access services can now be used on school buses to transmit information about emergencies or disturbances, track students

⁹⁴ Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2006, http://www.usac.org/res/documents/sl/pdf/ESL_archive/EligibleServicesList_041206.pdf, at 9 (retrieved July 25, 2008) (2006 ESL).

⁹⁵ See Alaska Department of Education and Early Development Reply Comments at 1-2; Arkansas Department of Information Systems & the Arkansas Department of Education Comments at 2-3; General Communication, Inc. Comments at 1-4; SECA Reply Comments at 1-2; State of Iowa Comments at 1-2; Wisconsin Department of Administration & Wisconsin Department of Public Instruction Comments at 1-3.

⁹⁶ 2007 ESL at 2-3.

⁹⁷ Leib Lurie Comments at 1-2.

⁹⁸ *Id.*

⁹⁹ See 2008 ESL at 7; *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9211, para. 26 (noting that eligibility is not determined by the type of technology, but by “whether the service in question is integral, immediate, and proximate to the provision of education or library services”).

¹⁰⁰ 47 C.F.R. § 54.500(b); *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, 9211, paras. 17-21, 26.

¹⁰¹ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, 9211, paras. 17-21, 26.

¹⁰² *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9211, para. 26.

entering or leaving buses with electronic radio frequency identification (RFID) cards, and locate buses with GPS technology that identifies and transmits the location of each bus.¹⁰³ Additionally, commenters assert that wireless Internet access technology, via handsets, can allow school officials to make crime database queries, receive weather alerts, and coordinate emergency management planning with police and fire departments.¹⁰⁴ The Commission has previously held that a bus driver's use of wireless telecommunications services while delivering students to and from school is considered an educational purpose.¹⁰⁵ We thus seek comment on whether these wireless Internet access applications indicated above or similar services offered off-premises serve an "educational purpose" as defined by the Commission.¹⁰⁶ Commenters should discuss how these wireless Internet access applications are similar or different from other currently eligible services which are used off-site for educational purposes.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980, as amended,¹⁰⁷ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this NPRM, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The IRFA is in Appendix B. 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. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.¹⁰⁸ In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.¹⁰⁹

B. Paperwork Reduction Act Analysis

26. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

¹⁰³ 2008 Sprint Nextel Corporation Comments at 1-2; 2008 Verizon Wireless Reply Comments at 1-5.

¹⁰⁴ 2008 Sprint Nextel Corporation Comments at 1-2; 2008 Verizon Wireless Reply Comments at 3-4.

¹⁰⁵ *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9209, fn.28. Other examples included a library staff person's use of wireless telecommunications service on a library's mobile library unit van, and the use by teachers or other school staff of wireless telecommunications service while accompanying students on a field trip or sporting event. *Id.*

¹⁰⁶ 47 C.F.R. § 54.500(b); *see also Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17. While not used offsite, commenters also seek comment on a service that allows school administrators, traveling from classroom to classroom, to record teacher and pupil assessment information electronically and transmit the data via the Internet to the appropriate database. 2008 Sprint Nextel Corporation Comments at 1-2; 2008 Verizon Wireless Reply Comments at 3-4

¹⁰⁷ 5 U.S.C. § 603.

¹⁰⁸ *See* 5 U.S.C. § 603(a).

¹⁰⁹ *Id.*

C. *Ex Parte* Presentations

27. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹¹⁰ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.¹¹¹ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.¹¹²

D. Comment Filing Procedures

28. We invite comment on the issues and questions set forth in the NPRM and IRFA contained herein. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,¹¹³ interested parties may file comments on this NPRM within 30 days after publication in the Federal Register and may file reply comments within 45 days after publication in the Federal Register. **All filings related to this NPRM shall refer to CC Docket No. 02-6.**

Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (ECFS), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
 - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.
- Paper Filers: 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, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110,

¹¹⁰ 47 C.F.R. §§ 1.1200-1.1216.

¹¹¹ 47 C.F.R. § 1.1206(b)(2).

¹¹² 47 C.F.R. § 1.1206(b).

¹¹³ 47 C.F.R. §§ 1.415, 1.419.

Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

29. Parties must also send a courtesy copy of their filing to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554. Antoinette Stevens's e-mail address is Antoinette.Stevens@fcc.gov and telephone number is (202) 418-7387.

30. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C., 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its website: www.bcpiweb.com, by e-mail at fcc@bcpiweb.com, by telephone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563.

31. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules.¹¹⁴ We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the NPRM in order to facilitate our internal review process.

32. For further information, contact Gina Spade at (202) 418-7105, or James Bachtell at (202) 418-2694 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

V. ORDERING CLAUSES

33. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1 through 4, 201-205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 through 154, 201 through 205, 254, 303(r), and 403, and section, this Notice of Proposed Rulemaking IS ADOPTED.

¹¹⁴ See 47 C.F.R. § 1.49.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A**List of Commenters**

Parties Filing Comments in Response to the July 2006 Public Notice

Commenters

1. Arkansas Department of Information Systems & Arkansas Department of Education
2. Avaya, Inc.
3. ComputerLand Network Technologies of East Texas
4. Council of the Great City Schools
5. Embarq Corporation
6. E-Rate Service Provider Forum
7. Funds for Learning
8. General Communication, Inc.
9. IBM Global Services
10. Iowa Department of Education
11. Leib Lurie
12. North Carolina Public Schools
13. Nsight Telservices
14. On-Tech Consulting, Inc.
15. Sprint Nextel Corporation
16. SECA
17. Tandberg
18. Tropos Networks
19. Wisconsin Department of Administration & Wisconsin Department of Public Instruction

Reply Commenters

1. Alaska Department of Education and Early Development/Alaska State Library
2. AT&T, Inc.
3. Greg Weisiger
4. Kellogg & Sovereign Consulting, LLC
5. North Carolina Department of Public Instruction/North Carolina Office of Information Technology Services
6. NTI Group, Inc.
7. Salina-Spavinaw Telephone Company
8. SECA
9. Wisconsin Department of Public Instruction

Parties Filing Comments in Response to the July 2007 Public Notice

Commenters

1. Computer Consulting & Network Design, Inc.
2. eDimension Consulting
3. Embarq Corporation
4. E-Rate Central
5. eRate Consulting Services LLC
6. E-rate Service Providers Association

7. First Communications, LLC
8. Funds for Learning, LLC
9. Kellogg & Sovereign Consulting, LLC
10. LiveAir Networks
11. Los Angeles Unified School District
12. New York City Department of Education
13. On-Tech Consulting, Inc.
14. South Carolina Budget and Control Board
15. Sprint Nextel Corporation
16. SECA
17. Wisconsin Department of Public Instruction

Reply Commenters

1. Cleveland Metropolitan School District
2. Kellogg & Sovereign Consulting, LLC
3. On-Tech Consulting, Inc.
4. Verizon Wireless

APPENDIX B

Initial Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act (RFA),¹ 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 the NPRM. 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 NPRM provided below in Section B. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³

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

36. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition.⁴ Specifically, under the schools and libraries universal service support mechanism, also known as the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, Internet access, and internal connections.⁵ Since the initial implementation of the E-rate program, USAC has developed various procedures and guidelines, consistent with the Commission's rules and requirements, for applicants to ensure that funding is provided only for eligible services.⁶

37. Pursuant to the Commission's rules, the Commission released Public Notices seeking comment on USAC's proposed ESL for Funding Years 2007 and 2008.⁷ The ESL indicates whether specific products or services may be able to receive discounts under the E-rate program.⁸ The final 2007 and 2008 ESLs and accompanying Public Notices were released on October 19, 2006 and October 19, 2007, respectively.⁹ In revising the 2007 and 2008 ESLs, we noted that the proceedings were limited to determining what services are eligible under the Commission's current rules and were not intended to be a vehicle for changing eligibility rules.¹⁰ Therefore, we indicated that those comments not addressed in the ESLs may be more appropriately filed for the Commission's consideration in the general docket for the E-rate program.¹¹ In this NPRM, we seek comment on the eligibility of certain services under the E-rate

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See 5 U.S.C. § 603(a).

⁴ *Universal Service Order*, 12 FCC Rcd 8776.

⁵ 47 C.F.R. §§ 54.502, 54.503.

⁶ See USAC website, Eligible Services List, <http://www.usac.org/sl/tools/eligible-services-list.aspx> (retrieved July 25, 2008).

⁷ July 2006 Public Notice, 21 FCC Rcd 8412; July 2007 Public Notice, 22 FCC Rcd 14134.

⁸ July 2006 Public Notice, 21 FCC Rcd 8412; July 2007 Public Notice, 22 FCC Rcd 14134.

⁹ 2007 ESL; Oct. 2006 Public Notice, 21 FCC Rcd 12310; 2008 ESL; Oct. 2007 Public Notice, 22 FCC Rcd 18751.

¹⁰ See Oct. 2006 Public Notice at 1; Oct. 2007 Public Notice at 2.

¹¹ See Oct. 2006 Public Notice at 1; Oct. 2007 Public Notice at 2.

program raised by the commenters that may not have been addressed as part of the 2008 or prior ESLs. Specifically, we seek comment on whether to include filtering software, an expanded classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications in the ESL beginning in Funding Year 2009. We also seek comment on whether to retain interconnected Voice over Internet Protocol (interconnected VoIP) as an eligible service for future funding years.

2. Legal Basis

38. The legal basis for this NPRM 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. §§ 151 through 154, 201 through 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

39. 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.¹² The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."¹³ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.¹⁴ 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 SBA.¹⁵ Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.¹⁶ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."¹⁷ Nationwide, as of 2002, there were approximately 1.6 million small organizations.¹⁸ "Small governmental jurisdiction"¹⁹ generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."²⁰ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.²¹ We

¹² 5 U.S.C. § 603(b)(3).

¹³ 5 U.S.C. § 601(6).

¹⁴ 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).

¹⁵ Small Business Act, 15 U.S.C. § 632.

¹⁶ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at 40 (July 2002).

¹⁷ 5 U.S.C. § 601(4).

¹⁸ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹⁹ 47 C.F.R. § 1.1162.

²⁰ 5 U.S.C. § 601(5).

²¹ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”²² Thus, we estimate that most governmental jurisdictions are small.

40. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for internal connections.²³

a. Schools and Libraries

41. Under the E-rate program, which provides universal service support for elementary and secondary schools and libraries, an elementary school is “a non-profit institutional day or residential school that provides elementary education, as determined under state law.”²⁴ A secondary school is defined as “a non-profit institutional day or residential school that provides secondary education, as determined under state law,” and not offering education beyond grade 12.²⁵ For-profit schools and libraries, and schools and libraries with endowments in excess of \$50 million are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools.²⁶ Certain other statutory definitions apply as well.²⁷ The SBA has defined as small entities elementary and secondary schools and libraries having \$6.5 million or less in annual receipts.²⁸ In funding year 2005 (July 1, 2005 to June 30, 2006) approximately 15,050 school districts, 6,547 individual schools, 3,641 library and library consortiums, and 449 school and library consortiums received funding under the E-rate program.²⁹ 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 15,050 school districts, 6,547 individual schools, 3,641 library and library consortiums, and 449 school and library consortiums would be affected annually by the rules proposed in this NPRM, under current operation of the program.

b. Telecommunications Service Providers

42. *Incumbent Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.³⁰ According to Commission data, 1,303 incumbent carriers reported

²² We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

²³ 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

²⁴ 47 C.F.R. § 54.500(c).

²⁵ 47 C.F.R. § 54.500(k).

²⁶ 47 C.F.R. § 54.501.

²⁷ See *id.*

²⁸ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) Code 611110.

²⁹ USAC website, 2005 USAC Annual Report, <http://www.usac.org/res/documents/about/pdf/annual-report-2005.pdf>, at 45 (retrieved July 25, 2008).

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

that they were engaged in the provision of local exchange services.³¹ Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

43. We have included small incumbent local exchange carriers in this RFA analysis. A “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”³² The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not “national” in scope.³³ We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

44. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.³⁴ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.³⁵ According to the Commission’s *2005 Trends Report*, 316 companies reported that they were engaged in the provision of interexchange services.³⁶ Of these 316 IXCs, an estimated 292 have 1,500 or few employees and 24 have more than 1,500 employees.³⁷ Consequently, the Commission estimates that most providers of interexchange services are small businesses that may be affected by the rules and policies adopted herein.

45. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers.³⁸ This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.³⁹ According to the *2005 Trends Report*, 769 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.⁴⁰ Of these 769 CAPs and competitive LECs, an estimated 676 have 1,500 or few employees and

³¹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “Trends in Telephone Service” at Table 5.3, Page 5-5 (June 2005) (*2005 Trends Report*). This source uses data that are current as of October 1, 2004.

³² 5 U.S.C. § 601(3).

³³ See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC, dated May 27, 1999. The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See U.S.C. § 632(a) (Small Business Act); 5 U.S.C.

§ 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

³⁴ 13 C.F.R. § 121.201, NAICS Code 517110.

³⁵ *Id.*

³⁶ *2005 Trends Report*, Table 5.3, page 5-5.

³⁷ *Id.*

³⁸ 13 C.F.R. § 121.201, NAICS Code 517110.

³⁹ *Id.*

⁴⁰ *2005 Trends Report*, Table 5.3, page 5-5.

93 have more than 1,500 employees.⁴¹ Consequently, the Commission estimates that most providers of competitive exchange services are small businesses that may be affected by the rules and policies adopted herein.

46. *Cellular and Wireless Providers.* Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications.⁴² Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees.⁴³ According to the *2005 Trends Report*, 437 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers.⁴⁴ Of these 437 wireless telephony providers, an estimated 260 have 1,500 or few employees and 177 have more than 1,500 employees.⁴⁵ Consequently, the Commission estimates that more than half of the providers of wireless telephony services are small businesses that may be affected by the rules and policies adopted herein.

47. *Other Wireless Services.* Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony.⁴⁶ The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees.⁴⁷ According to the *2005 Trends Report*, 33 providers classified themselves as wireless data carriers or other mobile service providers.⁴⁸ Of these 33 providers, an estimated 32 have 1,500 or few employees and 1 has more than 1,500 employees.⁴⁹ Consequently, the Commission estimates that most providers of wireless services other than wireless telephony are small businesses that may be affected by the rules and policies adopted herein.

48. *Private and Common Carrier Paging.* In the *Paging Third Report and Order*, we developed a small business size standard for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.⁵⁰ A “small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross

⁴¹ *Id.*

⁴² 13 C.F.R. § 121.201, NAICS Code 517212.

⁴³ *Id.*

⁴⁴ *2005 Trends Report*, Table 5.3, page 5-5.

⁴⁵ *Id.*

⁴⁶ The Commission has adopted a number of service-specific definitions of small businesses for various categories of wireless service, principally in the context of the Commission’s rules governing spectrum auctions. See *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, MD Docket No. 01-76, Report and Order, 16 FCC Rcd 13525, Attachment A, paras. 31-54 (2001). For purposes of administering the E-rate program, however, we find that it is appropriate to address the various non-telephony wireless services as a group.

⁴⁷ 13 C.F.R. § 121.201, NAICS Code 517212.

⁴⁸ *2005 Trends Report*, Table 5.3, page 5-5.

⁴⁹ *Id.*

⁵⁰ *Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, GN Docket No. 93-252, PP Docket No. 93-253, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068-70 paras. 291-295 (1997), 62 FR 16004 (Apr. 3, 1997), at paras. 291-295.

revenues that are not more than \$3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.⁵¹ Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to Commission data, 408 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services.⁵² Of those, the Commission estimates that 402 are small, under the SBA approved small business size standard.⁵³

c. Internet Service Providers

49. Under the category of Internet service provider, a small business is one having annual receipts of \$23 million or less.⁵⁴ According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of less than \$10 million, and an additional 111 firms with annual receipts of \$10 million or more.⁵⁵ Thus, the number of On-line Information Services firms that are small under the SBA's \$18 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

d. Vendors of Internal Connections

50. *Communications Equipment Manufacturers.* The Commission has not developed a definition of small entities applicable to the manufacturers of internal network connections. The most applicable definitions of a small entity are the definitions under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing" and "Other Communications Equipment Manufacturing."⁵⁶ According to the SBA's regulations, manufacturers of these types of communications equipment must have 750 or fewer employees in order to qualify as a small business.⁵⁷ The most recent available Census Bureau data indicates that there are 1,187 companies with fewer than 1,000 employees in the United States that manufacture radio and television broadcasting and communications equipment, and 271 companies with less than 1,000 employees that manufacture other communications equipment.⁵⁸ Some of these manufacturers might not be independently owned and operated. Consequently, we estimate that there are fewer than 1,458 small entity internal connections manufacturers that may be affected by the decisions and rules of the present action.

⁵¹ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, PR Docket No. 93-253, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at para. 98 (1999).

⁵² *2005 Trends Report*, Table 5.3, page 5-5.

⁵³ *Id.*

⁵⁴ 13 C.F.R. § 121.201, NAICS Code 518111.

⁵⁵ 1997 Census Report, Establishment and Firm Size, U.S. Census Bureau, U.S. Department of Commerce, Economics and Statistics Administration, Document EC97S51S-SZ, <<http://www.census.gov/prod/ec97/97s51-sz.pdf>>, at 24.

⁵⁶ 13 C.F.R. § 121.201, NAICS Code 334220, 334290.

⁵⁷ *Id.*

⁵⁸ 1997 Economic Census, Manufacturing, Industry Series, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Document No. E97M-3342B (August 1999), at 14; 1997 Economic Census, Manufacturing, Industry Series, Other Communications Equipment Manufacturing, Document No. EC97M-3342C (September 1999), at 14 (both available at <<http://www.census.gov/prod/www/abs/97ecmani.html>>).

51. *Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees.⁵⁹ Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments⁶⁰ in this category.⁶¹ Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61 percent,⁶² so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

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

52. The specific proposals under consideration in the NPRM would not, if adopted, result in additional recordkeeping requirements for small businesses.

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

53. 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.⁶³

54. In this NPRM, we seek comment on a number of issues raised by the commenters that may not have been addressed as part of the ESL proceedings. Specifically, we seek comment on whether to include interconnected VoIP service, filtering software, dark fiber, and other services in future funding years. We tentatively conclude that interconnected VoIP service should be eligible for discounts under the E-rate program. We tentatively conclude that it is administratively and operationally appropriate for interconnected VoIP service requests to be processed as a Priority 1 service. We seek comment on this tentative conclusion. If interconnected VoIP service is deemed an eligible service, we also seek comment on how USAC would implement this tentative conclusion. We believe that the inclusion of interconnected VoIP service will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

⁵⁹ 13 C.F.R. § 121.201, NAICS Code 334220.

⁶⁰ The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical locations for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 1997, which was 1,089.

⁶¹ U.S. Census Bureau, 1997 Economic Census, Industry Series: Manufacturing, “Industry Statistics by Employment Size,” Table 4, NAICS code 334220 (issued August 1999).

⁶² *Id.* Table 5, “Industry Statistics by Industry and Primary Product Class Specialization: 1997.”

⁶³ See 5 U.S.C. § 603(c).

55. We also seek comment on whether several individual services—filtering software, an expanded classification of basic telephone service, dark fiber, text messaging, firewall service, anti-virus/anti-spam software, scheduling services, telephone broadcast messaging, and certain wireless Internet access applications—should be eligible for E-rate program eligibility. We believe that, if eligible, the benefits conferred by making these services eligible will not have an adverse impact on small entities. We welcome, however, comments from parties that have opinions different from those reached in this analysis.

56. We believe our proposals and tentative conclusions will have a similar impact on both small and large schools and libraries, because both small and large schools and libraries will benefit equally from the possible addition of eligible services available under the E-rate program. Because this NPRM does not propose additional regulation for service providers and equipment vendors, these small entities will also experience no additional burden. We believe that small schools and libraries, as well as small service providers and equipment vendors, will benefit if we add more services to the eligible services list because it will open up more opportunities for small businesses to participate in the E-rate program. Therefore, we do not discuss any alternatives to the proposals contained in this NPRM. We invite commenters, in responding to the questions posed and tentative conclusions in the NPRM, to discuss any economic impact that such changes may have on small entities.

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

57. None.