

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: November 4, 2009

Released: November 5, 2009

Comment Date: [30 days after publication in the Federal Register]
Reply Comment Date: [45 days after publication in the Federal Register]

By the Commission: Commissioner McDowell issuing a statement.

I. INTRODUCTION

1. In this notice of proposed rulemaking (NPRM), we propose revising the Federal Communications Commission's (Commission) rules regarding the schools and libraries universal service support mechanism, also known as the E-rate program, to comply with the requirements of the Protecting Children in the 21st Century Act. Among other things, section 215 of the Protecting Children in the 21st Century Act, titled Promoting Online Safety in Schools, revised section 254(h)(5)(B) of the Communications Act of 1934, as amended (the Act), by adding a new certification requirement for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program. We also propose to revise related Commission rules to reflect existing statutory language more accurately.

II. BACKGROUND

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounted eligible telecommunications, Internet access, and internal connections services. In accordance with the Children's Internet Protection Act (CIPA), to be eligible for E-rate discounts for Internet access and internal connection services, schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures. As required by CIPA, section 54.520(c)(i) of the Commission's rules requires that the Internet safety policy must include a technology protection measure that protects against

1 Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008).
2 See id.; 47 U.S.C. § 254(h)(5)(B).
3 Protecting Children in the 21st Century Act § 215.
4 47 C.F.R. §§ 54.501-54.503.
5 Congress included the Children's Internet Protection Act (CIPA) as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 §§ 1701 et seq. Section 1721 of CIPA amends section 254(h) of the Act. 47 U.S.C § 254(h).

Internet access by both adults and minors to visual depictions that are (1) obscene, or (2) child pornography, or, with respect to use of the computers by minors, (3) harmful to minors.⁶ In addition, section 54.520(c)(i) requires the entity to certify that its policy of Internet safety includes monitoring the online activities of minors.⁷ Applicants make their CIPA certifications annually on the Confirmation of Receipt of Services Form (FCC Form 486).⁸

3. Among other things, the Protecting Children in the 21st Century Act revised section 254(h)(5)(B) of the Act by adding a new certification for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program.⁹ In addition to the existing CIPA certifications required of schools in section 254(h)(5) of the Act, the Protecting Children in the 21st Century Act requires the school, school board, local educational agency, or other authority with responsibility for administration of the school to certify that it “as part of its Internet safety policy is educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.”¹⁰

III. DISCUSSION

A. Protecting Children in the 21st Century Act Rule Revisions

4. We seek comment on revising section 54.520(c)(i) of the Commission’s rules to include the new certification requirement added by the Protecting Children in the 21st Century Act. We propose to revise section 54.520(c)(i) to add a certification provision that a school’s Internet safety policy must include educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.¹¹ We seek comment on this proposal.

5. In addition, we tentatively conclude that a recipient of E-rate funding for Internet access and internal connections should be required to certify, on its FCC Form 486 for funding year 2010, that it has updated its Internet safety policy to include plans for educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response, as required by the Protecting Children in the 21st Century Act. We note that the next opportunity for applicants to certify to the CIPA requirements, including this new certification, would be on the FCC Form 486 for funding year 2009, which would typically be filed after the start of the 2009 funding year (i.e., after July 1, 2009).¹² Schools may, however, require

⁶ 47 U.S.C. § 254(h); 47 C.F.R. § 54.520(c)(i).

⁷ 47 U.S.C. § 254(h)(5)(B)(i); 47 C.F.R. § 54.520(c)(i). The statute does not extend this requirement to libraries. 47 U.S.C. § 254(h)(5)(B)(i).

⁸ See FCC Form 486 at 5, available at the USAC website, http://www.universalservice.org/_res/documents/sl/pdf/486.pdf (retrieved Nov. 5, 2009).

⁹ Protecting Children in the 21st Century Act § 215.

¹⁰ *Id.*

¹¹ See Appendix A.

¹² Specifically, the FCC Form 486 must be submitted no later than 120 days after the service start date listed on the FCC Form 486, or no later than 120 days after the date of the applicant’s funding commitment decision letter, whichever is later, for the applicant to receive discounts retroactively to the service start date. See <http://www.universalservice.org/sl/applicants/step10/form486-filing-information.aspx> (retrieved Nov. 5, 2009); FCC Form 486 Instructions at 4, available at the USAC website, http://www.universalservice.org/_res/documents/sl/pdf/486i.pdf (retrieved Nov. 5, 2009).

additional time to amend their Internet safety policies and implement procedures to comply with the new requirements after the completion of this rulemaking proceeding. In addition, we note that Congress did not set a timeframe for implementation of the new certification. We seek comment on this tentative conclusion.

B. Other Proposed Rule Revisions

6. We also seek comment on revising certain rules to reflect more accurately existing statutory language regarding the CIPA certifications.¹³

7. First, we propose to revise the rules so that the definitions of elementary and secondary schools are consistent throughout. At this time, rule sections 54.500, 54.501, and 54.504 all contain differently worded definitions of elementary and secondary schools. We propose to define elementary and secondary schools in section 54.500 of the rules, and to revise sections 54.501 and 54.504 to refer to section 54.500 definitions.¹⁴ We seek comment on this proposal.

8. Second, we propose to revise section 54.520(a)(1) to add “school board” to the definition of entities that are subject to CIPA certifications.¹⁵ Although section 254(h) of the Act includes the term “school board” as an entity to which the CIPA certifications apply, our rules do not include this term.¹⁶ We seek comment on this proposal.

9. Third, we propose to revise section 54.520(a)(4) to add the existing statutory definitions of the terms “minor,” “obscene,” “child pornography,” “harmful to minors,” “sexual act,” “sexual contact,” and “technology protection measure,” consistent with the statute.¹⁷ Section 54.520 of our rules does not currently include the definitions of these terms, but instead refers back to the statute.¹⁸ Including the statutory definitions of these terms in the definitions section of our rules could help clarify the CIPA requirements. We seek comment on this proposal.

10. Fourth, we propose to revise sections 54.520(c)(1)(i) and 54.520(c)(2)(i) consistent with sections 254(h)(5)(D), (h)(6)(D), (h)(5)(B)(ii), (C)(ii), and (h)(6)(B)(ii), (C)(ii) of the Act to require that the technology protection measures be in operation during any use of computers with Internet access, and that the technology protection measures may be disabled by an authorized person, during adult use, to enable access for bona fide research or other lawful purpose.¹⁹ The statute requires that schools and libraries certify that they are enforcing the operation of the technology protection measures during the use

¹³ See Appendix B.

¹⁴ See Appendix B, § 54.500(c), (k), § 54.501(b), § 54.504(b)(2)(i), (c)(1)(i).

¹⁵ See Appendix B, § 54.520(a)(1).

¹⁶ See 47 U.S.C. § 254(h)(5)(A)(i).

¹⁷ See Appendix B, § 54.520(a)(4); 47 U.S.C. § 254(h)(7)(D)-(I). We note that the definitions set forth in section 254 may reference other statutory provisions. See e.g., 47 U.S.C. § 254(h)(7)(E) (defining obscene as having the “meaning given such term in section 1460 of title 18, United States Code”).

¹⁸ See 47 C.F.R. § 54.520(a)(4) (“The terms ‘minor,’ ‘obscene,’ ‘child pornography,’ ‘harmful to minors,’ and ‘technology protection measure’ as used in this section, are defined in the Children’s Internet Protection Act section 1721(c).”).

¹⁹ See Appendix B, § 54.520(c)(1)(i) and 54.520(c)(2)(i); 47 U.S.C. § 254(h)(5)(D), (6)(D), (h)(5)(B)(ii), (C)(ii), and (h)(6)(B)(ii), (C)(ii).

of computers by minors and adults.²⁰ This enforcement requirement is not currently included in the Commission's rules. We seek comment on this proposal.

11. In addition, sections 254(h)(5)(D) and (h)(6)(D) of the Act permit a school or library administrator, supervisor, or other person authorized by the certifying authority to disable an entity's technology protection measure to allow bona fide research or other lawful use by an adult.²¹ We note that in the *CIPA Order*, although the Commission acknowledged this statutory provision, it declined to adopt any implementing rule provision, stating that

[w]e decline to promulgate rules mandating how entities should implement these provisions. Federally-imposed rules directing school and library staff when to disable technology protection measures would likely be overbroad and imprecise, potentially chilling speech, or otherwise confusing schools and libraries about the requirements of the statute. We leave such determinations to local communities, whom we believe to be most knowledgeable about the varying circumstances of schools or libraries within those communities.²²

The Commission stated that its decision was supported by commenter concerns about the difficulty of school or library staff in determining whether an adult user was engaging only in bona fide research or other lawful purposes.

12. We propose to revise the rules to codify this permission that a school or library administrator, supervisor, or other person authorized by the certifying authority may disable an entity's technology protection measure, during use by an adult, to allow bona fide research or other lawful use.²³ We do not propose to adopt rules that mandate specific implementation methods, but merely mirror the statutory language. This will make clear that the statutory provision exists without imposing undue burdens on the entities to which it applies.²⁴ We seek comment on whether it is sufficient to adopt this rule without specifying federal guidelines for determination of what constitutes bona fide research or other lawful use. We seek comment on whether this statutory provision imposes an undue burden on E-rate beneficiaries, particularly on small entities, and if so, we seek comment on the least burdensome method of implementing this provision. For example, we note that the *CIPA Order* discussed leaving these determinations to local communities because they would be most knowledgeable about the varying circumstances of schools or libraries within those communities. We believe that our proposed rules are consistent with that position. We also seek comment on any other methods of implementing this statutory provision.

13. Fifth, we propose to revise sections 54.520(c)(1)(iii)(B), (2)(iii)(B), and (3)(i)(B) to clarify that it is only in the first year of participation in the E-rate program that an entity may certify that it will complete all CIPA requirements by the next funding year and still receive funding for that year, as adopted in the *CIPA Order*.²⁵ The text of the existing rules contains an option for an entity to certify that it will come into compliance with the CIPA requirements by the next funding year, but does not specify

²⁰ See 47 U.S.C. § 254(h)(5)(B)(ii), (C)(ii); 254(h)(6)(B)(ii), (C)(ii).

²¹ 47 U.S.C. § 254(h)(5)(D), (6)(D).

²² *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8203-04, para. 53 (2001) (*CIPA Order*).

²³ See Appendix B, § 54.520(c)(1)(i) and 54.520(c)(2)(i).

²⁴ 47 U.S.C. § 254(h)(5)(D), (6)(D).

²⁵ See Appendix B, § 54.520(c)(1)(iii)(B), (2)(iii)(B), (3)(i)(B); *CIPA Order*, 16 FCC Rcd at 8191-92, paras. 17-18.

that this certification option is only applicable to entities that are applying for E-rate discounts for the first time. We seek comment on this proposal.

14. Sixth, we propose to add a rule provision to require local determination of what matter is inappropriate for minors.²⁶ Among other things, the statute states that a determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library or other authority responsible for making the determination.²⁷ Although this is mandated by the statute, it is not currently in the Commission's rules. We seek comment on this proposal. We also seek comment on whether this requirement will be burdensome, particularly for small entities. If so, we seek comment on how to reduce this statutorily mandated burden.

15. Seventh, we propose to add a rule provision requiring each Internet safety policy that is adopted pursuant to section 254(l) of the Act to be made available to the Commission upon request by the Commission.²⁸ Although this requirement is mandated by the statute, it is not currently in the Commission's rules.²⁹ We seek comment on this proposal. We also seek comment on the manner in which the Internet safety policy should be made available to the Commission and on the timing of such response. We also seek comment on the burdens that this requirement may impose on respondents, particularly on small entities, and on how the burdens may be reduced.

16. Finally, we propose to add a rule provision requiring public notice and hearing to address any proposed Internet safety policy adopted pursuant to CIPA.³⁰ Although this is mandated by the statute and was discussed in the *CIPA Order*, there is no provision addressing this issue in the existing rules.³¹ As discussed in the *CIPA Order*, this public notice and hearing requirement only applies to entities that have not already provided such notice and hearing relating to an Internet safety policy and technology protection measure.³² We seek comment on this proposal.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended,³³ 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 C.³⁴ 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. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for

²⁶ See Appendix B, § 54.520(c)(4).

²⁷ See 47 U.S.C. § 254(l)(2).

²⁸ See Appendix B, § 54.520(c)(5).

²⁹ See 47 U.S.C. § 254(l)(3).

³⁰ See Appendix B, § 54.520(h).

³¹ See 47 U.S.C. § 254(h)(5)(A)(iii); (h)(6)(A)(iii); (l)(1)(B); *CIPA Order*, 16 FCC Rcd at 8202-03, paras. 49-52.

³² See *CIPA Order*, 16 FCC Rcd at 8202, para. 51.

³³ 5 U.S.C. § 604.

³⁴ See Appendix C.

Advocacy of the Small Business Administration.³⁵ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³⁶

B. Paperwork Reduction Act Analysis

18. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995.³⁷ In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”³⁸

C. Ex Parte Presentations

19. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.³⁹ 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.⁴⁰ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.⁴¹

D. Comment Filing Procedures

20. Pursuant to sections 1.415 and 1.419 of the Commission’s rules,⁴² interested parties may file comments and reply comments regarding the NPRM on or before the dates indicated on the first page of this document. All filings should 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 e-Rulemaking Portal; or (3) by filing paper copies.⁴³

21. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal e-Rulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and CC Docket No. 02-6. Parties may also submit an electronic comment by Internet e-mail. To get filing

³⁵ See 5 U.S.C. § 603(a).

³⁶ *Id.*

³⁷ Paperwork Reduction Act of 1995, Pub. L. No. 104-13, 109 Stat. 163 (1995).

³⁸ Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, 116 Stat. 729 (2002); 44 U.S.C. § 3506(c)(4).

³⁹ 47 C.F.R. §§ 1.1200-1.1216.

⁴⁰ 47 C.F.R. § 1.1206(b)(2).

⁴¹ 47 C.F.R. § 1.1206(b).

⁴² 47 C.F.R. §§ 1.415, 1.419.

⁴³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

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.

22. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. 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, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

23. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 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.

24. 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 should be addressed to 445 12th Street, S.W., Washington D.C. 20554.

25. Parties should send a copy of their filings to Anita Cheng, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5-A445, 445 12th Street, S.W., Washington, D.C. 20554, or by e-mail to anita.cheng@fcc.gov. Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

26. Documents in CC Docket No. 02-6 will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

27. Accessible Formats: 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) or 202-418-0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov; phone: 202-418-0530 or TTY: 202-418-0432.

V. ORDERING CLAUSES

28. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 4(i), 201-205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, and 403, and section 1.411 of the Commission's rules, 47 C.F.R. § 1.411, this notice of proposed rulemaking IS ADOPTED.

29. 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.

30. IT IS FURTHER ORDERED, pursuant to sections 1.103(a) and 1.4(b)(1) of the Commission's rules, 47 C.F.R. §§ 1.103(a), 1.4(b)(1), that this notice of proposed rulemaking SHALL BE EFFECTIVE on the date of publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Protecting Children in the 21st Century Act Proposed Rule Revisions

Part 54 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

A. Subpart F- Universal Service Support for Schools and Libraries. The following sections of Subpart F are revised as follows:

1. Amend § 54.520 to read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

* * * *

(c)(1)(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. § 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. This Internet safety policy must also include monitoring the online activities of minors and must educate minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

APPENDIX B

Other Proposed Rule Revisions

Part 54 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

B. Subpart F- Universal Service Support for Schools and Libraries. The following sections of Subpart F are revised as follows:

1. Amend § 54.500 to read as follows:

Section 54.500 Terms and Definitions

* * * * *

(c) *Elementary school.* An “elementary school” means an elementary school as defined in 20 U.S.C. § 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

* * * * *

(k) *Secondary school.* A “secondary school” means a secondary school as defined in 20 U.S.C. § 7801(38), a non-profit institutional day or residential school that provides secondary education, as determined under state law. A secondary school does not offer education beyond grade 12.

2. Amend § 54.501 to read as follows:

Section 54.501 Eligibility for services provided by telecommunications carriers.

* * * * *

(b) *Schools.* (1) Only schools meeting the statutory definition of “elementary school” or “secondary school” as defined in section 54.500(c) or (k) of these rules, and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts in telecommunications and other supported services under this subpart.

3. Amend § 54.504 to read as follows:

Section 54.504 Requests for services.

* * * * *

(b)(2)(i) The schools meet the statutory definition of elementary or secondary schools in section 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

* * * * *

(c)(1)(i) The schools meet the statutory definition of elementary or secondary schools in 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding \$50 million.

4. Amend § 54.520 to read as follows:

Section 54.520. Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

* * * * *

54.520(a)(1). School. For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

* * * * *

54.520(a)(4). Statutory definitions.

(i) The term “minor” means any individual who has not attained the age of 17 years.

(ii) The term “obscene” has the meaning given such term in 18 U.S.C. § 1460.

(iii) The term “child pornography” has the meaning given such term in 18 U.S.C. § 2256.

(iv) The term “harmful to minors” means any picture, image, graphic image file, or other visual depiction that--

(A) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms “sexual act” and “sexual contact” have the meanings given such terms in 18 U.S.C. § 2246.

(vi) The term “technology protection measure” means a specific technology that blocks or filters Internet access to the material covered by a certification under subparagraph (c) of this section.

* * * * *

(c)(1)(i). The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The technology protection measure must be enforced during use of computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under subparagraph (c)(1) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors and must educate minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.

* * * * *

(c)(1)(iii)(B) Pursuant to the Children’s Internet Protection Act, as codified at 47 U.S.C. § 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(c)(2)(i). The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The technology protection measure must be enforced during use of computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under subparagraph (c)(1) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

* * * * *

(c)(2)(iii)(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. § 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(c)(3)(i)(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. § 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first year of participation in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(c)(4) Local determination of content. A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, local educational agency, library, or other authority; or consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.

(c)(5) Availability for review. Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request for the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

(h) Public notice; hearing. A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

APPENDIX C

Initial Regulatory Flexibility Analysis

1. 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 notice of proposed rulemaking (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. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the NPRM (or summary thereof) will be published in the Federal Register.³

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

2. In the NPRM, we seek comment on revising the Commission's rules to add a new certification for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program, pursuant to the mandate of the Protecting Children in the 21st Century Act.⁴ Such action is necessary to comply with the Protecting Children in the 21st Century Act.

2. Legal Basis

3. The legal basis for the NPRM is contained in sections 1, 4(i), 201 through 205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201-205, 214, 254, 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 May Apply

4. 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.⁵ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁶ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁷ A small business concern is one which: (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.⁸

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 *id.*

⁴ Protecting Children in the 21st Century Act, Pub. L. No. 110-385, § 215, 122 Stat. 4096 (2008).

⁵ 5 U.S.C. § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), 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."

⁸ Small Business Act, 15 U.S.C. § 632.

5. The Commission has determined that the group of small entities directly affected by the rules herein includes eligible schools and libraries.⁹ Further descriptions of these entities are provided below.

6. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses according to SBA data.¹⁰

7. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.¹¹

8. *Small Governmental Jurisdictions.* The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹² Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.¹³ We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”¹⁴ Thus, we estimate that most governmental jurisdictions are small.

9. As noted, “small entity” includes non-profit and small government entities. 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.”¹⁵ A secondary school is generally 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 12.¹⁶ 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.¹⁷ Certain other statutory definitions apply as well.¹⁸ The SBA has defined for-profit, elementary and secondary schools and libraries having \$6 million or less in annual receipts as small entities.¹⁹ In funding year 2007 approximately 105,500 schools and 10,950 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 size standard,

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

¹⁰ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

¹¹ Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

¹² 5 U.S.C. § 601(5).

¹³ U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, page 272, Table 415.

¹⁴ 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.*

¹⁵ 47 C.F.R. § 54.500(b).

¹⁶ 47 C.F.R. § 54.500(j).

¹⁷ 47 C.F.R. § 54.501.

¹⁸ See *id.*

¹⁹ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) codes 611110 and 519120 (NAICS code 519120 was previously 514120).

we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

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

10. Schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible for E-rate discounts for Internet access and internal connection services.²⁰ Pursuant to the mandate in the Protecting Children in the 21st Century Act, the NPRM proposes to revise section 54.520(c)(i) of the Commission's rules to add a provision that a school's Internet safety policy must include educating minors about appropriate online behavior, including interacting with other individuals on social networking websites and in chat rooms and cyberbullying awareness and response.²¹

11. In addition, this NPRM revises certain rules to more accurately reflect the provisions of the Act with regard to certifications made pursuant to the Children's Internet Protection Act (CIPA).²² Specifically, the rule revisions that may affect small entities require: (1) schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults; (2) schools and libraries to disable technology protection measures to enable access for bona fide research or other lawful purpose; (3) local determination of what matter is inappropriate for minors; (4) schools and libraries to make available to the Commission, upon request by the Commission, any Internet safety policy that is adopted pursuant to section 254(l) of the Act; and (5) schools and libraries to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA.²³

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

12. 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.²⁴

13. With regard to the new certification requirements pursuant to the Protecting Children in the 21st Century Act, we do not believe that there will be significant economic impact on small entities. Currently, schools and libraries file the FCC Form 486 to certify their compliance with the requirements regarding Internet safety policies and technology protection measures.²⁵ Because schools and libraries will continue to use the same FCC Form 486 to certify their compliance with these requirements, there will be no additional reporting requirements.

²⁰ 47 C.F.R. § 54.520(c).

²¹ See Appendix A.

²² 47 U.S.C. § 254(h).

²³ See *supra* Appendix B.

²⁴ See 5 U.S.C. § 603(c).

²⁵ See FCC Form 486, available at http://www.universalservice.org/_res/documents/sl/pdf/486.pdf (retrieved Nov. 5, 2009).

14. With regard to the remaining rule provisions, we believe that several of the rule revisions will have no economic impact on small entities because they merely clarify existing definitions and existing requirements.²⁶ For example, the revisions regarding the definitions of elementary and secondary schools did not change the definitions, but merely clarified that the same definitions were utilized throughout the rules, or codified existing statutory definitions.

15. Several other rule revisions will have little economic impact on small entities because schools and libraries have already implemented these measures. We acknowledge that the existing rules do not contain provisions requiring schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults or to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA. However, as a practical matter, current E-rate beneficiaries have already implemented these requirements, even though these statutory requirements are not specifically stated in the text of the Commission's rules. Schools and libraries would have been unable to make the proper CIPA certifications unless the technology protection measures have been enforced during computer use by minors and adults. In addition, the requirement to provide public notice and hearing was discussed extensively in the *CIPA Order* even though an implementing rule was not adopted.²⁷

16. The requirement that schools and libraries may disable technology protection measures to enable access for bona fide research or other lawful purpose may impose a burden on small entities. As stated in the NPRM, there are concerns about the difficulty of school or library staff determining whether an adult user was engaging only in bona fide research or other lawful purposes. Accordingly, the NPRM seeks comment on ways to implement this statutory mandate while keeping the burdens on entities at a minimum. The NPRM also seeks comment on ways to implement the rule revision requiring local determination of what matter is inappropriate for minors while minimizing burdens. Finally the NPRM proposes to require, pursuant to the statute, that schools and libraries make available to the Commission, upon request by the Commission, any Internet safety policy that is adopted pursuant to section 254(l) of the Act. Because this may have an impact on small economic entities, the NPRM proposes several methods of making the Internet safety policy available to the Commission, as well as seeking comment on ways to reduce this burden on respondents.

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

17. None.

²⁶ See Appendix B, § 54.500, 54.501, 54.504, 54.520(a)(4), 54.520(c)(1)(iii)(B), 54.520(c)(2)(iii)(B), 54.520(c)(3)(i)(B).

²⁷ *Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182, 8202-03, paras. 49-52 (2001) (*CIPA Order*).

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6

I am pleased to support this Notice of Proposed Rulemaking which proposes to update the Commission's rules to comport with statutory requirements.²⁸ The Internet is an extremely important educational tool for students. Due to the widespread use of the Internet by minors both in school and at home, it is imperative that they be educated regarding the dangers that they may encounter online. Schools can play a critical role in supplementing this education. I commend the Chairman for updating the Commission's rules on this topic, and I look forward to hearing from interested parties.

²⁸ Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008) and Children's Internet Protection Act (CIPA) as part of the Consolidated Appropriations Act, 2001, Pub. L. No. 106-554 §§ 1701 *et seq.*