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	)	
	)	
A National Broadband Plan	)	GN Docket No. 09-51
For Our Future	)	

NOTICE OF PROPOSED RULEMAKING

Adopted: May 20, 2010 **Released: May 20, 2010**

Comment Date: (30 days from publication in the Federal Register)
Reply Comment Date: (45 days from publication in the Federal Register)

By the Commission: Chairman Genachowski and Commissioners Copps, McDowell, Clyburn, and Baker issuing separate statements.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION 1
II. STREAMLINING THE APPLICATION PROCESS 11
A. Background 11
B. Discussion 17
1. Technology Plans 19
2. Competitive Bidding Process 22
3. Application Process Streamlining 33
4. Discount Matrix Streamlining 35
III. PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES 42
A. Background 42
B. Discussion 45
1. Wireless Services Outside of School 46
2. Expanded Access to Low-Cost Fiber 53
3. Expanding Access for Residential Schools that Serve Unique Populations 56
4. Targeting Supported Services for Broadband 59
IV. EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM 61
A. Background 61
B. Discussion 67
1. Predictable Internal Connections Funding for More Schools and Libraries 69
2. Indexing the Annual Funding Cap to Inflation 85
V. CREATING A PROCESS FOR DISPOSAL OF OBSOLETE EQUIPMENT 87
A. Background 87
B. Discussion 90
VI. PROCEDURAL MATTERS 98
VII. ORDERING CLAUSES 106

APPENDIX A – Proposed Rules
APPENDIX B – List of Commenters from *NBP Public Notice #15*
APPENDIX C – List of Commenters from *Second FNPRM*
APPENDIX D – List of Commenters from *Comprehensive Review NPRM*
APPENDIX E – Initial Regulatory Flexibility Analysis

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we initiate one in a series of rulemaking proceedings to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.[1] The Joint Statement on Broadband, released with the National Broadband Plan, identifies comprehensive universal service fund (USF) reform as an essential goal for the Federal Communications Commission (Commission).[2] Upgrading the E-rate program (more formally known as the schools and libraries universal service support mechanism), the second largest component of USF, represents a significant initiative to meet that goal. With more than a decade of experience with the current E-rate program and a national imperative to maximize the utilization of broadband, it is time to re-examine what is working well and what can be improved in the current program. This NPRM also seeks comment on several potential reforms that would cut red tape by eliminating rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

2. Access to broadband at key anchor institutions, including schools and libraries, is a critical component of enabling everyone in this country to develop the digital skills they need to prosper in the 21st century, as important functions of everyday life – including applying for jobs, interacting with federal, state and local government agencies, and searching for health-related information — increasingly migrate online. Broadband is also an important tool to help educators, parents and students meet challenges in education. The long-term success of our workforce and our country depend upon improving learning for both K-12 students and adults. With broadband, students and teachers can expand instruction beyond the confines of the physical classroom and the traditional school day. Broadband can provide more customized learning opportunities, enabling students and adults to access high-quality, low-cost and personally relevant educational materials. Broadband can also improve the flow of educational information, allowing teachers, parents and organizations to make better decisions tied to each student's needs and abilities. Simply put, broadband can enable new ways of teaching and learning, as well as new ways for individuals to interact with government institutions.

3. Since its inception 12 years ago, the E-rate program has been extremely successful in enabling virtually all schools and libraries to provide telecommunications services and Internet access to

[1] Federal Communications Commission, *Connecting America: The National Broadband Plan*, (rel. Mar. 16, 2010) (National Broadband Plan or NBP), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited May 20, 2010). In this NPRM, we incorporate comments filed in response to the NBP Public Notice #15, the *Comprehensive Review NPRM,* and the *Schools and Libraries Second NPRM. See Comment Sought on Broadband Needs in Education, Including Changes to E-Rate Program to Improve Broadband Deployment, NBP Public Notice #15*, GN Docket No. 09-51, 24 FCC Rcd 13560 (2009) (*NBP Public Notice #15*); *Comprehensive Review of Universal Service Fund Management, Administration, and Oversight*, WC Docket No. 05-195, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11308 (2005) (*Comprehensive Review NPRM*); *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 (2003) (*Second FNPRM*). A list of the commenters and reply commenters is included in Appendices B-D. *See* Appendices B-D.

[2] *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para. 3 (rel. March 16, 2010) (*Joint Statement on Broadband*).

students and communities across America.[3] But there is more to be done to ensure that this program helps our children and communities prepare for the high-skilled jobs of the future and take advantage of the modern communications era.

4. This NPRM represents the first step in increasing the availability and use of broadband by children and our communities through the E-rate program to create more opportunities for educational advances, economic growth, government delivery of services, and civic engagement. Other reforms recommended in the National Broadband Plan will be proposed in future rulemakings. Our intent is to proceed thoughtfully in stages to allow participants – both recipients and service providers – time to adjust and give the Commission time to evaluate the impact of individual reforms before proceeding to the next step.

5. The reforms proposed in this NPRM fall into three conceptual categories: streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom. Streamlining the application process can reduce the cost of participating in the program and thereby make the program more accessible, particularly to smaller school districts and libraries that are often located in more rural areas and do not have dedicated staff to manage E-rate applications and related activities. Millions of households in rural areas do not have access to broadband at home;[4] for those areas, using broadband at schools and libraries may be the only option. It is critical that we simplify the process of participating in E-rate so that rural communities, as well as urban areas, can easily participate and obtain higher bandwidth services that will support more advanced applications.

6. By giving applicants more flexibility in selecting broadband services funded by E-rate, schools and libraries in both urban and rural areas will be able to leverage their finite E-rate dollars to get more services for less money. By focusing spending on more efficient uses that better serve the current needs of schools and libraries, E-rate recipients will be able to obtain higher bandwidth services that will enable more customized interactive online learning to engage increasingly computer-savvy students. For example, proposed reforms to expand access to lower-cost fiber will benefit communities that have invested in fiber infrastructure that can be used to provide broadband to their schools and libraries.

7. The E-rate program is currently subject to an annual funding cap of $2.25 billion, but demand for funding far exceeds available funding every year. This year, funding year 2010, approximately $2 billion alone was requested for telecommunications and internet access, leaving very little funding available for the internal connections that are necessary to bring higher bandwidth connectivity from a single location in the school to every classroom.[5] It is likely this year that only school districts with

---

[3] The National Center for Education Statistics (NCES) found nearly 100 percent of public schools in the United States had Internet access, and 97 percent of these schools used broadband connections to access the Internet. "Internet Access in U.S. Public Schools and Classrooms: 1994-2005," U.S. Dept. of Education, Institute of Education Sciences, NCES 2007-020, at 4-5 (NCES Study), available at http://nces.ed.gov/Pubsearch/pubsinfo.asp?pubid=2007020 (last visited May 20, 2010).

[4] *See* Testimony of Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, before the House Commerce Committee Hearing "The National Broadband Plan: Deploying Quality Broadband Services to the Last Mile" (Apr. 21, 2010) (estimating that between 14 and 24 million people lack access to terrestrial broadband at home); National Broadband Plan at 136 (14 million lack access to infrastructure capable of delivering broadband services). *See generally* Omnibus Broadband Initiative, The Broadband Availability Gap (OBI Technical Paper No. 1) at 1-3, available at http://www.broadband.gov/plan/broadband-working-reports-technical-papers.html (last visited May 20, 2010).

[5] *See* Letter from Mel Blackwell, Schools and Libraries Division, USAC, to Sharon Gillett, Wireline Competition Bureau (dated Mar. 10, 2010), available at
(continued….)

nearly 75 percent of students eligible to receive free or reduced price school lunch will receive any funding for internal connections. In future years, in fact, it is likely that requests for telecommunications and internet access services will exceed the cap, with the result that no funding for internal connections will be available for any applicants. This NPRM seeks comment on how to provide stability and certainty for the funding of internal connections that are necessary to deliver higher bandwidth services to the classroom and how to expand access to funding for internal connections for schools and libraries serving impoverished populations. The NPRM seeks comment on indexing the funding cap to inflation, which would make additional funding available to support current and new services to deliver the full benefits of the Internet to all.

8. We also are taking other steps outside of the rulemaking process to make the E-rate program more user-friendly, working closely with the Universal Service Administrative Company (USAC), which administers the E-rate program under Commission direction. We soon will be seeking comment on revisions to our application forms. USAC is also significantly upgrading the quality of its online forms system.[6] The Bureau is also reviewing USAC's program integrity procedures to ensure that requests for information are targeted and not duplicative.

9. In sum, this NPRM seeks comment on a package of potential reforms to the E-rate program that could be implemented in funding year 2011 (July 1, 2011 – June 30, 2012). These proposed reforms include:

- streamlining the application and competitive bidding processes for telecommunications and internet access in an effort to further reduce the administrative burden on applicants, while at the same time maintaining appropriate safeguards to mitigate potential waste, fraud, and abuse;
- codifying the requirement developed in Commission precedent that competitive bidding processes be "fair and open" to enhance the Commission's ability to enforce its rules in cases involving waste, fraud and abuse;
- simplifying the way schools calculate their discounts and conforming the E-rate definition of "rural" to the Department of Education's definition;
- supporting 24/7 online learning by eliminating the current rule that requires schools to allocate the cost of wireless Internet access service between funded, in-school use and non-funded uses away from school premises;
- providing greater flexibility to recipients to choose the most cost-effective bandwidth solutions for their connectivity needs by allowing the leasing of low-cost fiber from municipalities and other entities that are not telecommunications carriers;
- expanding the reach of broadband in residential schools that serve populations facing unique challenges, such as Tribal schools or schools for children with physical, cognitive, or behavioral disabilities;

(Continued from previous page)
http://www.universalservice.org/_res/documents/sl/pdf/FY2010%20Demand%20Estimate%20Letter.pdf (last visited May 20, 2010); 47 C.F.R. § 54.507(a).

[6] USAC has outlined a timeline for the implementation of the upgrades, including replacing the online FCC Form 471 with one allowing users to copy data from the previous year and eventually putting all program forms online, including the FCC Form 500. *See* January 25, 2010 Minutes, Schools & Libraries Committee Meeting; available at http://www.usac.org/_res/documents/about/pdf/board-minutes/sl-committee/2010/012510-SL-Meeting-Minutes.pdf (last visited May 20, 2010).

- creating a new, predictable funding mechanism for internal connections so that more schools and libraries have the ability to use the most technologically advanced applications, including video streaming to the classroom, to provide superior learning opportunities;
- indexing the current $2.25 billion cap on E-rate disbursements to inflation to maintain the purchasing power of the current program and enable continued support for high speed broadband and internal connections in the future; and
- creating a process for schools and libraries to dispose of obsolete equipment without running afoul of the prohibition on reselling equipment and services purchased using E-rate funds.

Each of these proposals is explained further below. We encourage input from Tribal governments on all of these issues, and specifically ask whether there are any unique circumstances in Tribal lands that would necessitate a different approach.[7] Similarly, we request comment on whether there are any unique circumstances in insular areas that would necessitate a different approach.

II. STREAMLINING THE APPLICATION PROCESS

A. Background

10. Under the E-rate program, eligible schools and libraries may receive discounts for eligible services used for educational purposes.[8] To request funding, schools and libraries must follow an application process that includes developing a technology plan, seeking competitive bids, and filing application forms.

11. An applicant applying for services other than basic telecommunications services must first develop a technology plan.[9] The technology plan must include five elements, including a strategy for

[7] For the purposes of this NPRM, we define "Tribal lands" as any federally recognized Indian tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and Indian allotments. The term "Tribe" means any American Indian or Alaska Native Tribe, Band, Nation, Pueblo, Village or Community which is acknowledged by the Federal government to have a government-to-government relationship with the United States and is eligible for the programs and services established by the United States. *See Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, 16 FCC Rcd 4078, 4080 (2000). Thus, "Tribal lands" includes American Indian Reservations and Trust Lands, Tribal Jurisdiction Statistical Areas, Tribal Designated Statistical Areas, and Alaska Native Village Statistical Areas, as well as the communities situated on such lands. This would also include the lands of Native entities receiving Federal acknowledgement or recognition in the future. Although Native Hawaiians are not currently members of federally-recognized Tribes, we also seek comment on whether there are any unique circumstances that would warrant an alternative approach in Native Hawaiian homelands.

[8] 47 C.F.R. §§ 54.502, 54.503.

[9] *See* 47 C.F.R. § 54.504; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9054, para. 529 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). The Commission currently does not require a technology plan if the applicant is seeking discounts only for basic telecommunications services. *See Request for Review 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, at para. 11 (2001). Basic telecommunications services include digital transmission services, paging services, telephone service, telephone service components, and other eligible telecommunications services. *See* USAC website, Schools and Libraries, Eligible Services List for Funding Year 2010, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf (last visited May 20, 2010).

using telecommunications and information technology to improve education or library services.[10] To ensure that the technology plan is based on the reasonable needs and resources of the applicant and is consistent with the goals of the E-rate program, the Commission requires technology plans to be approved by either the applicant's state or another USAC-certified technology plan approver.[11] An applicant whose technology plan has not been approved when it files the FCC Form 470 must certify that it understands that its technology plan must be approved prior to the commencement of service.[12]

12. Next, the Commission's competitive bidding rules require an eligible school, library, or consortium that includes eligible schools and libraries to seek competitive bids for all services eligible for support.[13] The applicant must submit to USAC a completed FCC Form 470 setting forth, among other things, the services for which it seeks discounts. The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids.[14] The applicant provides this description on its FCC Form 470 or indicates on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.[15] The FCC Form 470 is then posted to USAC's website for all potential competing service providers to review.[16]

13. After submitting an FCC Form 470, the applicant must wait at least 28 days before making a commitment with its selected service providers.[17] The applicant must consider all submitted bids prior to entering into a contract and price must be the primary factor in selecting the most cost-effective proposal.[18] The Commission's competitive bidding requirements apply in addition to state and local competitive bidding requirements, and are not intended to preempt such state and local requirements.[19] Pursuant to section 54.504(c) of the Commission's rules, an applicant requesting support for eligible

[10] 47 C.F.R. § 54.508(a).

[11] 47 C.F.R. § 54.508(d); *Universal Service First Report and Order*, 12 FCC at 9078, para. 574; *see also* USAC website, Schools and Libraries, Technology Plans, available at http://www.universalservice.org/sl/applicants/step02/ (last visited May 20, 2010).

[12] 47 C.F.R. §§ 54.504(b)(2)(iii)-(iv), 54.508(c); *see also Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15826-30, para. 56 (2004) (*Schools and Libraries Fifth Report and Order*). An applicant whose technology plan has not been approved when it files the FCC Form 471 must, once again, certify that it understands its technology plans must be approved prior to the commencement of service. 47 C.F.R. § 54.504(c)(1)(iv)-(v). Additionally, in order to comply with the requirements of the Protecting Children in the 21st Century Act, 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. *See* Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008).

[13] 47 C.F.R. §§ 54.504, 54.511(c).

[14] *Id.*

[15] *See* Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (May 2003) (FCC Form 470); *see also* USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (last visited May 20, 2010). The RFP must be available to all potential bidders for the duration of the bidding process. *Id.*

[16] 47 C.F.R. § 54.504(a).

[17] 47 C.F.R. § 54.504(b)-(c).

[18] 47 C.F.R. § 54.511(a); *see Request for Review by Ysleta Independent School District*, *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, 97-21, Order, 18 FCC Rcd 26407 (2003) (*Ysleta Order*).

[19] 47 C.F.R. § 54.504(a).

products and services must sign a contract for eligible services prior to filing its FCC Form 471.[20] An applicant also must certify on the FCC Form 471 that it has entered into a service contract that complies with state and local contract laws.[21] Tariffed services and certain month-to-month services do not require a signed contract.[22]

14. After entering into a contract for eligible services, the applicant files an FCC Form 471 to request funding. The form specifies the services that have been ordered, the service providers with whom the applicant has entered into an agreement, the eligible discount rate, and an estimate of funds needed to cover the discounts to be given for eligible services.[23] The filing window for the FCC Form 471 is established by USAC each year and typically closes in early February preceding the start of the funding year.[24] An applicant must file a new FCC Form 471 each year.[25] A new FCC Form 470 is not required to be posted each funding year if the applicant is seeking discounts on services provided under a multi-year contract executed under an FCC Form 470 posted in a prior funding year.[26] USAC assigns a funding

[20] 47 C.F.R. § 54.504(c). The instructions for the FCC Form 471 require an applicant to have a "signed contract" or a "legally binding agreement" with the service provider for all services ordered on the FCC Form 471. FCC Form 471 Instructions at 4; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). State law governs the determination of whether a binding contract exists between parties. To the extent state contract law does not require two signatures and two dates for a valid contract, Commission rules do not impose such a requirement. We note that, in detailing document retention requirements, the Commission required both beneficiaries and service providers to retain executed contracts that are "signed and dated by both parties." *Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15825, para. 48. We note that this language was not intended to establish a new rule regarding the validity of a contractual agreement. *See Requests for Waiver by Adams County School District 14*, *et al.*, *Schools and Libraries Universal Service Support Mechanisms*, CC Docket No. 02-6, Order, 22 FCC Rcd 6019 (2007).

[21] 47 C.F.R. § 54.504(c)(1)(vi).

[22] *See* FCC Form 471 Instructions at 23; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). An applicant taking service from a filed tariff is not required to have a binding contract because the service is offered by the service provider to all parties at set rates and conditions that are filed with the Commission or the relevant state public utility commission. If the services are month-to-month, an applicant may submit copies of standard monthly bills as proof, if required, that it has a binding, legal arrangement with a service provider. *See* FCC Form 471 Instructions at 19; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010). An applicant is instructed to indicate that such situations exist by filling in the abbreviation "MTM" in Item 15 of the FCC Form 471. *Id.*

[23] This form is used to request discounts on eligible services and contains the discount calculation worksheet and the discount funding request. The FCC Form 471 must be filed each time a school or library orders telecommunications services, Internet access, or internal connections. *See* Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (November 2004) (FCC Form 471); USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf (last visited May 20, 2010); *see also* 47 C.F.R. § 54.504(c).

[24] 47 C.F.R. § 54.507(c); *see also* USAC website, Schools and Libraries Deadlines, available at http://www.usac.org/sl/tools/deadlines/default.aspx (last visited May 20, 2010) (USAC Schools and Libraries Deadlines website).

[25] 47 C.F.R. § 54.507(d).

[26] To be used in multiple years, the FCC Form 470 posted in the previous funding year must have indicated that the applicant was seeking to enter into a multi-year contract. *See* USAC website, Schools and Libraries, Contract Guidance, available at http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx (last visited May 20, 2010) (USAC Contract Guidance website); *see also* Instructions for Completing the Schools and Libraries (continued….)

request number (FRN) to each request for discounted services and issues funding commitment decision letters (FCDLs) approving or denying the requests for discounted services.

15. After USAC reviews the application, it informs the applicant whether funding has been granted, and if so, the amount that has been approved. Once the applicant informs USAC that it is receiving services, USAC accepts invoices from service providers and begins to disburse funds.

B. Discussion

16. In this section, we discuss several proposals designed to improve and simplify the current E-rate application process. It is the intent that the adoption of these proposals will result in greater E-rate participation and will reduce the costs associated with administering the E-rate program. To the extent we can minimize the potential for inadvertent errors that do not fundamentally threaten program integrity, we should reduce the number of appeals of funding decisions that consume resources at both USAC and the Commission, resulting in faster decisions on funding and greater certainty for both applicants and service providers. About 15 percent of appeals to the Commission involve issues relating to alleged non-compliance with technology plan and competitive bidding requirements.

17. Specifically, we propose to eliminate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements. We also propose to eliminate the FCC Form 470 posting and the 28-day waiting period before applicants can enter into contracts for those priority one applicants that are subject to public procurement requirements. We propose to retain our current technology planning and competitive bidding requirements for applicants seeking priority two services. In order to provide greater clarity regarding our competitive bidding requirements for priority one and priority two services, we propose to codify a rule requiring all applicants to conduct competitive bidding processes that are fair and open. We also seek comment on other proposals that streamline the application process. For instance, we propose to significantly streamline the FCC Form 470 and 471 online application process and require that those forms be completed and submitted electronically. We also propose to revise our discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building. Finally, we propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount.

1. Technology Plans

18. We propose to amend section 54.508 of our rules to eliminate E-rate technology plan requirements for priority one applicants that otherwise are subject to state and local technology planning requirements. We seek comment on this proposal.[27] The provision of priority one services (i.e., telecommunications services and Internet access) is fairly straightforward for many applicants and, therefore, a technology plan for these services may represent an unnecessarily complex and burdensome

(Continued from previous page)
Universal Service Description of Services Requested and Certification Form (FCC Form 470), OMB 3060-0806 (October 2004) (FCC Form 470 Instructions) at 3-4; USAC website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/470i.pdf (last visited May 20, 2010). Section 54.507(e) of the Commission's rules states that "[i]f schools and libraries enter into long term contracts for eligible services, [USAC] shall only commit funds to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought." 47 C.F.R. § 54.507(e); *see also Universal Service First Report and Order*, 12 FCC Rcd at 9062, para. 544.

[27] *See* Appendix A, 47 C.F.R. 54.508; ALA NBP Public Notice #15 Comments at 16-17 (stating that the Commission should not be involved in shaping the process of technology planning on a local, regional, or state level).

program requirement.[28] According to one commenter, the U.S. Department of Education and most, if not all, states already require technology planning, and therefore our requirement is largely duplicative.[29]

19. We recognize, however, that the selection of the optimal package of telecommunications and Internet access solutions can be more complicated for larger school districts that typically have a greater array of competitive options for their broadband connectivity. We seek comment on whether a separate E-rate mandated technology plan requirement remains useful for larger telecommunications and Internet access service priority one funding requests, even for those applicants that are subject to other state or local requirements. For example, should we retain the E-rate technology plan requirement for applicants that request more than a specified amount of funding for priority one services, such as $1 million.

20. We propose to retain the FCC technology plan requirement for all priority two service requests and seek comment on this proposal.[30] Priority two services and equipment are specifically tailored to the needs and requirements of the individual applicant. The FCC requirement for a detailed technology plan for internal connections therefore may continue to serve valuable purposes. They can help the school, school district, or library ensure that (i) it is requesting the appropriate amount of equipment necessary to satisfy network demands, (ii) it has taken into account any unique installation requirements, appropriate placement of facilities, and time demands, including possible disruption to the classroom or library services during installation, and (iii) it has considered and selected the most cost-effective implementation methods. We also seek comment on whether the current third-party approval process should be retained to the extent that we continue to require technology plans.

2. Competitive Bidding Process

21. *FCC Form 470*. We propose to simplify significantly the application process for priority one services, e.g., telecommunications services and Internet access services by adding section 54.510 to our rules.[31] Specifically, we propose to eliminate the requirement that applicants for priority one services file an FCC Form 470 and wait 28 days before signing a contract with their selected service provider, as long as those applicants are subject to public procurement requirements.[32] That is, for priority one services, an applicant that is subject to public procurement requirements would no longer be required to comply with section 54.504(b) of the Commission's rules.[33] Instead, the applicant would initiate the application

[28] *See, e.g.*, NEILSA Comprehensive Review NPRM Comments at 7 (explaining that developing a technology plan for priority one services is a waste of applicant time and energy); Wisconsin DPI Comprehensive Review NPRM Comments at 9 (explaining that use of the technology plan as a methodology to address waste, fraud, and abuse is ineffective and a misuse of the purpose to have a plan). We acknowledge that, in the *Schools and Libraries Fifth Report and Order*, the Commission retained the technology plan requirement for those applicants seeking Internet access, stating that certified plans are important to ensuring that applicants have carefully considered how to employ the service. *See Schools and Libraries Fifth Report and Order*, 19 FCC Rcd at 15829, para. 62. We seek comment on whether increased use and familiarity with Internet access in the intervening six years makes this requirement unnecessary in today's environment.

[29] *See* SECA Comprehensive Review NPRM Comments at 59-61.

[30] *See* Appendix A, 47 C.F.R. 54.508; *but see* ALA Comprehensive Review NPRM Comments at 11-12 (stating that technology plans should be removed from all E-rate requirements).

[31] *See* Appendix A, 47 C.F.R. § 54.510; *see also* AASA & AESA NBP Public Notice #15 Comments at 7; SECA NBP Public Notice #15 Comments at 25-27; TETN NBP Public Notice #15 Comments at 4; WV DOE NBP Public Notice #15 Comments at 13-14.

[32] *See* Appendix A, 47 C.F.R. § 54.510. By "public," we mean state or local procurement regulations established by another governmental body that the applicant must follow to obtain goods and services.

[33] 47 C.F.R. § 54.504(b). In addition, it will no longer be necessary for USAC to send these applicants the FCC Form 470 Receipt Notification Letter. *See* 47 C.F.R. § 54.504(b)(4). The FCC Form 470 Receipt Notification (continued….)

process for priority one services by filing an FCC Form 471.[34] Applicants for priority one funding would still comply with their state and local procurement laws and processes when entering into E-rate eligible service contracts and with the Commission's requirement that the competitive bidding process be fair and open.[35] We emphasize that compliance with local and state procurement requirements would remain a condition of receiving E-rate funding.[36]

22. The elimination of the FCC Form 470 process and the 28-day waiting period for most priority one applicants could streamline the application process and make it easier for eligible institutions to receive support for essential priority one services such as telecommunications and Internet access services.[37] The complexity of the FCC Form 470 and its associated deadlines, category selections, multi-year contract and contract extension requirements, in and of themselves, have been the basis for a multitude of funding request denials by USAC.[38] Eliminating these requirements for priority one services could reduce the number of unnecessary application funding denials and reduce the administrative burden

(Continued from previous page)
Letter informs program participants of the date on which (1) USAC received the applicant's FCC Form 470; (2) the FCC Form 470 was posted to USAC's website; and (3) the applicant may enter into a contract for eligible services. *See* USAC website, Schools and Libraries, FCC Form 470 Receipt Notification Letter, available at http://www.usac.org/sl/applicants/step03/form470-filing-receipt-notification-letter.aspx (last visited May 20, 2010).

[34] *See* Appendix A, 47 C.F.R. § 54.504 as proposed herein.

[35] By "local," we mean city, county or other form of public governmental subdivision. *See*, *e.g.*, *Schools and Libraries Third Report and Order*18 FCC Rcd at 26939, paras. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *MasterMind Internet Services*, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4033-34, paras. 10-11 (2000) (*MasterMind Order*) (finding that a competitive bidding process may be undermined when an applicant does not make a bona fide request for services).

[36] *See Universal Service First Report and Order,* 12 FCC Rcd at 9030, para. 482 (noting that Commission requirements do not "exempt eligible schools or libraries from compliance with any state or local procurement rules, such as competitive bidding specifications"); 47 C.F.R. § 54.504(a) (stating that the program's "competitive bidding requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements"). All applicants must certify on the FCC Form 471 application, under penalty of perjury, that they have complied with state or local procurement requirements and that they have complied with the Commission's FCC Form 470 posting and 28-day waiting period requirements. *See* FCC Form 471 at 5-6, available at http://www.usac.org/_res/documents/sl/pdf/471_FY05.pdf (last visited May 20, 2010).

[37] *See*, *e.g.*, NEILSA Comprehensive Review NRPM Comments at 5-7; Pennsylvania DOE Comprehensive Review NPRM Reply Comments at 3; SECA Comprehensive Review NRPM Comments at 18; ALA Comprehensive Review NRPM Comments at 11-13. As for the FCC Form 470, commenters argue that the form is cumbersome for applicants, which often deters them from applying for E-rate support. *See, e.g.*, ALA Comprehensive Review NRPM Comments at 13.

[38] *See*, *e.g.*, *Request for Review of the Decision of the Universal Service Administrator by Bishop Perry Middle School*, *et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 21 FCC Rcd 5316 (2006) (*Bishop Perry Order*) (funding denied due to applicant's failure to timely file a certification related to an FCC Form 470); *Request for Review of the Decision of the Universal Service Administrator by Aberdeen School District*, *et al.*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 07-63 (rel. May 8, 2007) (*Aberdeen School District Order*) (28-day rule violation); *Request for Review by Brunswick County Schools*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 20 FCC Rcd 8152 (2005) (28-day rule violation); *Request for Review by Our Lady of Victory Academy*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 2389 (2004) (untimely FCC Form 470 certification); *Request for Waiver by Olathe Public Library*, *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 19 FCC Rcd 2170 (2004) (FCC Form 470 not properly certified).

on program participants and USAC during the application process. Fewer unnecessary reviews should also result in faster processing of applications for priority one services.

23. Eliminating the FCC Form 470 and 28-day waiting period for priority one applications should not jeopardize the integrity of the fund in those situations where state and local governments already have prescribed procurement regulations in place that public schools and libraries must follow before entering into a contract for goods or services.[39] Purchasing thresholds also are set by state and local policymakers to ensure that bidding occurs for desired products and services and the most cost-effective bids are selected.[40] In addition, public schools and libraries are held accountable by state and local authorities for violating state and local procurement regulations.[41] Further, priority one services such as telecommunications and Internet access are more likely to be purchased as commodities based on volume and distance, as opposed to being priced by project. Commenters note there have been relatively few instances of alleged waste, fraud, or abuse associated with priority one requests.[42] Eliminating these requirements could free up USAC program resources now spent applying these rules to priority one service applications, and allow more resources for reviewing other areas in which there is a greater chance of waste, fraud, and abuse. Nevertheless, we invite comment as to whether this proposed change would inadvertently increase instances of waste, fraud, and abuse.

24. We propose that priority one applicants not subject to state or local bidding requirements – for example, private schools or some charter schools – continue to be required to follow the current E-rate competitive bidding process by posting an FCC Form 470 and waiting 28 days to select a service provider. We believe that this would be less burdensome than requiring those applicants to learn and follow state or local procurement requirements that do not actually apply to them. We also propose that an applicant located in a state that does not have procurement rules in place would still need to follow the Commission's existing Form 470 process to satisfy the E-rate competitive bidding requirement. We seek comment on these proposals.

25. We propose to retain, for the present time, the Commission's existing competitive bidding requirements as set forth in section 54.504 of the Commission's rules for applications requesting support for priority two services.[43] We can re-evaluate the need for these requirements after gaining practical experience from the outcome of the rule changes proposed here. Unlike most priority one services, priority two services are specifically tailored to the needs and requirements of the individual applicant. Configurations and prices can vary widely. In addition, on average, priority two requests generally

[39] *See, e.g.*, West Virginia DOE Comprehensive Review NPRM Comments at 5; Chicago Public Schools Comprehensive Review NPRM Comments at 20; Miami-Dade County Public Schools Comprehensive Review NPRM Comments at 7.

[40] *See* ALA Comprehensive Review NPRM Comments at 13.

[41] *See* West Virginia Comprehensive Review NPRM Comments at 5; HITN Comprehensive Review NPRM Comments at 6.

[42] *See, e.g.,* SECA Comprehensive Review NRPM Comments at 20, Verizon Comprehensive Review NRPM Comments at 14. *See also USF Comprehensive Review NPRM*, 20 FCC Rcd at 11324, para. 37.

[43] Priority two services include internal connections products and services. *See* 47 C.F.R. § 54.506. Because of the different requirements for priority one and priority two services, USAC already recommends separate FCC Form 471s for priority one and priority two services. *See* Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (November 2004) (FCC Form 471 Instructions) at 5, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010).

involve greater amounts of money, per applicant, than priority one requests.[44] We seek comment on these proposals.

26. *Fair and Open Competitive Bidding Rule*. The Commission previously has addressed specific situations in which the fairness of an applicant's competitive bidding process has been compromised because of improper conduct by the applicant, service provider, or both.[45] Although the Commission has held in numerous orders that the competitive bidding process must be fair and open, there is currently no codified Commission rule specifically requiring that the competitive bidding process be conducted by an E-rate applicant in a fair and open manner.[46]

27. We therefore propose to amend 54.510 of our rules to codify the requirement that an applicant must conduct a fair and open bidding process when seeking bids for services eligible for E-rate support.[47] This rule will apply to all applicants for both priority one and priority two services – including applicants not filing FCC Forms 470 – and will apply in addition to state and local procurement requirements.[48] In addition, all applicants for both priority one and priority two must still comply with the Commission's rule requiring the careful consideration of all bids submitted, the selection of the most cost-effective bid for services or equipment, with price as the primary factor considered, and the selection of the service that is the most cost-effective means of meeting educational needs and technology plan goals.[49] Because we are proposing merely to codify an existing requirement, this should not increase the

[44] For example, the average request for telecommunications services in funding years 2006, 2007, and 2008 was $17,000, $18,000, and $19,000, respectively. The average request for priority two services was much larger. In funding years 2006, 2007, and 2008, for example, the average request for internal connections was $69,000, $76,000, and $97,000, respectively. *See also* Letter from Mel Blackwell, Vice President, Schools and Libraries Division, USAC, to Thomas J. Navin, Chief, Wireline Competition Bureau, Federal Communications Commission, available at http://www.universalservice.org/_res/documents/sl/pdf/2007-03-08-FY2007-Demand-Estimate.pdf (dated March 8, 2007) (estimating that demand for priority one requests for funding year 2007 was $1.79 billion, while demand for priority two requests was $1.9 billion) (last visited May 20, 2010).

[45] *See*, *e.g.*, *MasterMind Order*, 16 FCC Rcd 4028 (finding that the FCC Form 470 contact person influences an applicant's competitive bidding process by controlling the dissemination of information regarding the services requested and, when an applicant delegates that power to an entity that also participates in the bidding process as a prospective service provider, the applicant impairs its ability to hold a fair competitive bidding process); *Request for Review by Approach Learning and Assessment Center*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 22 FCC Rcd 5296, 5303, para. 19 (Wireline Comp. Bur. 2007) (*Approach Learning Order*) (finding that service provider participation suppressed fair and open competitive bidding); *Request for Review by Consorcio de Escuelas y Bibliotecas de Puerto Rico*, *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, 97-21, Order, 17 FCC Rcd 13624, 13627, para. 8 (2002) (finding that a competitive bidding violation occurs when naming an "optional" contact person in Item 11 of the FCC Form 470 is also a representative of a service provider participating in the bidding process as a bidder).

[46] *See*, *e.g.*, *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939, para. 66 (stating that a fair and open competitive bidding process is critical to preventing waste, fraud, and abuse of program resources); *MasterMind Order*, 16 FCC Rcd at 4033-34, paras. 10-11 (finding that a competitive bidding process may be undermined when an applicant does not make a bona fide request for services); *Request for Review by Dickenson County Public Schools*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 17 FCC Rcd 15747, 15748, para. 3 (2002) (noting that an applicant impairs its ability to hold a fair and open competitive bidding process when the applicant's FCC Form 470 contact person is also a service provider participating in the bidding process as a bidder).

[47] *See* Appendix A, 47 C.F.R. §§ 54.510(a),(b).

[48] We therefore propose changing 47 C.F.R. § 54.504(a). *See* Appendix A.

[49] *See* 47 C.F.R. § 54.504(c)(1)(xi).

burden on E-rate applicants that are already following our competitive bidding rules. We propose to codify this requirement to emphasize that, even without a Commission-established competitive bidding process in some instances, the Commission still requires any and all competitive bidding processes in which E-rate applicants participate to be conducted in a fair and open manner. We seek comment on this proposal.

28. We are deeply concerned about practices that thwart Commission and other public competitive bidding policies and create conditions for waste of funds intended to promote access to telecommunications and information services. As the Commission has observed, competitive bidding is vital to limiting waste and assisting schools and libraries in receiving the best value for their limited funds.[50] Codifying the requirement for a fair and open bidding process will assist in our continuing effort to ensure that the fund is being utilized by applicants as Congress intended, without waste, fraud, or abuse, by deterring program participants from engaging in any conduct that undermines the Commission's competitive bidding process as well as any state or local procurement processes. We do not believe that the Commission's fair and open process requirement will conflict with state and local procurement laws.[51]

29. If we codify this rule, we propose to provide illustrative guidance of the types of conduct that would satisfy or violate the rule, which could be updated periodically based on experience gained through investigations involving waste, fraud and abuse. Generally speaking, all potential bidders and service providers should have access to the same information, they should be treated in the same manner throughout the procurement process, and they should not have additional information beyond the contents of an applicant's FCC Form 470 or RFP, if the applicant uses these documents to initiate bidding.[52] While the lists set forth below are not exhaustive, we propose that the following behaviors constitute inappropriate conduct during the competitive bidding process.[53] Moreover, we believe that any party with a potential financial interest in the E-rate program (for example, a subcontractor to a service provider) also could not engage in the prohibited activities described below:

---

[50] *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480*; see also Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5425-26, para. 185 (1997) (stating that the competitive bidding process is a key component of the Commission's effort to ensure that universal service funds support services that satisfy the precise needs of an institution, and that the services are provided at the lowest possible rates.).

[51] *See, e.g.*, West Virginia DOE Comprehensive Review NPRM Comments at 5-6.

[52] The Commission's rules do not require an applicant to develop an RFP. However, if the applicant does create an RFP or other document (*e.g.*, Request for Quotes, Scope or Work) that provides additional information regarding the desired services, it must indicate this fact in the appropriate place on the FCC Form 470. Moreover, an applicant that posts an RFP, in addition to posting an FCC Form 470, must post the RFP for at least 28 days before selecting a service provider or signing a contract. *See* 47 C.F.R. § 54.504; FCC Form 470 at 3, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (last visited May 20, 2010). This ensures that all service providers are aware of any additional bid information. It also ensures that the competitive bidding process is open and fair to all service providers. To the extent we adopt a requirement that would eliminate the need to post an FCC Form 470, applicants would be required to make an RFP available for whatever period of time is specified under state or local procurement requirements.

[53] These scenarios are intended to provide examples of actions that are known to be issues in the competitive bidding process or address questions that have been raised by participants.

- An applicant may not have a relationship with a service provider that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information;[54]

- An applicant may not turn over its responsibility for ensuring a fair and open competitive bidding process to a service provider.[55]

- Applicant employees or board members may not serve on any board of any type of telecommunications, Internet access, or internal connections service provider that participates in the E-rate program in the same state;

- Service providers may not offer or provide gifts, including meals, to employees or board members of the applicant;[56]

- Applicant employees with any role in the selection of vendors may not have an ownership interest in a vendor that is seeking to provide products or services.

- Once a contract for products or services is signed by the applicant and service provider, a different service provider may not circumvent the bidding process and offer a new, lower price for the same products and services.

30. In addition, we seek comment on a proposal that applicants using the FCC Form 470 bidding process should also comply with the following requirements.[57]

- An applicant using the FCC Form 470 bidding process must describe the desired products and services with sufficient specificity to enable interested parties to submit responsive bids;[58]

- An applicant must identify the correct category of service on the FCC Form 470, *e.g.*, telecommunications, Internet access, or internal connections so that it can receive bidders for the services it seeks;[59]

---

[54] *See, e.g., Approach Learning Order,* 22 FCC Rcd at 5302, para 16 (finding no competitive bidding violation where the named contact person on the FCC Form 470 was not an employee of the selected service provider or any other service provider).

[55] *See*, *e.g.*, *Mastermind Order*, 16 FCC Rcd at 4033, paras. 10-11.

[56] *See, e.g.,* 47 C.F.R. §§ 1.3001, 1.3002. For example, prohibited gifts would include meals, tickets to sporting events, or trips. An applicant also must not violate its own ethical regulations relating to the acceptance of gifts from a vendor.

[57] Again, this list is not exhaustive.

[58] *See* Appendix A, 47 C.F.R. § 54.510(a). Schools and libraries should avoid making the descriptions on the FCC Form 470 that are (1) excessively specific such that some parties would effectively be excluded from placing bids, or (2) overly broad such that some parties would not know the products and services for which they would be submitting bids. *See, e.g., Ysleta Order*, 18 FCC Rcd at 26418-26420, paras. 24-28 (stating that an FCC Form 470 that lists virtually all E-rate eligible products and services violates the Commission's competitive bidding requirements). If an applicant intends to develop and release an RFP, the RFP should provide potential bidders with specific information about the desired services and functions. The applicant should also provide at least a general description of the desired services and functions on its FCC Form 470. *See* FCC Form 470 Instructions at 11-13, available at http://www.usac.org/_res/documents/sl/pdf/470i.pdf (last visited May 20, 2010). Any RFP must be made available to all potential bidders for the duration of the bidding process. *See* FCC Form 470 at 3, available at http://www.usac.org/_res/documents/sl/pdf/470.pdf (last visited May 20, 2010).

- Only an applicant or an authorized representative of the applicant can prepare, sign, and submit the FCC Form 470 and certification;[60]

- An applicant cannot list a service provider representative as the FCC Form 470 contact person and allow that service provider to participate in the competitive bidding process;[61]

- A service provider may not help an applicant prepare the FCC Form 470 or participate in the bid evaluation or vendor selection process in any way;[62]

- A service provider may provide information to an applicant about products or services – including demonstrations – before the applicant posts the FCC Form 470, but not during the bid selection process.

31. We reiterate that these lists do not include every possible scenario in which we would find an applicant in violation of our competitive bidding rules. We seek comment on whether these proposed requirements and examples are appropriate and whether there are others we should specifically adopt as part of a codified rule to provide guidance to program participants.

3. Application Process Streamlining

32. We note that the Commission is currently seeking comment on significantly streamlined FCC Forms 470 and 471 for funding year 2011.[63] Additionally, we are working with USAC in developing an improved online system that provides applicants with the tools and access to data necessary to participate more effectively and efficiently in the program. All forms should be available for online submission, and applicants should be able to upload requested information electronically. Applicants also should be able to save, retrieve, and edit previously filed applications and use these forms as the basis for future funding requests, thereby improving the efficiency of submission and processing of applications. We seek feedback from all interested parties on these planned user enhancements.

(Continued from previous page)

[59] *See, e.g.*, *Request for Review by Aberdeen School District No. 5, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.,* File No. SLD-327601, CC Docket No. 96-45, 19 FCC Rcd 22910 (2004) (finding that the applicant violated the Commission's competitive bidding rules by failing to list its funding request on the FCC Forms 470 and 471consistently).

[60] *See* Appendix A, 47 C.F.R. § 54.510(a); *see also Approach Learning Order*, 22 FCC Rcd 5296 (concluding that the Commission's competitive bidding rules were violated because there was a connection between the contact person listed on the FCC Form 470 and the selected service provider).

[61] *Approach Learning Order*, 22 FCC Rcd at 4032, para. 9 (stating that "to the extent a [service provider] employee was listed as the contact person on the FCC Form 470 that initiated a competitive bidding process in which [the service provider] participated, such Forms 470 were defective and violated our competitive bidding requirements. In the absence of valid Forms 470, the requests for support were properly denied.").

[62] *See* Appendix A, 47 C.F.R. § 54.510(a). *See, e.g., Approach Learning Order*, 22 FCC Rcd at 5303-04, para. 19 (finding competitive bidding violation where there was a connection between the contact person on the FCC Form 470 and the service provider). An applicant should note that USAC will investigate the appearance of impropriety. For example, an FCC Form 470 that is filed from a service provider's computer or mailed from a service provider's office would seem to indicate that the service provider assisted the applicant in the preparation of the form.

[63] Federal Register publication for the 60-day notice of revisions to FCC Forms 470 and 471, OMB Control No. 3060-0806, is pending.

33. Because these forms and systems upgrades will dramatically improve the online experience for applicants, we propose to require all applicants to file their FCC Forms 470 and 471 electronically.[64] We believe that the electronic submission of these forms will improve the efficiency of submitting and processing applications. It will also save administrative costs as USAC will not have to enter data into its electronic system from paper submissions, which will free up additional funding for supported services. Electronic completion and submission also would likely result in fewer errors on the form. We seek comment on this proposal.

4. Discount Matrix Streamlining

34. *Discount calculation*. We propose to revise our discount rules so that schools will calculate discounts on supported services by using the average discount rate for the entire school district rather than the weighted average for each school building.[65] Currently, school districts, library systems, or other billed entities are required to calculate discounts for services that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the discounts of all member schools and libraries.[66] School districts, library systems, or other billed entities are required to ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library receives a proportionate share of the shared services for which support is sought.[67] For schools, the average discount is the weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school.[68] For libraries, the average discount is a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.[69]

35. We agree with E-rate Provider Services (EPS) that calculating discounts by individual school adds a significant level of complexity to the application process, as the discounts must be calculated separately by school and checked individually by USAC.[70] Accordingly, we propose to revise section 54.505(b)(4) of our rules to require applicants to: (1) calculate a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program[71] by the total number of students in the district; and (2) then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services.[72] All schools and libraries within that school district would then receive the same discount rate. We seek comment on our proposal. We also seek comment on whether there should be a similar requirement for library systems and how this proposed rule would affect consortium applications.

36. This proposed discount percentage rate calculation could streamline the application process by simplifying the way in which schools compute their discount percentage rate and reduce the administrative burden on USAC by no longer requiring USAC to verify each individual school's discount

---

[64] *See* EdLiNC NBP Public Notice #15 Comments at 5-6; SECA NBP Public Notice #15 Comments at 19; Texas State Library NBP Public Notice #15 Comments at 1.

[65] *See* Appendix A, 47 C.F.R. § 54.505.

[66] *See* 47 C.F.R. § 54.505(b)(4) (2009).

[67] *Id.*

[68] *Id.*

[69] *Id.*

[70] EPS NBP Public Notice #15 Comments at 5-6.

[71] *See infra* para. 60 in which the NSLP is discussed further.

[72] *See* Appendix A; 47 C.F.R. § 54.505.

percentage rate.[73] Additionally, it could significantly reduce the amount of information necessary for block 4 of the FCC Form 471 application.[74] This proposal could also eliminate applicants' submission of multiple FCC Form 471 applications at different discount levels. Moreover, it could reduce the incentive for districts to purchase priority two equipment at a 90 percent discount rate and transfer it after three years to a school with a lower discount rate.[75] We also seek comment on other ways to accomplish these goals. We also seek comment on how to determine if a school district can receive the additional discount available for some applicants located in rural areas. Currently, the urban/rural designation is based on the physical address of each individual school or library. Some applicants have a mixture of urban and rural entities on the same application. Should these districts be considered urban? Should their urban/rural status depend on the number of entities within the district that fall within each category?

37. *Rural Definition*. We propose to adopt a new definition of "rural area" for the purpose of determining whether an E-rate applicant qualifies for the rural discount. A school's E-rate discount level is determined in part by whether it is classified as urban or rural.[76] In some discount bands, schools and libraries in rural areas receive 5 percent to 10 percent more in discounts than those schools and libraries in urban areas.[77] We look at this proposed change with the recognition that the reason certain discounts are provided to schools and libraries located in rural areas is because those schools and libraries sometimes face significant challenges due to their remote location. As we seek comment on this proposed change in definition, it is not with the intent to reduce discounts to certain rural schools but rather to ensure that the funds are targeted appropriately.

38. In 1997, the Commission adopted for the E-rate program the definition of "rural area" used by the U.S. Department of Health and Human Service's Office of Rural Health Care Policy (ORHP).[78] Under ORHP's definition, an area is rural if it is not located in a county within a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget (OMB), or if it is specifically identified as "rural" in the Goldsmith Modification to Census data.[79] In the 2003 *Schools and Libraries Third Report and Order*, the Commission sought comment on a new definition of "rural area."[80] At that time, the Commission commented that a new definition was necessary because ORHP was no longer using the definition adopted by the Commission and had not updated the Goldsmith Modification to the 2000 Census data.[81]

---

[73] *See* EPS NBP Public Notice #15 Comments at 6 (stating that this proposed approach condenses more than 1,000 schools in New York City to a single discount rate).

[74] See FCC Form 471, Block 4 (providing the discount calculation worksheet for schools, libraries, and consortia). *See also* USAC Website, Schools and Libraries, Required Forms, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf (last visited May 20, 2010).

[75] *Schools and Libraries Third Report and Order*, 18 FCC Rcd 26912 at 26923-24, paras. 26-28; 47 C.F.R. § 54.513(c).

[76] 47 C.F.R. § 54.505(b)(3).

[77] 47 C.F.R. § 54.505(b)(3)(c).

[78] *See Universal Service First Report and Order*, 12 FCC Rcd at 9042, para. 504.

[79] 47 C.F.R. § 54.505(b)(3).

[80] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26939-41, paras. 67-69.

[81] *Id.* at para. 67. ORHP subsequently updated the Goldsmith Modification to the 2000 Census data, and has also developed the Rural Urban Commuting Area (RUCA) code system for designating rural areas eligible for rural health grants.

39. We now propose that, for E-rate purposes, an area will be considered rural based on the methodology and locale codes used by the U.S. Department of Education's National Center for Education Statistics (NCES), also known as urban-centric locale codes.[82] We propose that any school or library that is within a territory that is classified as "town-distant," "town-remote," "rural-distant," or "rural-remote" by an NCES urban-centric locale code will be considered rural for purposes of calculating its E-rate discount level. We propose revising section 54.505(b)(3) and 54.5 of our rules to reflect this approach.[83]

40. First, it is reasonable for the E-rate program, which benefits schools and libraries, to use the Department of Education's definition because it is specifically targeted to schools.[84] By contrast, the current ORHP definition defines rural areas for rural health grant purposes only.[85] Second, commenters have noted that the urban-centric locale codes pinpoint more precisely whether a school is located in a rural area.[86] Rather than determining whether the school's county or census tract is located in a rural area under the ORHP definition, the urban-centric locale codes determine whether a particular address is rural based on its proximity to metropolitan areas and on population size and density.[87] The locale codes can be more specific because they are based solely on settlement patterns and are not constrained by political or geographic boundaries such as census tracts.[88] Third, one of the reasons proffered by the Commission for selecting its original definition of "rural area" – that it was less burdensome to schools and libraries and that the information was readily available to the public – applies to the new definition as well.[89] In particular, it should be administratively straightforward for a school to discover its categorization, because the Department of Education's website has the coding system broken down by state, and the information is readily available.[90] We seek comment on this proposal.

III. PROVIDING GREATER FLEXIBILITY TO SELECT BROADBAND SERVICES

A. Background

41. 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 eligible for support under the E-rate program.[91] The Commission annually issues a list of services and

[82] *See* U.S. Dept. of Education website, National Center for Education Statistics, available at http://nces.ed.gov/ccd/rural_locales.asp (last visited May 20, 2010) (Identification or Rural Locales).

[83] *See* Appendix A and 47 C.F.R. §§ 54.5, 54.505(b)(3).

[84] *See* Identification or Rural Locales.

[85] *See* U.S. Dept. of Health and Human Services website, Office of Rural Health Policy, available at http://ruralhealth.hrsa.gov/funding/eligibilitytestv2.asp (last visited May 20, 2010).

[86] *See, e.g.,* AASA & AESA Second FNPRM Comments at 6; EdLiNC Second FNPRM Comments at 6-7; Rural School and Community Trust Second FNPRM Comments at 2-3..

[87] *See* U.S. Dept. of Education website, National Center for Education Statistics, available at http://nces.ed.gov/ccd/rural_locales.asp#justification (last visited May 18, 2010) (Justification for New Classificatory Scheme Locale Codes).

[88] *Id.*

[89] *See Universal Service First Report and Order*, 12 FCC Rcd at 9042-43, paras. 504-506. The Commission also adopted the definition in the *Universal Service First Report and Order* because it was consistent with the rural definition adopted for the rural health care support mechanism. *Id.* at 9042-43, para. 505. The Commission rejected alternatives as likely to be more administratively burdensome. *Id.* at 9043, para. 506.

[90] *See* AASA & AESA Second FNPRM Comments at 5; Rural School and Community Trust Second FNPRM Comments at 4.

[91] 47 U.S.C. § 254(c)(1), (c)(3), (h)(2)(A).

products eligible to receive discounts under the E-rate program, known as the Eligible Services List (ESL).[92]

42. Applicants can receive E-rate support for any services selected from the ESL. In addition to determining if requested services are eligible, schools and libraries must use the services for "educational purposes."[93] In the *Schools and Libraries Second Report and Order*, the Commission determined that activities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as "educational purposes."[94] The Commission adopted a presumption that, under this standard, reasonable requests for any supported service – over any technology platform – to be used by any student, library patron, or school or library staff member while in a library, classroom, or on school or library property shall be eligible for discounts.[95] Moreover, the Commission concluded that, in certain limited instances, the use of services off school or library property would also be integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered as an "educational purpose".[96]

43. The National Broadband Plan recommended that the Commission review the eligibility of some services to improve the efficiency of the E-rate program.[97] First, the NBP recommended that the E-rate program "support online learning by providing wireless connectivity to portable devices so students can engage in learning while not at school."[98] Second, the NBP recommended that the Commission give schools and libraries more flexibility to purchase the lowest-cost broadband solutions.[99] That recommendation suggested allowing schools and libraries the ability to lease or purchase dark fiber, among other options.[100] The NBP also recommended that federal and state policies should facilitate the "use of state, regional and local networks when that is the most cost-efficient solution for anchor institutions to meet the connectivity needs."[101]

---

[92] 47 C.F.R. § 54.522. The ESL currently is divided into five main categories – telecommunications services, Internet access, internal connections, basic maintenance of internal connections, and miscellaneous. *See, e.g.,* Eligible Services List, Schools and Libraries Support Mechanism for Funding Year 2010, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-09-105A2.pdf (last visited May 20, 2010) (2010 ESL).

[93] 47 U.S.C. § 254(h)(1)(B).

[94] *See Schools and Libraries Universal Service Support Mechanism,* CC Docket No. 02-6*,* Second Report and Order and Further Notice of Proposed Rulemaking*,* 18 FCC Rcd 9202, 9208, para. 17 (2003) (*Schools and Libraries Second Report and Order*); 47 C.F.R. § 54.500(b).

[95] *Schools and Libraries Second Report and Order, 18 FCC Rcd.* at 9208-9209, para. 19.

[96] *Id.* The Commission provided the following examples of off-site activities that would be considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons: a school bus driver's use of wireless telecommunications services while delivering children to and from school, 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.* at para. 19, n. 29.

[97] National Broadband Plan at 235-240.

[98] *Id.* at 239 (NBP Recommendation 11.23).

[99] *Id.* at 237 (NBP Recommendation 11.17).

[100] *Id.*

[101] *Id.* at 153 (NBP Recommendation 8.20).

B. Discussion

44. We propose to support wireless Internet access service even when the portable device is used off school property, provide greater flexibility to use low-cost fiber for broadband connectivity, and expand access to broadband for students who live at their schools due to geographic challenges or in order to receive specialized instruction. Each of these proposals is described in further detail below. We also seek comment on additional ways in which the Commission can better allocate E-rate funding to support educational purposes more directly and to more effectively target our funding to broadband services.

1. Wireless Services Outside of School

45. We propose to adopt the National Broadband Plan recommendation to provide full E-rate support for wireless Internet access service used with a portable learning devices that are used off premises.[102] We seek comment on this proposal. Currently, the E-rate program supports wireless Internet access on school grounds.[103] If a device that provides wireless Internet access service, such as a laptop, is taken off school grounds, however, applicants are required to cost-allocate the dollar amount of support for the time that the device is not at school.[104] If that same device is left at school all of the time, the program would pay 100 percent of the applicant's non-discount share. As such, our rules prevent students from fully utilizing learning opportunities that the devices can provide in the home.

46. Advances in technology have enabled students to continue to learn well after the school bell rings and from virtually anywhere. As noted in the NBP, "Online educational systems are rapidly taking learning outside the classroom, creating a potential situation where students with access to broadband at home will have an even greater advantage over those students who can only access these resources at their public schools and libraries."[105] We propose to modify our rules so that we can lessen the digital divide between those who are fortunate enough to subscribe to broadband at home and those who do not.

47. Recent data demonstrates that the widespread availability of wireless laptop computing for students is linked to improved educational outcomes. For example, the Maine Learning and Technology Initiative (MLTI) provided a laptop to every seventh- and eighth-grade student in the state as part of its mission to transform teaching and learning in Maine's public schools.[106] A study of the MLTI conducted

[102] National Broadband Plan at 239 (NBP Recommendation 11.23).

[103] *See* 2010 ESL at 8.

[104] *See* USAC website, Schools and Libraries, Step 6: Cost Allocation Guidelines for Products and Services, available at http://www.usac.org/sl/applicants/step06/cost-allocation-guidelines-products-services.aspx (last visited May 20, 2010); *see also* 2010 ESL at 17 (homes or other non-school or non-library sites are provided as examples of ineligible locations) and 25 (explanation of cost allocation).

[105] National Broadband Plan at 254.

[106] *See* The Maine Learning With Laptops Studies, http://www.mcmel.org/MLLS/ (last visited May 20, 2010). The Maine Learning with Laptop Studies project (MLLS) is a small group of educators, educational technologists, and scholars producing research, documentation, evaluation, and advocacy of one laptop to one student (1-to-1) learning with technology initiatives. Also, the California Emerging Technology Fund (CETF) and The Children's Partnership in California launched the School2Home initiative. The initiative is a statewide program to close the achievement gap and the digital divide by integrating the use of laptop computers and broadband technology into teaching and learning at 539 low-performing middle schools in California. As part of this program, portable laptop computers are used and home broadband connectivity is emphasized so that homework and Internet research can be performed at home as well as school. *See* Testimony of Rachelle Chong, Special Counsel, Advanced Information and Communications Technology, State of California, May 13, 2010, available at http://energycommerce.house.gov/index.php?option=com_content&view=article&id=2001:hearing-on-qthe-national-broadband-plan-promoting-broadband-adoptionq&catid=134:subcommittee-on-communications-technology-and-the-internet&Itemid=74 (last visited May 20, 2010).

by the Maine Education Policy Research Institute at the University of Southern Maine found that eighth-grade student writing, as measured by the Maine Educational Assessment (MEA), the state's standardized assessment, improved significantly after laptop implementation in middle schools.[107] Laptop initiatives have been deployed at the regional and district level as well. In Henrico County in Richmond, Virginia, a three-year study released in 2008, revealed that 1-to-1 laptop use was associated with higher test scores in biology, history, chemistry, reading and Earth science.[108] Both of these laptop programs have incorporated student connectivity to the Internet in home and school environments.

48. We emphasize that this proposal only relates to support for Internet access monthly service, and not the purchase of devices or equipment, such as mobile broadband cards, smartphones, or e-books. This proposal, therefore, would allow E-rate funding for Internet access services, which are already eligible, to be used to facilitate learning both on and off premises. It also would permit funding for connectivity that schools may increasingly utilize in the future to provide customized educational content to students.

49. We note that that the requirements of the Children's Internet Protection Act and the Protecting Children in the 21st Century Act still would apply to services being used off-premises.[109] In addition, consistent with the Act, the Commission requires schools and libraries to certify, among other things, that services obtained through discounts from the E-rate program will be used solely for educational purposes.[110] We recognize that usage in the school or library typically occurs under the supervision of school or library personnel. We seek comment on what other safeguards, if any, we should consider imposing to mitigate against the risk of non-educational use at home that is not directly supervised by the recipient of funding.

50. We seek comment on whether recipients of funding should be required to have policies and procedures in place to mitigate the risk that E-rate funded wireless connectivity is not used for educational uses off-premises. For instance, should recipients be required to have policies relating to acceptable use off-premises? We seek comment on whether the residents of the households of students may use E-rate funded connectivity (so long as it is for educational purposes) because, for example, such use may be fundamental to promoting digital literacy skills for both the students and the other household members who support the child's educational experience, and whether such use is consistent with the educational purposes requirement of the statute. In our recent decision to permit schools to make E-rate funded

---

[107] *See* Maine's Middle School Laptop Program: Creating Better Writers, by David Silvernail and Aaron Gritter, October 2007, available at http://www.usm.maine.edu/cepare/Impact_on_Student_Writing_Brief.pdf at 9 (last visited May 20, 2010).

[108] *See* Documenting Outcomes from Henrico County Public School's Laptop Computing Initiative: 2005-06 through 2007-08, Final Technical Report, Monday, November 24, 2008, by Dale Mann, Ph.D., Managing Director, Interactive, Inc., available at http://www.henrico.k12.va.us/pdf/DataAndReports/technicalreport112408.pdf (last visited May 20, 2010). Henrico's laptop initiative began in 2001, providing laptops to each middle and high-school student in county schools. *See Report Praises Henrico Schools' Laptop Initiative*, Lisa Crutchfield, Richmond Times-Dispatch, published Nov. 20, 2008, available at http://www2.timesdispatch.com/rtd/news/local/education/article/LAPS29_20081028-213116/112465 (last visited May 20, 2010).

[109] Thus, laptops being used off-premises would need to be CIPA-compliant. 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); Protecting Children in the 21st Century Act, Pub. L. No. 110-385, Title II, 122 Stat. 4096 (2008). *See also* 47 C.F.R. § 54.520. The Council of Great City School notes that filtering and CIPA-compliant access can be provided outside of school buildings. Council of Great City Schools NBP Public Notice #15 Comments at 3.

[110] 47 U.S.C. § 254 (h)(1)(B); 47 C.F.R. § 54.504(b)(2)(v); 47 C.F.R. § 54.504(c)(1)(vii).

connections available to the community,[111] in order to reduce the likelihood of waste, fraud, and abuse, and to guard against potential additional costs being imposed on the E-rate program, we set forth certain conditions regarding other uses of school facilities that choose to allow the community to use their E-rate funded services.[112] Among other things, the Commission required that: (1) schools participating in the E-rate program not be permitted to request funding for more services than are necessary for educational purposes; and (2) consistent with the Act, a school's discounted services or network capacity may not be "sold, resold, or transferred by such user in consideration for money or any other thing of value."[113] Should similar or other requirements be imposed if we expand support for wireless connectivity off-premises to guard against waste, fraud, and abuse?

51. We seek comment on whether providing E-rate funds for wireless Internet access to portable devices in offsite locations would result in increased demand for wireless connectivity in the E-rate program, and if so, how that would affect other requests for E-rate funding, given the overall annual funding cap. According to one 2008 survey, more than 27 percent of school districts were implementing in at least one grade or on pilot basis some form of one-on-one computing program with Internet connected wireless devices for use in the classroom and at home.[114] We seek comment on how funding for wireless connectivity might increase over the next several years if we were to adopt this rule. If commenters believe that this rule change would limit the ability of eligible users to obtain other services, we seek comment on whether the Commission should limit wireless Internet access for mobile devices on a trial basis by, for example, capping the number of monthly service contracts per school district or some other method of allocating funding. We seek comment on whether we should implement this proposal on an interim basis for funding year 2011 and subsequently evaluate how to implement a permanent rule based on that experience.

2. Expanded Access to Low-Cost Fiber

52. We seek comment on permitting recipients to receive support for the lease of fiber, even if unlit, from third parties that are not telecommunications carriers, such as municipalities and other community or anchor institutions, to allow schools and libraries more flexibility to select the most cost-effective broadband solutions.[115] Dark fiber was conditionally eligible for E-rate discounts prior to Funding Year 2004.[116] In the *Schools and Libraries Third Report and Order*, released in 2003, however,

---

[111] *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order and Notice of Proposed Rulemaking, 25 FCC Rcd 1740 (2010) (*E-rate Community Use Order and NPRM*).

[112] *See id.* at paras. 11-13.

[113] *Id.;* 47 U.S.C. § 254 (h)(3).

[114] Summary of 2008 America's Digital Schools survey, available at http://www.fetc.org/FETC2009/Documents/Hayes.pdf (last visited May 20, 2010).

[115] The Commission first sought comment on whether dark fiber should be eligible for E-rate funding in the *Schools and Libraries Third Report and Order*. *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26934, paras. 76-77. On July 31, 2008, the Commission released a notice of proposed rulemaking which, among other things, asked commenters to refresh the record on whether dark fiber should be an eligible service. *See Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Notice of Proposed Rulemaking, 23 FCC Rcd 11703, 11710-11, para. 17 (2008).

[116] The ESL for funding year 2003 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, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism, available at http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101802.pdf, at 33 (last visited May 20, 2010) (Funding Year 2003 ESL)

the Commission found that, pending resolution of the regulatory status of dark fiber, it would not be eligible for E-rate discounts.[117]

53. Fiber networks are used by both the public sector and governmental agencies for broadband Internet access today. A number of commenters in the record of the National Broadband Plan asserted that dark fiber may be a more cost-effective option for applicants – and therefore the program – in many instances. Several commenters expressed support for giving recipients more flexibility to use dark fiber as part of their broadband solutions.[118] In order to provide greater flexibility to E-rate participants to reduce their overall cost of broadband and increase their bandwidth, we now propose to make leased dark fiber from any source eligible for funding as a priority one service.

54. We propose to add leased dark fiber to the ESL, pursuant to section 254(h)(2)(A) of the Act. We propose to add leased fiber with the same conditions as when it was on the ESL previously.[119] That is, applicants would be able to lease fiber capacity that does not include modulating electronics, as long as they provide the electronics.[120] In addition, the leased fiber must be used immediately.[121] Under such an approach, applicants would, for instance, be able to lease dark fiber that may be owned by state, regional or local governmental entities, when that is the most cost-effective solution to their connectivity needs. We also seek comment on any other operational issues that may arise with the addition of leased fiber, such as dark fiber, to the ESL.

---

[117] *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, Schools and Libraries, Eligible Services List of the Schools and Libraries Universal Support Mechanism, available at http://www.universalservice.org/_res/documents/sl/pdf/ESL_archive/EligibleServicesList_101003.pdf, at 30 (last visited May 20, 2010). *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). In 2008, the Commission released an order on remand finding inadequate evidence in the record to conclude that certain dark fiber arrangements constituted common carriage. *Local Exchange Carriers' Individual Case Basis DS3 Service Offerings*, CC Docket No. 88-166, Order on Remand, 23 FCC Rcd 569 (2008) (*Dark Fiber Remand Order*). As a consequence, the Commission vacated prior Commission orders that subjected Bell operating companies' dark fiber offerings to common carrier regulation. *Id*. at 573, para. 8. In other proceedings, dark fiber has been treated differently depending on context. *See* Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A, February 2010, at 29, available at http://www.universalservice.org/_res/documents/fund-administration/pdf/forms/form-499A-fy2010-instructions.pdf (last visited May 20, 2010) (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*).

[118] The Council of Great City Schools observed, "The rapid growth and increased availability of fiber networks in recent years has the potential to help urban districts develop greater capabilities to offer high-quality and modern instructional services to inner-city students, and the broadband access the Commission is seeking," noting the flexibility to lease dark fiber from providers and own the related equipment would permit "the most cost-effective pricing" for schools and libraries. Council of Great City Schools NBP Public Notice #15 Comments at 5. The state of Wisconsin said E-rate should prefer the most cost-effective solution. Wisconsin Department of Public Instruction NBP Public Notice #15 Comments at 3.

[119] 47 U.S.C. § 254(h)(2)(A).

[120] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26944, n.156; Funding Year 2003 ESL.

[121] *See* Council of Great City Schools NBP Public Notice #15 Comments at 5.

3. Expanding Access for Residential Schools that Serve Unique Populations

55. We seek comment on whether we should allow schools that serve unique populations to receive E-rate funding for priority one and priority two services delivered to residential areas. In the *Schools and Libraries Second Report and Order*, recognizing that the technology needs of participants in the E-rate program are complex and unique to each participant, the Commission clarified the scope of educational purposes.[122] Specifically, the Commission defined educational purposes as "[A]ctivities that are integral, immediate, and proximate to the education of students, or in the case of libraries, integral, immediate, and proximate to the provision of library services to library patrons, qualify as "educational purposes."[123] The Commission concluded that 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 library patrons.[124] The Commission thus concluded that in certain limited instances, the use of telecommunications services offsite would be considered integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, would be considered to be an educational purpose.[125]

56. In the *Universal Service First Report and Order*, the Commission limited the eligibility of internal connections by limiting support for a service "only if it is necessary to transport information all the way to individual classrooms."[126] The Commission subsequently elaborated on this policy in the *Universal Service Fourth Order on Reconsideration*, explaining that E-rate support is "not available for internal connections in non-instructional buildings used by a school district unless those internal connections are essential for the effective transport of information within instructional buildings."[127] Consistent with these orders, funding for internal connections to dormitory rooms, study centers within dormitories, teachers' centers, and residential programs have been found to be ineligible for support under the E-rate program.[128]

57. We recognize, however, that this rule does not take into account the special circumstances of institutions that provide residential living arrangements to meet the unique challenges of certain student

---

[122] *See Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208, para. 17.

[123] *Id*.; 47 C.F.R. § 54.500(b).

[124] 47 C.F.R. § 54.500(b).

[125] *Schools and Libraries Second Report and Order*, 18 FCC Rcd at 9208-09, para. 19.

[126] *See Universal Service First Report and Order* 12 FCC Rcd at 9017-18, 9021, para. 459; *see also Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-45, 96- 262, 94-1, 91-213, 95-72, Fourth Order on Reconsideration, Report and Order, 13 FCC Rcd 5318, 5440 at para. 209 (1997) (*Universal Service Fourth Order on Reconsideration*).

[127] *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5440, para. 210; *see also* 47 C.F.R. § 54.506(a).

[128] *See Request for Review by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610, 25612, paras. 6-7 (Com. Car. Bur. 2000) (*Anderson School Order*) (finding that study centers in dormitories are neither traditional classrooms nor computer learning centers, and that the dormitory buildings at issue were physically separated from the classrooms and not necessary for the effective transport of information to the classrooms); *Request for Review of the Decision of the Universal Service Administrator by New York City Board of Education, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, File No. SLD-200310, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 8578, 8581, para. 9 (Wireline Comp. Bur. 2002) (denying funding for a teachers' center, despite its occasional use for student classroom instruction); *See Requests for Review of the Decisions of the Universal Service Administrator by Eagle Hill School, et al*., File No. SLD-84941, et al., 24 FCC Rcd 12714 (Wireline Comp. Bur. 2009) (denying funding to dormitory and residential facilities).

populations. We propose to revise our rules to allow schools with residential areas on their grounds to receive E-rate funding for priority one and priority two services in those residential areas in circumstances where the students do not have access to comparable schooling or training if they were to reside at home. Specifically, we seek comment on whether the use of priority one and priority two services at a dormitory on a school campus could be considered integral, immediate, and proximate to the education of students, and thus, considered to be used for educational purposes, when the school is serving students with medical needs, cognitive, or behavioral disabilities, or who have no option but to live at school due to challenging terrain or their home's distance from a school.[129] For example, in West Virginia, students at the West Virginia School for the Deaf and Blind reside in dormitories on the same campus as the school, away from their parents, to receive schooling.[130] These students are unable to go home or to a public library to access the Internet after school hours.[131] The West Virginia School for the Deaf and Blind, however, pursuant to our rules, is unable to receive funding for services provided to these residential facilities, thus, requiring the school to cost-allocate between the eligible and ineligible uses of its services on the school's campus.[132] Currently, our rules state that service is eligible for support as a component of the institution's internal connections only if it is necessary to transport information all the way to individual classrooms.[133] We invite comment on whether we should amend our eligibility limitation imposed on internal connections, and if so, how we should amend that limitation with regard to schools described above. In addition, should we require that support for services to dormitories be limited to only to those schools whose operating expenses are funded, in whole or in part, with state or federal funds? We seek comment on any other possible conditions or limitations to extending support to schools for services provided to dormitories located on a school's campus to target finite funding to those schools for which funding may be truly necessary to access advanced telecommunications and information services and to minimize the potential for waste, fraud, and abuse.

4. Targeting Support for Broadband Services

58. Finally, we seek comment on other ways to reallocate funding so that finite amounts of E-rate dollars can be better targeted to satisfy the educational needs of students and library patrons. We recognize that schools and libraries face significant challenges in obtaining higher bandwidth necessary to support emerging needs at a time when budgets are stagnant or declining. According to one report, more than half of school districts surveyed faced problems in obtaining funding for higher bandwidth services, and two-thirds of those surveyed reported conserving bandwidth by restricting certain online applications such as streaming video.[134] At the same time, more advanced applications such as media streaming and video conferencing, distance or online learning, multimedia applications that make learning more engaging and relevant, and one-to-one programs that enable students to engage in continuous learning

[129] For example, schools in this category could include hospital schools, schools for children with special needs and schools in Tribal lands or insular areas.

[130] *See* Request of the West Virginia Department of Education for a Waiver of Commission's Rule 54.506 and Clarification of the Definition of Educational Purpose, to Federal Communications Commission, CC Docket. No. 02-6 (filed Apr. 29, 2010).

[131] *Id.*

[132] *Id.* Schools located on Tribal lands, such as the Crow Creek Sioux Tribal High School in Stephan, South Dakota, often have the same cost allocation issues for residential schools that serve a student body drawn from a geographically dispersed area.

[133] 47 C.F.R. § 54.506(a).

[134] *Researchers identify key ed-tech trends*, E-School News (May 15, 2008) (summarizing 2008 America's Digital Schools survey), available at www.eschoolnews.com/2008-05/15/researchers-identify-key-ed-tech-trends/ (last visited May 20, 2010).

hold great promise for educating the next generation. We therefore seek comment on specific proposals to re-prioritize E-rate funding to support higher bandwidth connectivity that will enable such applications to be delivered to students and libraries across the country.

59. In the short-term, the demand for wireless services and increased bandwidth for broadband will likely increase. We seek comment on whether there are specific telecommunications services, Internet access services, or priority two services on the current ESL that should receive a lower priority in E-rate funding so that we can target funding toward higher bandwidth connectivity. For example, should dial-up Internet access continue to be funded as a priority one service or instead, should greater priority be given to applicants seeking support for broadband services? Similarly, should we give a higher priority to advanced telecommunications and broadband services, rather than voice telecommunications services? We recognize that budgets are challenged for state and local authorities around the country, but also emphasize that our objective in managing this finite program is to achieve the maximum benefits of access to the full range of content and applications that the Internet can deliver, not to fund voice telephone service that schools and libraries across the country were paying for in full before the inception of the E-rate program. We seek comment on these and any other proposals commenters might suggest to meet the goal of generating the most return for each E-rate dollar.

IV. EXPANDING THE REACH OF BROADBAND TO THE CLASSROOM

A. Background

60. When the E-rate program was created in the *Universal Service First Report and Order*, the Commission established an annual funding cap on E-rate disbursements.[135] The Joint Board recommended that an annual cap be set at $2.25 billion, based on third-party estimates of the cost of services eligible for discounts.[136] The Commission adopted the Joint Board's recommendation, but noted that the $2.25 billion figure was only an estimate because of the lack of real data, technology's rapid development, and the difficulty in predicting demand for the services to be offered.[137] The Commission's current priority rules provide that requests for all eligible services other than internal connections and basic maintenance for internal connections shall receive first priority for funding.[138] The remaining funds are allocated to requests for support for internal connections and basic maintenance of internal connections (priority two services), beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.[139]

61. Under the Commission's rules, eligible schools and libraries may receive discounts ranging from 20 percent to 90 percent of the pre-discount price of eligible services, based on indicators of need.[140] Schools and libraries in areas with higher percentages of students eligible for free or reduced price lunch through the National School Lunch Program (NSLP) or an alternative mechanism qualify for higher discounts for eligible services than applicants with low levels of eligibility for such programs.[141] For example, the most disadvantaged schools and libraries where at least 75 percent of children are eligible

[135] *Universal Service First Report and Order*, 12 FCC Rcd at 9055, para. 530; 47 U.S.C. 254(b)(5).

[136] *Universal Service First Report and Order*, 12 FCC Rcd at 9054-55, paras. 530-31 (extrapolating from data provided by the McKinsey Report, Rothstein Thesis, and NCLIS Report).

[137] *Id.* at 9055, para. 530.

[138] 47 C.F.R. § 54.507(g)(1)(i).

[139] 47 C.F.R. § 54.507(g)(1)(ii); 47 C.F.R. § 54.505(c).

[140] 47 C.F.R. §§ 54.505(a)-(b).

[141] 47 C.F.R. § 54.505(b).

for free or reduced price school lunch receive a 90 percent discount on eligible services, and thus pay only 10 percent of the cost of those services, while schools and libraries where less than one percent of students are eligible to receive free or reduced price school lunch receive a 20 percent discount and must pay 80 percent of the cost.[142] Schools and libraries located in rural areas also may receive an additional 5 to 10 percent discount compared to urban areas.[143] Funding for all priority one services, including telecommunications, advanced telecommunications, and Internet access, is committed first.[144] Beginning with schools and libraries eligible for a 90 percent discount, the remaining funds for internal connections are allocated to eligible applicants at each descending single discount percentage, e.g., 89 percent, 88 percent, and so on until the cap has been reached.[145]

62. While the E-rate program has always been able to fund all priority one requests, the demand for internal connections has exceeded the E-rate program's $2.25 billion cap in every year but one since the program's existence.[146] As a result, many requests for priority two services are denied, and over the years, the vast majority of requests for internal connections have gone unfunded.[147] This trend has held true throughout the duration of the program's history. In fact, since funding year 2000, with one exception, priority two funding has been available only for recipients where at least 50 percent of the students are eligible for free or reduced price school lunch.[148] As a consequence, the largest urban districts have received, on average, as much as $50 to $190 per student for internal connections, while smaller school districts across the country receive nothing.[149]

63. In funding year 2007, for example, applicants requested more than $2 billion for internal connections and basic maintenance of internal connections, but only $600 million was authorized for funding.[150] Only schools or libraries at the 81 percent level or higher received priority two funding that

[142] 47 C.F.R. § 54.505(c).

[143] 47 C.F.R. § 54.505(b)(3).

[144] 47 C.F.R. § 54.507(g)(1)(i).

[145] 47 C.F.R. § 54.507(g)(1)(iii).

[146] *See* USAC website, Automated Search of Commitments, available at http://www.usac.org/sl/tools/commitments-search/Default.aspx (last visited May 20, 2010) (USAC Automated Search of Commitments).

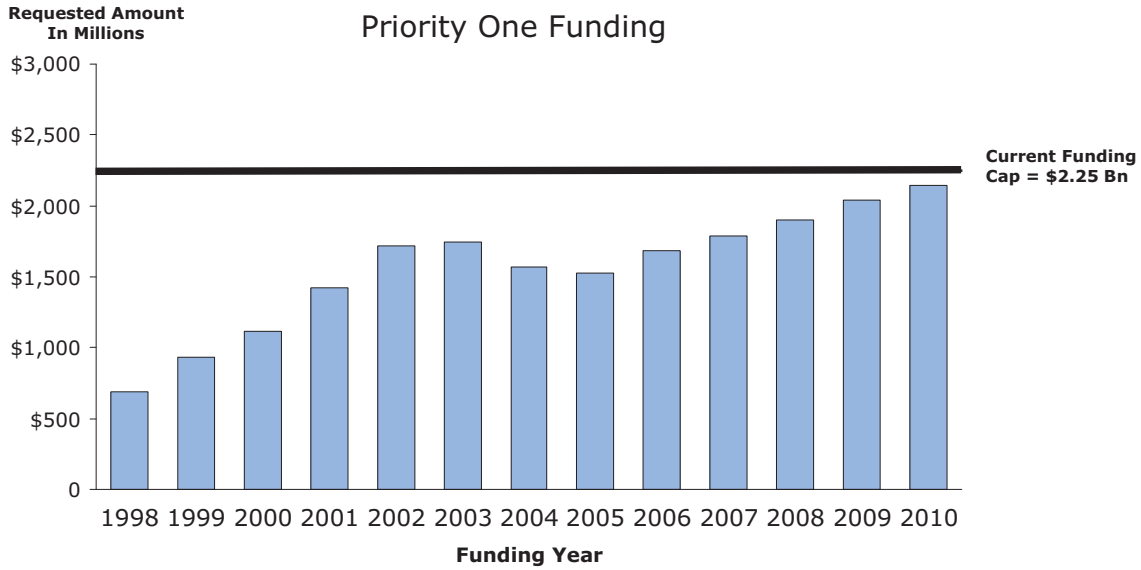
[147] In 2008 and 2009, for instance, schools and libraries sought more than $4 billion in E-rate program services even though only $2.25 billion was available. *See* USAC Automated Search of Commitments (demonstrating the lack of available internal connections funding for applicants in the 79 percent funding tier and below in every funding year since 2004).

[148] *See, e.g.,* USAC website, Schools and Libraries, Schools and Libraries News Brief (dated Apr. 11, 2008), available at http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=155 (last visited May 20, 2010) (setting the funding year 2007 denial threshold); USAC website, Schools and Libraries, Schools and Libraries News Brief (dated July 6, 2007), available at http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=98 (last visited May 20, 2010) (setting the funding year 2006 priority two threshold). In funding year 2003, priority two funding was available at the 70 percent discount level due to a $420 million rollover of unused E-rate funds. *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26935, para. 57 (carrying forward funds that were projected to be unused in the first quarter of 2004 for use through June 30, 2004).

[149] *See* USAC Automated Search of Commitments.

[150] Funds for Learning NBP Public Notice #15 Comments at 12; *see also* Letter from Mel Blackwell, Schools and Libraries Division, USAC, to Thomas J. Navin, Chief, Wireline Competition Bureau (dated Mar. 8, 2007), available at http://www.universalservice.org/_res/documents/sl/pdf/FY2010%20Demand%20Estimate%20Letter.pdf (last visited May 20, 2010) (noting that demand for priority two funding in funding year 2007 was estimated to be nearly $2 billion).

year. In funding year 2008, there were insufficient funds to grant discounts to any priority two funding requests seeking 86 percent discounts or less.[151] Most recently, for funding year 2010, approximately $2 billion was requested just for priority one services.[152] USAC projects that it will only be able to fund slightly more than the 90 percent applicants – meaning those applicants that have nearly 75 percent of their students eligible for free or reduced price lunch – for requested priority two services for funding year 2010 and only with significant rollover funding. The net result is that institutions that serve areas with significant poverty, with 30 or 50 percent of their population eligible to receive free or reduced-price lunch, are expected to receive no funding at all for internal connections this year.



64. The Commission has tried various strategies to expand the distribution of E-rate funding for internal connections. In 2003, the Commission adopted a rule limiting each eligible entity's receipt of discounts on internal connections to twice every five funding years.[153] The Commission also amended its rules to require that those E-rate funds identified as unused from prior years be used to increase the annual funding cap for the next E-rate funding year.[154] Since then, the Commission has carried forward unused E-rate funds for use in funding years 2003, 2004, 2007, 2008, and 2009.[155] Despite these efforts, most

[151] *See* USAC website, Schools and Libraries, Schools and Libraries News Brief (Feb. 27, 2009), available at http://www.universalservice.org/sl/tools/news-briefs/preview.aspx?id=213 (last visited May 18, 2010).

[152] *See* Letter from Mel Blackwell, Schools and Libraries Division, USAC, to Sharon Gillett, Wireline Competition Bureau (dated Mar. 10, 2010), available at http://www.universalservice.org/_res/documents/sl/pdf/FY2010%20Demand%20Estimate%20Letter.pdf (last visited May 20, 2010).

[153] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26916-17, paras. 9, 11.

[154] *Id.* at 26935, para. 55.

[155] *Id.*; *Carryover of Unused Funds for Funding Year 2004*, CC Docket No. 02-6, Public Notice, 19 FCC Rcd 20420 (Wireline Comp. Bur. 2004); *Wireline Competition Bureau Announces Carryover of Unused Funds for Funding Year 2007,* CC Docket No. 02-6, Public Notice, 22 FCC Rcd 10795 (Wireline Comp. Bur. 2007); *Carryover of Unused Federal Universal Service Funds for Funding Year 2008,* CC Docket No. 02-6, Public Notice, 23 FCC Rcd (continued….)

applicants have never received E-rate funding for internal connections.[156] Indeed, many applicants do not even apply for priority two funding because they know from experience that the cap will be reached before many priority two requests are funded.[157] As shown below, in funding year 2008, most internal connections and basic maintenance funding was committed to recipients that had 75 percent or more eligible for free/reduced lunch, while applicants that had one-third or one-half of their students eligible received nothing.[158] In contrast, as demonstrated below, priority one funding is more evenly distributed among applicants in the various discount brackets.

Priority One Commitments Funding Year 2008

Discount Bracket	Percentage Eligible for Free/Reduced Lunch (Urban)	Percentage Eligible for Free/Reduced Lunch (Rural)	Internet Access	Telecomm. Services	Percentage of Priority One Total
20-29%	Less than 1%	Less than 1% (starting at 25% Discount Level)	$633,000	$2,158,000	0.2%
30-39%	1% to 19%		$1,101,000	$7,072,000	0.6%
40-49%			$26,367,000	$106,687,000	8.3%
50-59%	20% to 34%	1% to 19%	$30,842,000	$141,140,000	11.0%
60-69%	35% to 49%	20% to 34%	$52,973,000	$221,920,000	17.3%
70-79%		35% to 49%	$89,197,000	$290,207,000	22.6%
80-89%	50% to 74%	50% to 74%	$88,109,000	$391,222,000	30.5%
90%	75% to 100%	75% to 100%	$42,170,000	$121,496,000	9.5%
		TOTAL	$331,391,000	$1,281,902,000	100.0%

Priority Two Commitments Funding Year 2008

Discount Bracket	Percentage Eligible for Free/Reduced Lunch (Urban)	Percentage Eligible for Free/Reduced Lunch (Rural)	Internal Connections	Basic Maint. of Internal Connections	Percentage of Priority Two Total
20-29%	Less than 1%	Less than 1% (starting at 25% Discount Level)	$0	$0	0.0%
30-39%	1% to 19%		$0	$0	0.0%
40-49%			$0	$0	0.0%
50-59%	20% to 34%	1% to 19%	$0	$0	0.0%
60-69%	35% to 49%	20% to 34%	$0	$0	0.0%
70-79%		35% to 49%	$0	$0	0.0%
80-89%	50% to 74%	50% to 74%	$177,954,000	$27,234,000	21.8%

(Continued from previous page)

9960 (Wireline Comp. Bur. 2008); *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 24 FCC Rcd 10164 (Wireline Comp. Bur. 2009).

[156] *See, e.g.,* USAC website, Schools and Libraries, Schools and Libraries News Brief (dated Dec. 4, 2009), available at http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=270 (last visited May 20, 2010) (setting funding year 2008 priority two funding requests at 87 percent); USAC website, Schools and Libraries, Schools and Libraries News Brief (dated March 12, 2010), available at http://www.usac.org/sl/tools/news-briefs/preview.aspx?id=268 (last visited May 20, 2010) (setting funding year 2009 priority two funding approvals at 80 percent and above and denials at 54 percent).

[157] National Broadband Plan at 256 (NBP Recommendation 11.18) (citing to SECA NBP Public Notice #15 Comments at 29).

[158] While USAC has not completed funding commitments for FY 2009, it is likely that a similar situation will exist for FY 2009 as well.

90%	75% to 100%	75% to 100%	$582,309,000	$97,973,000	78.2%
		TOTAL	$760,262,000	$125,207,000	100.0%

65. The National Broadband Plan recommended that the Commission should provide E-rate support for internal connections to more schools and libraries.[159] The NBP noted that, while the vast majority of schools and libraries receive discounts to help pay for broadband services, they do not receive funds for the internal infrastructure necessary to utilize increased broadband capacity.[160] To ensure that schools and libraries have robust broadband connections and the capability to deliver that capacity to classrooms and computer rooms, the NBP recommended that the Commission develop ways that priority two funding can be made available to more E-rate applicants.[161]

66. The National Broadband Plan also recommended prospectively indexing the E-rate funding cap to the inflation rate.[162] According to the NBP, the current program's purchasing power has fallen by about $676 million in inflation-adjusted dollars since the program began.[163] The NBP noted that the E-rate program is "significantly oversubscribed, leaving most internal wiring requests unmet each year" and annual funding requests typically exceed the cap by nearly a two-to-one margin.[164]

B. Discussion

67. Internal connections, such as routers or hubs, are essential to the effective use of broadband within schools and libraries because they enable students and library patrons to utilize higher bandwidth applications in multiple locations within a school or library. As schools and libraries are increasingly utilizing higher bandwidth services to meet educational and community needs, they need to upgrade and replace their existing internal connections as well in order to fully utilize the broadband services they are purchasing. Without upgraded Internet access and the internal connections necessary to bring the connection all the way to the classroom or library patron, many users simply will be unable to utilize the many applications available in today's marketplace, such as high-definition video streaming, that support online learning. Demand for priority one services has grown from $800 million in 1998 to approximately $2 billion in 2009. As noted above, only schools and libraries with the highest discount levels are receiving priority two subsidies, and the availability of priority two funding gets smaller as applicants apply for more funding for priority one services.[165] The net result is the E-rate program is funding high-capacity pipes to a single point of entry at the school (or library) but not providing any support for the equipment that enables the computer terminals or laptops across the school or library to access that high-capacity pipe. Further, without changes to the way in which we allocate funding for internal connections, it is quite possible that in funding year 2011, E-rate support for telecommunications services and Internet access could eliminate the availability of any funding for internal connections.[166]

---

[159] National Broadband Plan at 237 (NBP Recommendation 11.16).

[160] *Id.*

[161] *Id.*

[162] National Broadband Plan at 256 (NBP Recommendation 11.18).

[163] *Id.* (calculated using publicly available Gross Domestic Product deflators from 1997 to 2009 yields total monetary deflation of $676 million).

[164] *Id.*

[165] *See supra* paras. 63-65.

[166] *See* ALA NBP Public Notice #15 Comments at 19; SECA NBP Public Notice #15 Comments at 30; Wisconsin DPI NBP Public Notice #15 Comments at 6-7.

68. In this NPRM, we seek comment on how to ensure that schools and libraries receive funding for internal connections (priority two services). We have two important goals in mind: (1) providing funding for internal connections to more schools and libraries than in the past; and (2) ensuring a predictable amount of funding available to schools and libraries for internal connections each year.

1. Predictable Internal Connections Funding for More Schools and Libraries

69. One option would be to allocate funding for internal connections based on a per student cap per school district, to which the applicant's discount rate would be applied. Under this option, libraries would be eligible to receive the same amount of funding as the public school districts within which they are located.[167] To ensure that a predictable amount of funding is available for internal connections, we could set aside a defined amount of funding before funding is allocated to telecommunications and internet access, current priority one services. If we choose this option, we also could eliminate the 2-in-5 rule. Another option would be to eliminate support for basic maintenance for internal connections, or, in the alternative, to cap the amount available for basic maintenance. We seek comment on whether and, if so, how we could phase in any of these proposals on a trial basis to examine the distributional impacts of such rule changes. In what funding year should any of these options be implemented? Commenters should provide specific proposals on the timing and staging of specific reforms. We further describe these options below and seek comment.

70. We believe that these options for reforming how we fund internal connections could have several advantages over our current rules. First, the current discount matrix and rules of priority have the effect of providing funding to a limited number of school districts that have the very highest percentage of students eligible for free or reduced price school lunch, while providing nothing to other districts that are significantly impoverished. Second, many stakeholders have expressed a desire for a more predictable funding mechanism whereby schools and libraries would know on a yearly basis how much funding they will receive for internal connections. This predictability is essential so that schools and libraries can better plan for their future technological needs. If, for instance, a certain amount of total funding would be designated for internal connections, USAC would be able to issue funding commitment decision letters earlier for priority two projects, enabling schools and libraries to begin projects more quickly.

71. *Capped Amount*. To create a more predictable funding mechanism for priority two services, we seek comment on establishing a flat per student cap per school district for each funding year, with the applicant's discount rate applied after the cap is determined.[168] For example, if the cap were set at $15 per student, a school district that has 100,000 students would have a cap of $1.5 million in internal connections funding. If the district were eligible for an 75 percent discount (that is, a school with 50 percent to 74 percent of its students eligible for free or reduced price lunch), it would be eligible to receive up to $1.125 million for internal connections each year.[169] If that same school district was eligible for a 30 percent discount (that is, a school with 20 percent to 34 percent of its students eligible for free or reduced price lunch), it could receive up to $450,000. Under this option, libraries would receive the same discount as the public school districts in which they are located.[170] We seek comment on this option and

[167] We understand that tying library funding to local school districts' support levels, as the E-rate program has always done, may not be the best proxy for the determination of library support for priority two services. As such, we plan to propose additional changes for the allocation of funding specifically for libraries in a future NPRM.

[168] *See* Appendix A, 47 C.F.R. § 54.505(c).

[169] We also propose to calculate discounts based on school districts instead of individual schools, where those schools are part of a district, to better reflect the actual poverty level of the entire district. *See infra* para. 79.

[170] *See infra* para. 79.

any alternatives that would increase predictability of priority two funding while meeting the goal of ensuring internal connections funding to more schools and libraries.

72. We also seek comment on whether there should be a minimum amount for which a school, library, or school district is eligible, not tied to the number of students. For instance, should we establish a baseline amount of support that would be provided to an eligible facility, and then a variable amount of support depending on the number of students? If a minimum amount is established, what should it be? We note that smaller applicants might receive less funding because of their smaller number of students; however, some types of equipment are not necessarily usage-sensitive. Should there be additional funding provided to rural applicants, either by establishing a higher dollar amount for rural applicants or a higher discount level?

73. We recognize that schools and libraries at the highest discount levels could receive significantly less funding if we were to establish a capped amount than they receive under the current rules. However, in the near future, as demand for priority one services grows, it is likely that, absent changes to the current funding structure, there will be no funding available for internal connections for even the highest-discount applicants.[171] In addition, those same schools and libraries may be able to realize savings on their purchase of priority one services if they have greater freedom to use lower-cost fiber, as proposed above, which could free up additional money in their budget to pay for internal connections. And in any event, we are concerned that the same few schools continue to receive all of the available funding, year after year, while many schools that have nearly as many students in poverty receive no funding for internal connections.

74. *Set Aside for Internal Connections*. We seek comment on revising section 54.507 of our rules to set aside a defined amount of funding from the $2.25 billion fund for internal connections before priority one funding is allocated.[172] We seek comment on an appropriate amount to set aside for internal connections. For instance, would $500 million be an appropriate amount to set aside for internal connections? Depending on the amount set aside, it is possible that all of the requests for priority one would not be funded. If so, our rules of priority would operate to fund requests from the highest-discount schools first, and it is possible that recipients with the lowest discounts (namely, schools that serve very few students eligible for free or reduced price school lunch) would no longer receive any funding from the E-rate program. We seek comment on whether we should change our rules of priority to effectuate an alternative result.

75. *Threshold for Priority Two Funding*. We seek comment on the appropriate threshold for any revised methodology for internal connections funding. Today, the money effectively is channeled to school districts that have 75 percent or more students eligible for free or reduced-price school lunch. We seek comment on how to focus funding on improving internal connections to a broader group of needy schools, school districts, and libraries. For instance, should we adopt rule changes that would enable school districts where 35 percent or 50 percent of students are eligible for NSLP to obtain predictable funding for internal connections. We encourage parties to submit factual analyses of the distributional impact of alternative thresholds into the record.

---

[171] See United States Government Accountability Office Report to Congressional Requestors, "Long-Term Strategic Vision Would Help Ensure Targeting of E-rate Funds to Highest-Priority Uses," GAO 09-253 at 13 (March 2009) ("Although requests for Priority 1 services—that is, telecommunications and Internet access—have remained roughly level since 2002, commitments have increased, at least in part, because applicants received a greater proportion of the funds they requested. The increasing amounts committed for Priority 1 services has the effect of decreasing the amounts available for Priority 2 services, which are funded only after all eligible Priority 1 services requests are satisfied.").

[172] *See supra* para. 69; Appendix A, 47 C.F.R. § 54.507(g)(1)(i).

76. Revised Discount Matrix. Many commenters have suggested that the Commission should revise the priority two discount matrix to enable more school districts to obtain funding for internal connections.[173] SECA and other commenters argue that altering the discount rate is an effective way to increase the availability of priority two funds and more evenly distribute priority funds to a greater number of entities.[174] Additionally, we note that other governmental programs that award funding for similar purposes require recipients to pay 15 or 20 percent of the total cost.[175] An approach that strengthens incentives for applicants to find the most cost-effective services to meet their needs is an important tool to maximize the public benefits of a finite amount of governmental funding, and could further our efforts to curb waste, fraud, and abuse by applicants and service providers.[176] We seek comment on a revised discount matrix for internal connections and ask whether we should adjust the current level of additional discount provided to rural schools and libraries.[177] Commenters should set forth with specificity an alternative proposed discount matrix.

77. *Eliminate the 2-in-5 Rule*. We seek comment, in conjunction with the options detailed above, on eliminating section 54.506(c), the 2-in-5 rule, which limits an eligible entity's receipt of discounts on internal connections to twice every five funding years.[178] In the *Schools and Libraries Third Report and Order*, the Commission sought to make funds for internal connections available to more eligible schools and libraries on a regular basis by limiting the frequency with which applicants may receive priority two

[173] *See e.g.,* KS NBP Public Notice #15 Comments at 13-14 (supporting a reduction of the highest priority one discount level from 90 percent to 80 percent); SECA NBP Public Notice #15 Comments at 22-25; SECA NBP Public Notice #15 Reply Comments at 7 (proposing to lower the maximum priority two discount from 90 percent to 75 percent so that priority two funding will be more evenly distributed to a greater number of underfunded entities); AK DOE NBP Public Notice #15 Comments at 82, 88-89 (proposing to lower the maximum priority two discount to 70 percent); AASA & AESA NBP Public Notice #15 Comments at 7-8 (asserting that the Commission should require a greater priority two "buy-in" for 90 percent schools so they might have a more vested ownership in the process and think more carefully about proposed projects). *But see* ASD NBP Public Notice #15 Comments at 21 (change in priority one discount level would have adverse consequences with existing contracts, technology planning, and budgetary projections); EdLiNC NBP Public Notice #15 Comments at 6 (arguing that requiring applicants to bear a greater share of the costs would damage school and library budgets); *see also* Iowa NBP Public Notice #15 Comments at 10; ENA NBP Public Notice #15 Comments at 9; NYS OCFS NBP Public Notice #15 Comments at 5.

[174] *See* SECA NBP Public Notice #15 Comments at 22-25; AK DOE NBP Public Notice #15 Comments at 82, 88-89.

[175] We note that the Commission's universal service Rural Health Care (RHC) Pilot Program provides funding only for up to 85 percent of an applicant's costs. *See Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111, 11112, para. 3 (2006) (*2006 Pilot Program Order*). Similarly, awardees in the Broadband Technology Opportunities Program (BTOP), administered by the National Telecommunications and Information Administration, are required to provide matching funds of at least 20 percent toward the total eligible project cost. *See* 74 Fed. Reg. 33,104, 33,112 (July 9, 2009); 75 Fed. Reg. 3792, 3799 (Jan. 22, 2010). We also note that participants in the Distance Learning and Telemedicine Grant program under the Rural Utilities Service, an agency of the United States Department of Agriculture, must contribute at least 15 percent of the total amount of financial assistance requested. *See* 7 CFR 1703.125(g).

[176] *Id.*

[177] *See* 47 C.F.R. §§ 54.505(b), (d).

[178] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26917-20, paras. 11-18; 47 C.F.R. § 54.506(c). The Commission exempted basic maintenance services from this restriction. *Id.* at 26917, para. 11. For example, under this rule, a school or library could receive support for internal connections in funding years 2005, 2008, and 2011. Alternately, a school that received support for priority two services in funding years 2005 and 2006 will not be eligible to receive support for priority two services until funding year 2010.

discounts.[179] Further, the Commission concluded that, by precluding a particular entity from receiving support for priority two discounts every year, the rule would strengthen incentives for applicants not to waste program resources by replacing or upgrading equipment on an annual basis but rather to fully use equipment purchased with universal service funds.[180]

78. However, the 2-in-5 rule has not served its intended purposes. Today, funding for maintenance represents roughly 15 percent of all priority two funding, with the very largest school districts receiving most of that funding. The rule has not increased the availability of priority two funding to more eligible schools and libraries on a regular basis. In addition, because the availability of funding is dependent, in part, on the amount of funding sought by higher-discount eligible entities, the 2-in-5 rule actually has increased the unpredictability of priority two funding. Additionally, commenters argue that, instead of increasing the incentive for applicants to not waste program resources, the rule has encouraged schools to undertake large projects that might not be necessary and discriminates against schools that undertake smaller, more long-term projects.[181] We seek comment on any potential implications the elimination of the 2-in-5 rule may have upon current recipients of funding for maintenance and how to address such implications.

79. *Application by School District*. We seek comment on requiring schools and libraries to submit applications for internal connections by school district, not by individual school. Schools that operate independently from a school district, however, such as private schools and some charter schools, should still apply for discounts individually. We propose, therefore, that any school that is part of an organized school district must apply as part of that district, with libraries receiving the same discount as the public school districts in which they are located.[182] Requiring schools to apply by school district could help streamline the process and will simplify the discount calculation for schools.[183] Additionally, it would ensure that libraries receive funding for internal connections and at the same discount level as schools located within their school district.

80. *Eliminate funding for basic maintenance for internal connections*. We seek comment on options for modifying the funding of basic maintenance of internal connections.[184] Currently, the ESL lists basic maintenance as a supported priority two service.[185] In the *Universal Service First Report and Order*, the Commission determined that support for internal connections includes "basic maintenance services" that are "necessary to the operation of the internal connections network."[186] Subsequently, in the *Schools and Libraries Third Report and Order*, the Commission provided further detail on which maintenance services are "necessary" under the terms of the *Universal Service First Report and Order*.[187] The Commission found that basic maintenance services are eligible for universal service support as an internal connections service if, but for the maintenance at issue, the internal connection would not

[179] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26918, para. 14.

[180] *Id.* at 26919, para. 17.

[181] *See, e.g.*, Kuskowkwim NBP Public Notice #15 Comments at 6.

[182] *Id.* We note that some schools are operated by a state department of education. A state should file one application for all schools that fall directly under its authority.

[183] *Id.*

[184] *See, e.g.*, West Virginia DOE NBP Public Notice #15 Comments at 15-17.

[185] *See* 2010 ESL at 5, 9, 20-21. We are not proposing to change the eligibility of maintenance and technical support for services provided as a component of an eligible telecommunications service under priority one.

[186] *See Universal Service First Report and Order*, 12 FCC Rcd at 9021-22, para. 460.

[187] *See Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26921-22, para. 23.

function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services.[188] At that time, the Commission sought to identify maintenance as a separate category for priority two funding in part to provide greater transparency regarding the use of internal connections funding. It appears, however, some recipients of funding for maintenance may be using such funding to pay for ongoing information technology support functions, which siphons funding away from other critical uses.

81. One option would be to eliminate E-rate funding for basic maintenance of internal connections. We seek comment on whether funding of basic maintenance for internal connections should remain on the ESL. First, given that funding for the E-rate program is finite and there is a consistent level of unmet demand, we have concerns that our current rules inadvertently result in basic maintenance effectively taking precedence over funding the internal connections that are necessary to deliver higher bandwidth applications like high definition video streaming to schools and libraries. We believe it may be preferable to spread funding more broadly across needy schools and libraries for internal connections than to provide funding for maintenance of networks for a limited number of school districts. Second, it may be the case that funding for basic maintenance is used to pay for "warranties" on equipment or to support significant information technology departments. Given the limited funding available for internal connections, we question whether the E-rate should be supporting ongoing tech support to address potential problems when there is such unmet demand for actual equipment that will enable services *definitely* to be used. We recognize that maintenance in some form is important for services to be available, but are concerned that our current rules fail to impose appropriate limitations. Third, under our current allocation method, the same schools and school districts receive large amounts of funding year after year for basic maintenance, while others receive nothing.[189] In order to achieve our inclusion objectives, the limited funding available could be better utilized to pay for facilities for schools and libraries serving high poverty populations that have never received funding for internal connections. At least until priority two funding has been distributed more broadly, we ask whether the funding should be used to support initial installation of internal connections rather than pay for maintenance for entities that have already had their internal connections funded through the E-rate program. Finally, eliminating funding for basic maintenance could provide additional incentives for schools and libraries to evaluate carefully the reliability of different solutions from various providers and think seriously about maintenance costs when constructing their internal networks.

82. Another option would be to cap basic maintenance payments and reimburse requests that are based on actual repair and maintenance costs only. Specifically, consistent with the internal connections approach,[190] we seek comment on establishing a per student cap per school district for each funding year, with the applicant's discount rate applied after the cap is determined. For example, if the per student cap were $2, a school district with 100,000 students would have a total of up to $200,000 in E-rate funding for basic maintenance for internal connections. If the district were eligible for a 75 percent discount, it could be eligible to receive up to $150,000 for maintenance each year. Under this option, libraries would be eligible for up to the same discount as the public school district in which they are located. We believe that this approach would help to ensure that funding for basic maintenance for internal connections is

[188] *See id.* at 26921-22, para. 23. Specifically, the Commission determined that basic maintenance includes repair and upkeep of previously purchased eligible hardware and wire, and basic technical support including configuration changes. The Commission noted that basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment's ability to transport information. *Id.*

[189] *See* USAC website, Schools and Libraries, Funding Request Data Retrieval Tool, available at http://www.sl.universalservice.org/funding/opendatasearch/Search1.asp (last visited May 20, 2010).

[190] *See supra* paras. 72-74.

allocated more equitably among the schools and libraries that most need funding support for maintenance. To address the potential waste that occurs by funding maintenance based on estimated costs, we also propose to limit funding for maintenance to actual expenses for repair and maintenance. In order to make this change, we propose to change E-rate program rules to allow applicants to seek E-rate funds for basic maintenance for internal connections in the funding year following the funding year in which they sought and received repairs on internal connections. We seek comment, therefore, on revising section 54.507(d) of the Commission's rules to allow applicants to request funding for basic maintenance that was received in the prior funding year.[191]

83. For either option (eliminating funding for basic maintenance of internal connections or capping such funding), we seek comment on whether such a change should be phased in over some number of funding years, and, if so, how. In either case, the requirement that applicants seek funding for only basic maintenance would remain unchanged. Specifically, we would continue to find ineligible any services that include maintenance of equipment that is not supported by E-rate or that enhances the utility of equipment beyond the transport of information, as well as diagnostic services in excess of those necessary to maintain the equipment's ability to transport information.[192] Additionally, we seek comment on any other methods we could use to ensure support for basic maintenance is distributed equitably and in a way that is based on actual repair costs. For example, one alternative method could be that funding for basic maintenance could be distributed in the next funding year after the costs were incurred based on the actual amount for labor and parts or equipment.

2. Indexing the Annual Funding Cap to Inflation

84. We propose to amend section 54.507 of our rules to index the E-rate program funding cap to the rate of inflation, on a prospective basis, so that the program maintains its current purchasing power in 2010 dollars.[193] Many commenters responding to the *NBP Public Notice #15* support adjusting the annual E-rate funding cap to take into account inflation, suggesting that increasing the cap will allow schools and libraries to continue to benefit from upgraded connections that deliver faster and more efficient broadband service as demand for greater capacity increases.[194] In order to maintain predictability, however, we propose that during periods of deflation, the funding cap will remain at the level from the previous funding year.[195] We seek comment on these proposals.

85. We propose using the gross domestic product chain-type price index (GDP-CPI), which is released quarterly.[196] This is the same index used by the Commission to inflation-adjust revenue

---

[191] *See* 47 C.F.R. § 54.507(d). This rule currently requires applicants receiving funds for non-recurring services to receive such services by the September after the funding year closes.

[192] *See Schools and Libraries Third Report and Order,* 18 FCC Rcd at 26921-22, para. 23.

[193] *See* Appendix A*,* 47 C.F.R. §§ 54.507(a)(1), (a)(2).

[194] *See*, *e.g.*, Dell NBP Public Notice #15 Comments at 4; Kuskowkwim NBP Public Notice #15 Comments at 7; SECA NBP Public Notice #15 Comments at 30; Schools, Health and Libraries Broadband Coalition NBP Public Notice #15 Comments at 4; Texas State Library NBP Public Notice #15 Comments at 2; U.S. Broadband Coalition NBP Public Notice #15 Comments at 36; Technology CEO Council NBP Public Notice #15 Comments at 1.

[195] *See* West Virginia Department of Education NBP Public Notice #15 Comments at 19.

[196] *See, e.g.,* National Income and Product Accounts Table, Bureau of Economic Analysis, April 2010, Table 1.1.4., available at http://www.bea.gov/National/nipaweb/TableView.asp?SelectedTable=4&Freq=Qtr&FirstYear=2007&LastYear=2009 (last visited May 20, 2010).

thresholds used for classifying carrier categories for various accounting and reporting purposes.[197] It also is used to calculate adjustments to the annual funding cap for the high cost loop support mechanism, which subsidizes service provided by rural telephone companies.[198] The Commission has noted that the Bureau of Economic Analysis of the Department of Commerce, which produces the index, considers the GDP-CPI a more accurate measure of price changes than other indices for the Commission's purposes.[199] The GDP-CPI is used by the Commission since it reflects price changes in all sectors of the economy.[200] While inflation is currently very low, implementation of such a proposal could result in the E-rate cap growing from $2.25 billion to approximately $2.55 billion over the next five years if inflation were to occur similar to the historical rate for the last five years. We seek comment on this proposal and on whether there are better ways to index the E-rate funding cap to inflation.

V. CREATING A PROCESS FOR DISPOSAL OF OBSOLETE EQUIPMENT

A. Background

86. *E-rate Program Rules and Requirements*. Once an eligible school or library has purchased services at a discount under the E-rate program, section 254(h)(3) of the Act prohibits that school or library from reselling or otherwise transferring the purchased service, or any equipment components of such a service, in consideration for money or any other thing of value.[201] In the *Schools and Libraries Third Report and Order*, the Commission further prohibited schools and libraries from transferring the equipment components of eligible services to other schools within three years of their purchase, even without receiving money or other consideration in return for the equipment, with one exception.[202] If the school or library that orders the eligible services or equipment permanently or temporarily closes, then that school or library can transfer any services and equipment components of those services to another school or library, so long as the school or library notifies USAC of the transfer.[203] The Act and the Commission's rules, however, do not specifically address what schools and libraries should do with equipment acquired with E-rate support once the equipment has become obsolete.

87. *E-Rate Central Petition for Clarification or Waiver*. E-Rate Central subsequently filed a petition for clarification or waiver of the Commission's rules concerning the disposal of equipment

[197] *See, e.g.,* 47 C.F.R. § 32.9000 (defining mid-sized incumbent local exchange carrier with annual revenue indexed for inflation as measured by the Department of Commerce Gross Domestic Product Chain-type Price Index (GDP-CPI)).

[198] *See* 47 C.F.R. § 36.603(c). For the high cost loop support, the annual cap is adjusted by the "Rural Growth Factor," which is the sum of the annual percentage change in GDP-CPI and the annual percentage change in the number of rural incumbent telephone company phone lines, known as working loops. Because phone lines have been declining at a greater rate than inflation in recent years, the net result has been a downward adjustment in annual funding under that program.

[199] *See Implementation of the Telecommunications Act of 1996: Reform of Filing Requirements and Carrier Classifications*, CC Docket No. 96-193, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 11716, 11721-22, para. 10 (1996) (*ARMIS NPRM*); Implementation of the Telecommunications Act of 1996, CC Docket No. 96-193, Report and Order, 12 FCC Rcd 8071, 8091, para. 41 (1997) (*ARMIS Order*).

[200] *ARMIS NPRM*, 11 FCC Rcd at 11721-22, para. 10; *ARMIS Order*, 12 FCC Rcd at 8091, para. 41.

[201] 47 U.S.C. § 254(h)(3); *see also* 47 C.F.R. § 54.513(a) (2009).

[202] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26923–24, paras. 26–28; 47 C.F.R. § 54.513(c).

[203] *Schools and Libraries Third Report and Order*, 18 FCC Rcd at 26924, paras. 27–28; 47 C.F.R. § 54.513(c).

purchased under the E-rate program.[204] Specifically, E-Rate Central sought guidance from the Commission on the proper method for disposing of equipment when its value or usefulness precludes the possibility of transferring the equipment to another eligible facility.[205] E-Rate Central noted that the Commission's rules for the disposal of equipment funded under the E-rate program, which prohibit eligible services and equipment components from being sold or transferred in consideration of anything of value, may conflict with New York's state regulations mandating that obsolete equipment shall be sold through bid procedures, if possible, for the highest possible price.[206] E-Rate Central argued that because much of the equipment purchased with E-rate funds becomes obsolete and expensive to retain after several years, schools and libraries should be allowed to dispose of obsolete equipment through a public auction or any other lawful means.[207] Thus, E-Rate Central requested that the Commission clarify that the E-rate equipment transfer rules are meant to apply only to equipment being transferred from one location for use in another, not to the normal disposal of unusable surplus equipment.[208]

88. In the absence of specific rules governing the disposal of equipment, E-Rate Central proposed five principles to govern appropriate equipment disposal procedures.[209] These five principles include: (1) the equipment subject to disposal has exceeded its useful life which, as a rebuttable presumption, is deemed to be five years; (2) the equipment subject to disposal is formally declared to be surplus by the school board, internal auditor, or other authorized body or individual; (3) the disposal process fully complies with state and local laws; (4) in the event any significant, non *de minimis* value is realized as a result of the disposal process, the applicant should return funds to USAC in proportion to the E-rate support received for the initial purchase (E-Rate Central suggested a definition of *de minimis* as any value that would result in the return of funds to USAC of $1,000 or less); and (5) a record of the disposal must be maintained in compliance with the existing E-rate record retention rules.[210]

---

[204] *See* E-Rate Central Petition for the Clarification or Waiver of E-Rate Rules Concerning the Disposal of Equipment Purchased Under the Schools and Libraries Universal Support Mechanism, CC Docket No. 02-6 (filed Sept. 13, 2006) (E-Rate Central Petition).

[205] *See* E-Rate Central Petition at 2.

[206] *See id.* at Attachment A (citing to New York State Boards of Cooperative Educational Services' (BOCES) Regulation on Sale and Disposal of BOCES Property).

[207] *Id.* at 1–2.

[208] *Id.* at 2. The Bureau released a public notice seeking comment on E-Rate Central's petition. *See E-Rate Central Petition for Clarification or Waiver of the Commission's Rules Concerning the Disposal of Equipment Purchased Under the Schools and Libraries Universal Support Mechanism*, CC Docket No. 02-6, Public Notice, 21 FCC Rcd 13750 (Wireline Comp. Bur. 2006). In response to the public notice, the Bureau received comments from BellSouth Corporation (BellSouth) and the State E-rate Coordinators' Alliance (SECA), and one reply comment from AT&T, Inc. (AT&T). *See* Comments of BellSouth Corporation, CC Docket No. 02-6 (filed Dec. 18, 2006) (BellSouth E-rate Central Petition Comments); Comments of State E-rate Coordinators' Alliance, CC Docket No. 02-6 (filed Dec. 18, 2006) (SECA E-rate Central Petition Comments); Comments of AT&T, Inc., CC Docket No. 02-6 (filed Jan. 8, 2007) (AT&T E-rate Central Petition Reply Comments). In response to E-Rate Central's petition, the Commission also received an *ex parte* proposal filed by CXtec. Letter from Barbara S. Ashkin, VP & Chief Operating Officer, CXtec *et al*., to the Federal Communications Commission, CC Docket No. 02-6 (filed May 21, 2007) (CXtec *Ex Parte*). CXtec is a Syracuse, New York, company that sells both new and pre-owned technology equipment. *See id.* at 1. CXtec proposes that the Commission apply the General Services Administration's (GSA) Exchange/Sale regulations to the E-rate program, which would allow a school or library seeking to replace aging equipment to sell or exchange that equipment and use the proceeds from that sale or exchange to purchase new equipment. *See* CXtec *Ex Parte* at 4; 41 C.F.R. § 102-39 (Replacement of Personal Property Pursuant to the Exchange/Sale Authority).

[209] *See* E-Rate Central Petition at 2–3.

[210] *Id.*

B. Discussion

89. We propose to amend section 54.513 of our rules establishing how participants in the E-rate program may dispose of obsolete equipment purchased with E-rate discounts.[211] We also propose revising an FCC form to report such equipment disposals to USAC. The changes we propose seek to balance the competing concerns of providing schools and libraries the flexibility to dispose of obsolete equipment and the need to guard against waste, fraud, and abuse within the E-rate program. We seek comment on our proposed changes provided below.

90. *Process for Disposal of Obsolete Equipment*. We seek comment on permitting the disposal of E-rate equipment for payment or other consideration, subject to four of E-Rate Central's proposed five principles.[212] We propose to revise section 54.513 of our rules to provide for the disposal of equipment for payment or other consideration where such equipment has exhausted its useful life.[213] We clarify that, to the extent a school or library chooses to dispose of equipment purchased using E-rate funds and does not receive monetary payment or other consideration, it may do so without complying with these proposed rules. As BellSouth suggests, the Commission encourages schools and libraries to recycle the equipment when feasible.[214] We do not believe, however, that it is necessary to adopt a requirement that applicants return any non-*de minimis* value, as discussed below.[215] Specifically, we believe that the Act's prohibition on the sale, resale, or transfer of telecommunications services and network capacity was intended to prevent applicants from profiting from supported services during the time that the applicant is supposed to be using them.[216] We do not believe this prohibition extends to when the applicant is no longer utilizing equipment purchased with the assistance of E-rate funds because the equipment is past its useful life. Thus, we propose to allow schools and libraries to dispose of equipment for payment or other consideration under the following conditions: (1) the equipment has exhausted its useful life but no sooner than five years after the equipment is installed; (2) the equipment is formally declared to be surplus by the school board, information technology officer, or other authorized body or individual; (3) the school or library notifies USAC within 90 days of disposal and keeps a record of the disposal for a period of five years following the disposal; and (4) the disposal process fully complies with state and local laws, where applicable. We discuss these conditions separately below.

91. First, we propose that schools and libraries be permitted to sell or trade in equipment after the equipment has exhausted its useful life. We agree with commenters that there should be a rebuttable presumption of no less than five years from the installation date for the useful life of any equipment purchased using E-rate funds.[217] Commenters note that the absence of rules specifically addressing the disposal of equipment purchased under the E-rate program when it has reached the end of its useful life has led some schools and libraries to place obsolete, out-of-service equipment in school basements or

[211] *See* Appendix A, 47 C.F.R. § 54.513 (d).

[212] *See* E-Rate Central Petition at 2-3.

[213] *See* Appendix A, 47 C.F.R. § 54.513(d).

[214] *See* BellSouth E-Rate Central Petition Comments at 2.

[215] *See infra* para. 94.

[216] *See supra* para. 86.

[217] *See* E-Rate Central Petition at 2 (arguing that "much of the electronic equipment eligible for E-rate discounts has a limited technical and economic life of 3–5 years"); SECA E-Rate Central Petition Comments at 1 (supporting E-Rate Central's petition); *see also* AT&T E-Rate Central Petition Reply Comments at 1; BellSouth E-Rate Central Petition Comments at 1.

other on-campus storage locations.[218] Such indefinite storage imposes additional needless costs on schools and libraries. Additionally, our silence may have encouraged some schools or libraries to simply throw away unused equipment, even though that same equipment could be put to use by others.[219] We seek comment on permitting the disposal of E-rate equipment for payment or other consideration, subject to certain conditions. Specifically, we seek comment on whether five years is a reasonable minimum time period for retaining equipment components purchased using an E-rate discount. Further, this proposal would count five years from the date of installation. We seek comment on whether that is the appropriate date from which to count five years or whether some other date, such as purchase date, is more appropriate. We note that our proposal would not require schools and libraries to continue using the equipment for five years, but they could not resell or trade it in before five years had passed.

92. Second, we seek comment on the proposal suggested by commenters to require applicants to formally declare that the equipment is surplus.[220] We propose to require that the school board or other authorized body make the formal declaration. We note that E-rate Central proposed that an internal auditor may make the formal declaration. While we do not believe that is typically the function of an internal auditor, we do not preclude schools or libraries from having such a person make the declaration at their discretion. We believe this formal process will prevent applicants from disposing of equipment prematurely. We also propose that the formal declaration be subject to the Commission's document retention rules, as detailed in section 54.516.[221]

93. Third, we propose that schools and libraries notify USAC of the resale or trade of equipment funded via the E-rate program within 90 days of its disposal. We also propose that applicants be required to keep a record of the disposal for a period of five years following the disposal.[222] To implement this requirement, we propose to revise the FCC Form 500 (Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation), as discussed below, to require applicants to submit certain information to USAC documenting the resale or trade of their equipment.[223] We seek comment on these proposals.

94. In setting forth these proposed conditions, we seek comment on E-rate Central's proposal to require the return of any funds that are related to the resale or trade of E-rate equipment.[224] We seek comment on whether E-rate Central's proposed *de minimus* threshold of $1000 should be set at a higher level to reduce administrative burden.[225] In many instances, the value of equipment after five years of purchase in all likelihood would be so small that it would not justify requiring schools to return a portion of the proceeds to USAC. As SECA notes, the administrative and financial burden on USAC and

[218] *See* E-Rate Central Petition at 2; SECA E-Rate Central Petition Comments at 1; AT&T E-Rate Central Petition Reply Comments; CXtec *Ex Parte.*

[219] To the extent that schools or libraries believe their equipment has no value, we encourage them to recycle the equipment when feasible.

[220] *See* E-Rate Central Petition at 2; BellSouth E-Rate Central Petition Comments at 2; SECA E-Rate Central Petition Comments at 1.

[221] *See* 47 C.F.R. § 54.516.

[222] *See* E-Rate Central Petition at 2.

[223] *See infra* paras. 95-96.

[224] *See* E-Rate Central Petition at 3; AT&T E-Rate Central Petition Reply Comments at 2.

[225] E-Rate Central Petition at 3 (proposing that "the applicant should return funds to USAC in proportion to the E-rate support received for the initial purchase"); *see also* AT&T E-Rate Central Petition Reply Comments at 2 ("AT&T would encourage efforts to return non-*de minimis* funds to USAC resulting from the sale by applicants of obsolete equipment that applicants purchased, in part, with E-Rate funds.").

applicants of documenting and processing any such refunds would far outweigh the value of the funds being returned since such refunds would be minimal.[226] Further, requiring applicants to return any funds related to the disposal of E-rate equipment could deter them from disposing unneeded equipment. We seek comment on these proposals.

95. *Revised FCC Form 500*. Currently, to help the Commission track the use of equipment components purchased with E-rate discounts, schools and libraries are required to "maintain asset and inventory records of equipment purchased as components of supported internal connections services sufficient to verify the actual location of such equipment for a period of five years after purchase."[227] Similarly, if a school or library closes and transfers services or equipment components thereof to another school or library, the transferor "must notify [USAC] of the transfer, and both the transferor and recipient must maintain detailed records documenting the transfer and the reason for the transfer for a period of five years."[228] Consistent with the Commission's recordkeeping and reporting requirements, we propose to revise the FCC Form 500 to require schools and libraries to report to USAC the disposal of equipment purchased with an E-rate discount for payment or other consideration. Specifically, the revised FCC Form 500 would require a school or library disposing of equipment to report the following information to USAC:

(A) the applicant's name, entity number, address, and telephone number;

(B) the name, address, telephone number, and email address of the applicant's authorized point of contact;

(C) the date of the disposal of obsolete equipment;

(D) the name of each piece of equipment disposed of, including the date of purchase and the funding request number(s) associated with the disposed equipment;

(E) any payment, trade-in value, or other consideration received for such disposal of equipment;

(F) the name of the entity that paid or otherwise gave the applicant valuable consideration for the equipment;

(G) formal declaration by the school board or other authorized body or individual that the equipment subject to disposal is surplus; and

(H) certification that the information provided on the form is true and accurate to the best of the applicant's knowledge, evidenced by the signature of someone authorized to so certify by the applicant and the date.

96. Requiring schools and libraries to submit this information as part of the FCC Form 500 could facilitate our ongoing efforts to mitigate waste, fraud and abuse. Collecting this information would allow USAC and the Commission to better assess how long program participants are using equipment purchased with E-rate discounts prior to disposal of any obsolete equipment, and to track what E-rate program participants do with equipment they no longer use. Moreover, such revision would require limited information, all of which is easy to obtain whenever a school or library seeks to dispose of obsolete equipment. We seek comment on revising the FCC Form 500 and ways in which to further minimize any potential burdens on applicants while guarding against waste, fraud, and abuse in the E-rate

[226] *See* SECA E-Rate Central Petition Comments at 2 ("[W]e strongly suspect that the administrative cost of processing any such refunds would far outweigh the value of the funds being returned.").

[227] 47 C.F.R. § 54.516(a).

[228] 47 C.F.R. § 54.513(c).

program. We also seek comment on the information that we propose to obtain from applicants and whether less or more information would be appropriate.

VI. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

97. As required by the Regulatory Flexibility Act of 1980, as amended,[229] 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 E. 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.[230] In addition, the Notice and IRFA (or summaries thereof) will be published in the Federal Register.[231]

B. Paperwork Reduction Act Analysis

98. This document contains proposed 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, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the "information collection burden for small business concerns with fewer than 25 employees."

C. *Ex Parte* Presentations

99. These matters shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.[232] 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.[233] Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission’s rules.[234]

D. Comment Filing Procedures

100. 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,[235] 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 and GN Docket No. 09-51.** Comments may be filed using:

---

[229] *See* 5 U.S.C. § 603.

[230] *See* 5 U.S.C. § 603(a).

[231] *Id.*

[232] 47 C.F.R. §§ 1.1200-1.1216.

[233] 47 C.F.R. § 1.1206(b)(2).

[234] 47 C.F.R. § 1.1206(b).

[235] 47 C.F.R. §§ 1.415, 1.419.

(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://fjallfoss.fcc.gov/ecfs2/ or the Federal eRulemaking Portal: http://www.regulations.gov.

- 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. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

  - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours 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).

101. Parties must also send a courtesy copy of their filing to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-B540, Washington, D.C. 20554. Charles Tyler's e-mail address is Charles.Tyler@fcc.gov and his telephone number is (202) 418-7400.

102. 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.

103. 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.[236] 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

[236] *See* 47 C.F.R. § 1.49.

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.

104. For further information, contact Regina Brown at (202) 418-0792 or James Bachtell at (202) 418-2694 in the Telecommunications Access Policy Division, Wireline Competition Bureau.

VII. ORDERING CLAUSES

105. 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, this Notice of Proposed Rulemaking IS ADOPTED.

106. 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

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 C.F.R. Part 54 as follows:

PART 54 - UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. §§ 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.5 to read as follows:

§ 54.5 Definitions.

Rural area. For purposes of the rural health care universal service support mechanism, a "rural area" is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. "Core Based Statistical Area" and "Urban Area" are as defined by the Census Bureau and "Place" is as identified by the Census Bureau.

3. Amend § 54.500 by adding new subsections (a), (e), (o), (p), and (q), eliminating subsection (m), and re-designating subsections (a), (b), and (c) as (b), (c), (d), re-designating subsections (d), (e), (f), (g), (h), (i), (j), (k), (l) as (e), (f), (g), (h), (i), (j), (k), (l), and (m), and re-designating subsections (k) and (l) as (r) and (s) to read as follows:

§ 54.500 Terms and definitions.

(a) Applicant. For purposes of this subpart, an "applicant" is an eligible school or library, or a consortium that includes an eligible school or library.

(b) * * *

(c) * * *

(d) * * *

(e) Internal connections. For purposes of this subpart, a service is eligible for support as a component of an institution's "internal connections" if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch.

(f) * * *

(g) * * *

(h) * * *

(j) * * *

(k) * * *

(l) * * *

(m) * * *

(o) Priority one services. For purposes of this subpart, "priority one services" are telecommunications services, Internet access, and information services as designated annually by the Commission in the Eligible Services List.

(p) Priority two services. For purposes of this subpart, "priority two services" are internal connections, as designated annually by the Commission in the Eligible Services List.

(q) Rural area. For purposes of this subpart, a "rural area" is within a territory whose locale code is classified as either rural-fringe, rural-distant, or rural-remote by the U.S. Department of Education's National Center for Education Statistics.

(r) * * *

(s) * * *

4. Amend § 54.501 by revising subsection (a) to read as follows:

§ 54.501 Eligibility for service provided by telecommunications carriers.

(a) Telecommunications carriers shall be eligible for universal service support under this subpart for providing supported services to eligible applicants.

* * * * *

5. Amend § 54.502, as proposed in FCC 09-105,[237] to read as follows:

§ 54.502 Supported services.

(a) Telecommunications services - For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms. Supported telecommunications services are designated annually in the Eligible Services List by the Commission in accordance with section 54.503 of the Commission's rules.

(b) Internet access and information services – For purposes of this subpart, supported Internet access and information services include basic conduit access to the Internet and the services defined in section 54.5 of the Commission's rules as Internet access. Supported Internet access and information services are designated annually by the Commission in the Eligible Services List in accordance with section 54.503 of the Commission's rules.

(c) Internal connections – For purposes of this subpart, supported internal connections are defined in §54.500(e) as eligible services. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school

[237] The proposed rule language in italics includes the rules as proposed in FCC 09-105.

campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way. Supported internal connections are defined and listed in the Eligible Services List as updated annually in accordance with section 54.503 of the Commission's rules.

(d) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) and (c) of this section for eligible schools, libraries, and consortia including those entities. Such services provided by non-telecommunications carriers shall be subject to all the provisions of this subpart, except Sections 54.501(a), 54.502(a), and 54.515.

6. Amend § 54.504 by eliminating subsections (a) and (b) and revising and re-designating subsection (c) as subsection (a), and by re-designating subsections (d), (e), (f), (g), and (h) as subsections (b), (c), (d), (e), and (f) to read as follows:

§ 54.504 Requests for services.

(a) Filing of FCC Form 471. An applicant seeking to receive discounts for eligible services as designated by the Commission on the eligible services list under this subpart shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of FCC Form 471.

(1) The FCC Form 471 shall be signed by the person authorized to order telecommunications services for the applicant and shall include that person's certification under oath that:

(i) * * *

(ii) * * *

(iii) * * *

(iv) All of the schools and libraries listed on the FCC Form 471 application are:

(A) covered by an individual or higher-level technology plan for using the services requested in the application that meets the requirements of § 54.508 of the Commission's rules;

(B) are not covered by a technology plan because the application requests only eligible priority one services as defined in § 54.500(1) and the applicant is subject to state or local technology planning requirements; or

(C) are not covered by a technology plan because the application requests only basic telecommunications services

(v) The applicant's technology plan(s) has/have been/will be approved by a state or other authorized body consistent with § 54.508 of this subpart.

(vi) * * *

(vii) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value. Services that the applicant purchases at discounts are not deemed sold, resold, or transferred in consideration for money or any other thing of value if disposed pursuant to § 54.513.

(viii) * * *

(ix) * * *

(x) * * *

(xi) All bids submitted to an applicant seeking eligible services were carefully considered and the most cost-effective bid was selected in accordance with § 54.510 of this subpart, with price being the primary factor considered, and is the most cost-effective means of meeting educational needs and technology plan goals.

(2) * * *

(d) * * *

(e) Rate disputes. If they reasonably believe that the lowest corresponding price is unfairly high or low, applicants may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates

(1) Applicants may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant applicant is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

* * * * *

7. Amend § 54.505 by revising subsection (b) to read as follows:

§ 54.505 Discounts.

(a) * * *

(b) Discount percentages. The discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for eligible services as designated by the Commission. The discounts available to a particular applicant shall be determined by indicators of poverty and high cost.

(1) * * *

(2) * * *

(3) The Administrator shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(i) Schools and libraries whose locale code is city, suburb, town-fringe, or rural-fringe, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as urban.

(ii) Schools and libraries whose locale code is town-distant, town-remote, rural-distant, or rural-remote, as measured by the U.S. Department of Education's National Center for Education Statistics, shall be designated as rural.

(4) Applicants shall calculate discounts on supported services described in § 54.502 or other supported special services described in § 54.503 by first calculating a single discount percentage rate for the entire school district by dividing the total number of students eligible for the National School Lunch Program or **other alternative eligible mechanism** by the total number of students in the district. Applicants shall then compare that single figure against the discount matrix to determine the school district's discount for priority one and priority two services. All schools and libraries within that school district shall receive the same discount rate.

* * * * *

9. Amend § 54.507 by revising subsections parts (a), (a)(1), (a)(2), (c), (d), to read as follows:

§ 54.507 Cap.

(a) Amount of the annual cap. The annual funding cap on federal universal service support for schools and libraries shall be $2.25 billion in funding year 2010. In funding year 2011 and subsequent funding years, the funding cap shall be automatically increased annually to take into account increases in the rate of inflation as calculated in subpart (a)(1). All funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

(1) Increase Calculation. To measure increases in the rate of inflation for annual automatic increase purposes, the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP–CPI). To compute the annual increase, the average of the GDP–CPI for four quarters shall be calculated by adding the four GDP–CPI quarters and dividing the sum by 4. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent and otherwise rounding to the next lower 0.1 percent. This percentage increase shall be applied to the amount of the annual funding cap from the previous funding year. If the yearly average GDP–CPI decreases or stays the same, the annual funding cap shall remain the same as the previous year.

(2) Public Notice. When the calculation of the yearly average GDP–CPI is determined, the Commission shall publish a Public Notice in the Federal Register within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

(b) * * *

(c) Requests. Funds shall be available to fund discounts for applicants on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's website a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that treats all applicants filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

(d) Annual filing requirement. Applicants shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year. Applicants must use recurring services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought. The deadline for implementation of non-recurring services will be September 30 following the close of the funding year. An applicant may request and receive from the Administrator an extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

(e) * * *

(f) * * *

(g) * * *

* * * * *

10. Amend § 54.508 by revising subsections (a), (b), (c), and deleting subsection (d) to read as follows:

§ 54.508 Technology Plans.

(a) When plan is necessary and content. Applicants seeking only basic telecommunications services do not need to develop a technology plan when requesting schools and libraries universal service support. Applicants must develop a technology plan when requesting schools and libraries universal service support (1) for eligible priority one services if they are not subject to state or local technology planning requirements and (2) for eligible priority two services. Applicants must document the date on which the technology plan was created. The technology plan must comply with state and local technology planning requirements or meet the standards established by the U.S. Department of Education's Enhancing Education through Technology, 20 U.S.C. § 6764, or the U.S. Institute for Museum and Library Services. The technology plan must include the following elements:

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(b) Approval. Applicants required to prepare technology plans under this subpart must have such plan(s) approved. An applicant that has developed a technology plan approved by the state, the U.S. Department of Education's Enhancing Education through Technology, or the U.S. Institute for Museum and Library Services has an approved plan for purposes of the universal service program. Other applicants must obtain approval from either the Administrator or an independent entity approved by the Commission or certified by the Administrator as qualified to provide such approval. All parties who will provide such approval must apply the standards set forth in paragraph (a) of this section.

(c) Timing of certification. Applicants must certify on the FCC Form 471 that they have prepared a technology plan, if required. Applicants must also confirm in FCC Form 486 that their technology plan was approved before they began receiving services pursuant to it.

(d) [Delete]

11. Add § 54.510 to read as follows:

§ 54.510 Competitive Bidding Requirements.

(a) All entities participating in the schools and libraries universal service support program must conduct a fair and open competitive bidding process, consistent with all requirements set forth in this subpart.

(b) Competitive bid requirements. An applicant shall:

(1) seek competitive bids for all eligible priority one services in accordance with state or local procurement requirements. If requested by the Administrator, each applicant bears the burden of demonstrating compliance with state or local procurement requirements. Unless there is an existing contract signed on or before July 10, 1997, pursuant to § 54.511(c), an applicant that is not subject to state or local procurement requirements shall follow the FCC Form 470 posting requirements as set forth in subsection (c) of this subpart to meet the competitive bidding requirements.

(2) seek competitive bids for all eligible priority two services pursuant to the requirements established in this subpart, except as provided in § 54.511(c). These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state and local requirements.

(c) Posting of FCC Form 470.

(1) An applicant seeking to receive discounts for eligible internal connections products and services under this subpart shall post an FCC Form 470 to initiate the competitive bidding process. An eligible applicant that is not subject to state or local procurement requirements and that is seeking to receive for eligible

priority one service shall post an FCC Form 470 to initiate the competitive bidding process. The FCC Form 470 and any request for proposal cited in the FCC Form 470 should include:

(i) a list of specified services for which the applicant anticipates they are likely to seek discounts; and

(ii) sufficient information to enable bidders to reasonably determine the needs of the applicant.

(iii)-(vi) [Delete]

(2) The FCC Form 470 shall be signed by the person authorized to order eligible services for the eligible applicant and shall include that person's certification under oath that:

(i) The schools meet the statutory definition of elementary and secondary schools found under section 254(h) of the Act, as amended in the No Child Left Behind Act of 2001, 20 U.S.C. 7801(18) and (38), do not operate as for-profit businesses, and do not have endowments exceeding $50 million;

(ii) The libraries or library consortia eligible for assistance from a State library administrative agency under the Library Services and Technology Act of 1996 do not operate as for-profit businesses and whose budgets are completely separate from any school (including, but not limited to, elementary and secondary schools, colleges, and universities).

(iii) All of the individual schools, libraries, and library consortia receiving eligible services are covered by:

(A) Individual technology plans for using the internal connections products or services requested in the application that meets the requirements of § 54.508 of this subpart; or

(B) No technology plan is required by the Commission's rules.

(iv) The technology plan(s) has/have been/will be approved consistent with § 54.508 of this subpart or no technology plan is required.

(v) The services the applicant purchases at discounts will be used solely for educational purposes and will not be sold, resold, or transferred in consideration for money or any other thing of value except as allowed by § 54.513.

(vi) Support under this support mechanism is conditional upon the school(s) and library(ies) securing access to all of the resources, including computers, training, software, maintenance, internal connections, and electrical connections necessary to use the services purchased effectively.

(vii) All bids submitted for eligible priority one and priority two products and services will be carefully considered, with price being the primary factor, and the bid selected will be for the most cost-effective offering consistent with § 54.511.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose.

(4) After posting on the Administrator's website an applicant's FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator's website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

12. Amend § 54.511 by revising subsections (a), (b), (c)(1), (c)(2), (c)(3), (d)(1), and adding subsection (e) to read as follows:

§ 54.511 Ordering Services.

(a) Selecting a provider of eligible services. In selecting a provider of eligible services, applicants shall carefully consider all bids submitted and must select the most cost-effective service offering. In determining which service offering is the most cost-effective, entities may consider relevant factors other than the pre-discount prices submitted by providers but price should be the primary factor considered.

(b) Lowest corresponding price. Providers of eligible services shall not charge applicants a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

(c) Existing contracts. (1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the requirements set forth in § 54.510(b), (c)(3), and (c)(4) as follows:

(i) * * *

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.510 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) For an applicant that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the applicant is exempt from the competitive bid requirements.

(3) [delete]

(d)(1) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts.

(e) Contract requirements. All contracts for eligible products and services must comply with state and local contract laws. Applicants must have a contract or legally binding agreement in place when filing the FCC Form 486. Applicants bear the burden of demonstrating compliance with state and local contract laws and should be prepared to provide the necessary documentation of such compliance at any time during the application review process.

13. Amend § 54.513 by revising the title and adding subsection (d) to read as follows:

§ 54.513 Resale and transfer of services and disposal of surplus equipment.

* * * * *

(d) Disposal of Surplus Equipment that Has Exhausted Its Useful Life. At least five years after its installation date, surplus equipment may be resold for payment or other consideration if:

(1) the equipment has exhausted its useful life;

(2) the school board or other authorized body formally declares the equipment to be surplus;

(3) the school or library notifies USAC within 90 days of reselling or trading the equipment using FCC Form 500 and keeps a record of such disposal for a period of five years following the disposal; and

(4) the disposal process substantially complies with state and local laws, where applicable.

14. Amend § 54.519 by revising subsections (a) and (b) to read as follows:

§ 54.519 State telecommunications networks.

(a) Telecommunications services. State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of applicants. Such state telecommunications networks shall pass on such discounts to applicants and shall:

* * * * *

(6) Comply with the competitive bid requirements set forth in § 54.510(b).

(b) Internet access and installation and maintenance of internal connections. State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.502(d), to receive universal service support for providing such services to applicants.

APPENDIX B

List of Commenters

Broadband Needs in Education, Including Changes to the E-rate Program to Improve Broadband Deployment Public Notice

GN Docket Nos. 09-47, 09-51, 09-137
CC Docket No. 02-6
WC Docket No. 05-195

Comments	Abbreviation
1. Alaska Department of Education & Early Development	AK DOE
2. Albuquerque Public Schools	APS
3. American Association of School Administrators, Association of Educational Service Agencies	AASA & AESA
4. American Library Association	ALA
5. Anchorage School District	ASD
6. Arizona LEA Broadband Data	Ariz BB Data
7. Arizona Long Range Strategic Educational Tech Plan	AZ Long Range
8. Arkansas State E-rate Coordinator	Ark
9. AT&T Inc.	AT&T
10. Berkeley County School District	Berkeley
11. California K-12 High Speed Network	CK-12HSN
12. California PUC & the People of the State of CA	CPUC
13. City of Chicago Board of Education of the City of Chicago Chicago Public Schools, Chicago Public Library City Colleges of Chicago	City
14. Colorado's Education Access Gateway Learning Environment Network	CEAGLN
15. Common Sense Media	CSM
16. Cordova School District	CSD
17. Council of the Great City Schools	GCS
18. Dell Inc.	Dell
19. Discovery Communications, Inc.	Discovery
20. Durham Public Schools	Durham
21. e-CLIC	e-CLIC
22. Education and Libraries Networks Coalition	EdLiNC
23. Education Networks of America, Inc./ENA Services, LLC	ENA
24. E-rate Provider Services, LLC	EPS
25. Fairfax County Public Schools	FCPS
26. Florida Virtual School	FLVS
27. Franklin County, Tennessee School District	Franklin County
28. Funds for Learning	FFL
29. Houston ISD	HISD
30. Iowa Department of Education	Iowa
31. Kellogg and Sovereign Consulting	KS
32. Lower Kuskokwim School District, Alaska	Kuskokwim
33. Melissa Raes	MR
34. Miami-Dade Schools	Miami
35. Michigan Dept. of Education	MDOE
36. Mississippi Head Start	Mississippi Head Start
37. Mukilteo School District	Mukilteo

38. National Assn. of Telecommunications Officers & Advisors	NATOA
39. National Internet2 K20	Internet2
40. National School Boards Assn.	NSBA
41. Nebo School District	Nebo
42. New York State Education Department	NYSED
43. Oneida-Herkimer-Madison BOCES	OHMB
44. Ohio Public Library Information Network	OPLIN
45. Oregon Dept of Education	OR DOE
46. Pat Cassella	Cassella
47. Pelican City School District	PCSD
48. Polk County Public Schools	Polk County
49. Professor Heather E. Hudson (University of Alaska)	Hudson
50. Qualcomm Incorporated	Qualcomm
51. San Diego USD	SDUSD
52. San Bernardino County Superintendent of Schools	SBCSS
53. School District of Palm Beach County, Florida	SDPB
54. South Kitsap School District	SKSD
55. Sprint Nextel Corp.	Sprint
56. St. Charles Parish Public Schools	St. Charles
57. State E-rate Coordinators Alliance	SECA
58. State of Alaska	Ak
59. Sunesys, LLC	Sunesys
60. Telesolutions Consultants	TC
61. Texas Education Telecommunication Network	TETN
62. Texas State Library and Archives Commission	Texas State Library
63. Towanda Area School District	Towanda
64. University of Alaska	Univ. Alaska
65. Utah Education Network	UT EN
66. Verizon and Verizon Wireless	Verizon
67. Volusia County Schools	Volusia
68. West Virginia State Department of Education	WV DoE
69. Wickenburg, Arizona	Wickenburg
70. Wisconsin Department of Public Instruction	Wisconsin DPI

Reply Comments	**Abbreviation**
1. AACC & EDUCAUSE	AACC & EDUCAUSE
2. AT&T	AT&T
3. Bill and Melinda Gates Foundation	Gates Foundation
4. Brian Hogan	Hogan
5. CenturyLink	CL
6. Connected Nation and The National Coalition on Black Civic Participation-Black Women's Roundtable	Connected Nation & NCBCP-BWR
7. eCLIC	eCLIC
8. Gardner Edgerton SD No. 231	Gardner
9. General Communication, Inc.	GCI
10. International Association for K-12 Online Learning	iNACOL
11. Microsoft	Microsoft
12. National Association of Telecommunications Officers and Advisors	NATOA

13. Northeastern Regional Information Center	NERIC
14. Noelle Kreider	Kreider
15. Public Broadcasting Service	PBS
16. The Schools, Health and Libraries Broadband (SHLB) Coalition	SHLB
17. Software & Information Industry Association	SIIA
18. State Ed Tech Directors	SETDA
19. State E-rate Coordinators Association	SECA
20. The Quilt and StateNets	Quilt
21. Washington State Office of Superintendent of Public Instruction	Wash Office

APPENDIX C

List of Commenters

Second Further Notice of Proposed Rulemaking

CC Docket No. 02-6

Comments	**Abbreviation**
1. Alaska Department of Education and Early Development and State Library	Alaska EED
2. American Association of School Administrators/ Association of Educational Service Agencies	AASA/ AESA
3. American Library Association	ALA
4. Arkansas E-rate Work Group	AEWG
5. Avaya, Inc.	Avaya
6. BellSouth Corporation	BellSouth
7. Central Susquehanna Intermediate Unit	
8. Consortium for School Networking	CoSN
International Society for Technology in Education	ISTE
9. Council of the Great City Schools	Council of GCS
10. Education and Libraries Networks Coalition	EdLiNC
11. E-Rate Central	E-rate Central
12. E-Rate Complete, LLC	E-rate Complete
13. Funds For Learning, LLC	FFL
14. General Communication, Inc.	GCI
15. Illinois State Board of Education	ISBE
16. International Business Machines Corporation	IBM
17. Kellogg & Sovereign Consulting, LLC	K&S
18. Louisiana eRate Filers Organization	LaErate
19. National Association of State Utility Consumer Advocates	NASUCA
20. New York City Department of Education	NYCDOE
21. Sprint Corporation	Sprint
22. State E-Rate Coordinators' Alliance	SECA
23. United Utilities, Inc.	United
24. Weisiger, Greg	Weisiger

Reply Comments	
1. Alaska Department of Education and Early Development and Alaska State Library	Alaska EED
2. BellSouth Corporation	BellSouth
3. California Public Utilities Commission and the People of the State of California	CPUC or California
4. Consortium for School Networking	CoSN
5. International Society for Technology in Education	ISTE
6. Council of the Great City Schools	CGCS
7. International Business Machines Corporation	IBM
8. Sprint Corporation	Sprint
9. State E-rate Coordinators Alliance	SECA

10. Verizon	Verizon
11. Weisiger, Greg	Weisiger
12. Wisconsin Department of Public Instruction	WIDPI

APPENDIX D

List of Commenters

Comprehensive Review Notice of Proposed Rulemaking

WC Docket No. 05-195

Comments

1.	Alexicon Telecommunications Consulting	(Alexicon)
2.	American Association of School Administrators	(AASA)
3.	American Library Association	(ALA)
4.	Arkansas E-rate Work Group	(AEWG)
5.	AT&T Corp	(AT&T)
6.	BellSouth Corporation	(BellSouth)
7.	Business Discount Plan, Inc.	(BDP)
8.	California Department of Education, Education Technology Office California E-rate Focus Group	(CDE)
9.	Centennial Communications Corporation	(Centennial)
10.	CenturyTel, Inc.	(CenturyTel)
11.	Chicago Public Schools	(CPS)
12.	CTIA-The Wireless Association	(CTIA)
13.	Council of Chief State School Officers	(CCSSO)
14.	Council of the Great City Schools	(CGCS)
15.	Delaware Public Service Commission	(DEPSC)
16.	Dobson Cellular Systems, Inc. & American Cellular Corporation	(Dobson)
17.	Education and Library Networks Coalition	(EdLiNC)
18.	Education and Early Development and the Alaska State Library	(EED)
19.	E-Rate Service Provider Forum	(ESPF)
20.	Federal Communications Commission, Office of Inspector General	(FCC OIG)
21.	Federated Investors, Inc.	(Federated)
22.	Florida Public Service Commission	(FPSC)
23.	General Communication, Inc.	(GCI)
24.	Greg Weisiger	(Weisiger)
25.	E-Rate Alliance	(E-Rate Alliance)
26.	GVNW Consulting, Inc.	(GVNW)
27.	Hispanic Information and Telecommunications Network	(HITN)
28.	IDT Telecom, Inc.	(IDT)
29.	International Society for Technology in Education and The Consortium for School Networking	(ISTE)
30.	Kellogg & Sovereign Consulting, LLC	(Kellogg and Sovereign)
31.	Los Angeles Unified School District	(LAUSD)
32.	Miami-Dade County Public Schools	(M-DCPS)
33.	Missouri Public Service Commission	(MoPSC)
34.	National Exchange Carrier Association, Inc.	(NECA)
35.	National Head Start Association	(NHSA)
36.	National Rural Education Advocacy Coalition	(NREAC)
37.	National Telecommunications Cooperative Association	(NTCA)
38.	Northeast Iowa Library Service Area	(NEILSA)

39. New Jersey Board of Public Utilities	(NJBPU)
40. New Jersey Division of the Ratepayer Advocate	(NJRPA)
41. New York State Education Department	(NYSED)
42. Organization for the Promotion and Advancement of Small Telecommunications Companies and the Western Telecommunications Alliance	(OPASTCO)
43. Orin Heend and Sara Fitzgerald	(Heend/Fitzgerald)
44. Private School Technology Coalition Agudath Israel Association of Christian Schools International Council for American Private Educators National Catholic Education Association National Association of Independent Schools United States Conference of Catholic Bishops	(PSTC)
45. Qwest Communications International Inc.	(Qwest)
46. Regulatory Studies Program Mercatus Center George Mason University	(Mercatus)
47. SBC Communications Inc.	(SBC)
48. Sprint Nextel Corporation	(Sprint Nextel)
49. South Carolina K12 School Technology Initiative Partnership	(SC K12 Committee)
50. State E-Rate Coordinators Alliance	(SECA)
51. TracFone Wireless, Inc.	(TracFone)
52. Trillion Partners, Inc.	(Trillion)
53. United States Telecom Association	(USTelecom)
54. Universal Service Administrative Company	(USAC)
55. Verizon	(Verizon)
56. West Virginia Department of Education	(WVDE)
57. West Virginia Library Commission	(WVLC)
58. Wisconsin Department of Public Instruction	(Wisconsin DPI)

Reply Comments

1. American Association of School Administrators	(AASA)
2. American Library Association	(ALA)
3. AT&T Inc.	(AT&T)
4. Council of the Great City Schools	(CGCS)
5. Dobson Cellular Systems, Inc. and American Cellular Corporation	(Dobson)
6. GVNW Consulting, Inc.	(GVNW)
7. Hispanic Information and Telecommunications Network, Inc.	(HITN)
8. IDT Telecom, Inc.	(IDT)
9. Illinois State Library/Office of the Secretary of State	(Illinois State Library)
10. International Business Machines Corporation	(IBM)
11. International Society for Technology in Education	(ISTE)
12. National Exchange Carrier Association, Inc.	(NECA)
13. National Telecommunications Cooperative Association	(NTCA)
14. New Jersey Division of the Ratepayer Advocate	(NJRPA)
15. Organization for the Promotion and Advancement of Small Telecommunications Companies and	(OPASTCO)
16. Western Telecommunications Alliance	(WTA)
17. Pennsylvania Department of Education	(PA DOE)

18. Qwest Communications International Inc.	(Qwest)
19. Sprint Nextel Corporation	(Sprint Nextel)
20. State Educational Technology Directors Association	(SETDA)
21. State E-rate Coordinators Alliance	(SECA)
22. South Dakota Department of Education	(SDDOE)
23. Universal Service Administrative Company	(USAC)
24. Verizon	(Verizon)
25. WiscNet	(WiscNet)
26. Wisconsin Council on Library and Network Development	(COLAND)
27. Wisconsin Department of Public Instruction	(Wisconsin DPI)

APPENDIX E

Initial Regulatory Flexibility Analysis

1. Pursuant to 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 this Notice of Proposed Rulemaking (NPRM).[2] Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed on or before the dates indicated on the first page of this NPRM. The Commission will send a copy of the NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[3] In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.[4]

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

2. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254.[5] 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.[6] 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.[7]

3. This NPRM is one in a series of rulemaking proceedings designed to implement the National Broadband Plan's (NBP) vision of improving and modernizing the universal service programs.[8] The Joint Statement on Broadband, released with the National Broadband Plan, identifies comprehensive universal service fund (USF) reform as an essential goal for the Federal Communications Commission (Commission).[9] In meeting the objectives set forth in these documents, this NPRM seeks comment on reforms to focus spending on more productive uses that will better serve the current educational needs of schools and libraries, while maintaining the overall size of the E-rate program in relation to the rate of inflation. This NPRM also seeks comment on potential reforms that would eliminate rules that have not effectively served their intended purpose, while continuing to protect against waste, fraud, and abuse.

---

[1] 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612 has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] We note that, because our actions here do not add any compliance burdens constituting a significant economic impact on small entities, we could have chosen to certify our actions under 5 U.S.C. § 605(b).

[3] 5 U.S.C. § 603(a).

[4] *Id.*

[5] *See* 47 U.S.C. § 254 *passim.*

[6] *Universal Service Order*, 12 FCC Rcd 8776.

[7] 47 C.F.R. §§ 54.502, 54.503.

[8] Connecting America: The National Broadband Plan (rel. Mar. 16, 2010) (NBP), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (last visited May 20, 2010).

[9] *Joint Statement on Broadband*, GN Docket No. 10-66, Joint Statement on Broadband, FCC 10-42, para. 3 (rel. March 16, 2010) (*Joint Statement on Broadband*).

2. Legal Basis

4. The legal basis for the NPRM is 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.

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

5. 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.[10] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[11] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[12] 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.[13] Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA.[14] A "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[15] Nationwide, as of 2002, there were approximately 1.6 million small organizations.[16] 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."[17] Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.[18] We estimate that, of this total, 84,377 entities were "small governmental jurisdictions."[19] Thus, we estimate that most governmental jurisdictions are small.

6. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services, including

---

[10] 5 U.S.C. § 603(b)(3).

[11] 5 U.S.C. § 601(6).

[12] 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).

[13] Small Business Act, 15 U.S.C. § 632.

[14] *See* SBA, Office of Advocacy, "Frequently Asked Questions," http://web.sba.gov/faqs/faqindex.cfm?areaID=24 (revised Sept. 2009).

[15] 5 U.S.C. § 601(4).

[16] Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

[17] 5 U.S.C. § 601(5).

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

[19] 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.*

telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for internal connections.[20]

a. Schools

7. As noted, "small entity" includes non-profit and small governmental entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools, an elementary school is generally "a non-profit institutional day or residential school that provides elementary education, as determined under state law."[21] 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.[22] For-profit schools, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program.[23] Certain other restrictive definitions apply as well.[24] The SBA has also defined for-profit, elementary and secondary schools having $7 million or less in annual receipts as small entities.[25] In funding year 2007, approximately 105,500 schools received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these additional entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 such schools might be affected annually by our action, under current operation of the program.

b. Telecommunications Service Providers

8. *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.[26] According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services.[27] Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees.[28] Thus, under this category and associated small business size standard, we estimate that the majority of entities are small.

9. 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."[29] 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

[20] 47 C.F.R. §§ 54.502, 54.503, 54.517(b).

[21] 47 C.F.R. § 54.500(c).

[22] 47 C.F.R. § 54.500(k).

[23] 47 C.F.R. § 54.501.

[24] *See id.*

[25] 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 611110.

[26] 13 C.F.R. § 121.201, NAICS code 517110.

[27] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.5, Page 5-5 (August 2008) (*2008 Trends Report*) (using data that is current as of Nov. 1, 2006).

[28] *Id.*

[29] 5 U.S.C. § 601(3).

"national" in scope.[30] 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.

10. *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.[31] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[32] According to the Commission's *2008 Trends Report*, 300 companies reported that they were engaged in the provision of interexchange services.[33] Of these 300 IXCs, an estimated 268 have 1,500 or few employees and 32 have more than 1,500 employees.[34] Consequently, the Commission estimates that most providers of interexchange services are small businesses.

11. *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.[35] This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees.[36] According to the *2008 Trends Report*, 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services.[37] Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or few employees and 87 have more than 1,500 employees.[38] Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

12. *Wireless Telecommunications Carriers (except Satellite)*. Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[39] Prior to that time, such firms were within the now-superseded categories of "Paging" and "Cellular and Other Wireless Telecommunications."[40] Under the present and prior categories, the SBA has deemed a wireless business

---

[30] *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).

[31] 13 C.F.R. § 121.201, NAICS code 517110.

[32] *Id.*

[33] *2008 Trends Report*, Table 5.3, page 5-5.

[34] *Id.*

[35] 13 C.F.R. § 121.201, NAICS code 517110.

[36] *Id.*

[37] *2008 Trends Report*, Table 5.3, page 5-5.

[38] *Id.*

[39] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[40] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.; U.S. Census Bureau, 2002 NAICS Definitions, "517212 Cellular and Other Wireless Telecommunications"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

to be small if it has 1,500 or fewer employees.[41] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[42] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[43] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[44] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[45] Thus, we estimate that the majority of wireless firms are small.

13. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[46] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[47] According to the *2008 Trends Report*, 434 carriers reported that they were engaged in wireless telephony.[48] Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees.[49] We have estimated that 222 of these are small under the SBA small business size standard.

14. *Common Carrier Paging*. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite).[50] Prior to that time, such firms were within the now-superseded category of "Paging."[51] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[52] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year.[53] Of this total, 804 firms had employment of

---

[41] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[42] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

[43] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[44] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517212 (issued Nov. 2005).

[45] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[46] 13 C.F.R. § 121.201, NAICS code 517210.

[47] *Id.*

[48] "Trends in Telephone Service" at Table 5.3.

[49] "Trends in Telephone Service" at Table 5.3.

[50] U.S. Census Bureau, 2007 NAICS Definitions, "517210 Wireless Telecommunications Categories (Except Satellite)"; http://www.census.gov/naics/2007/def/ND517210.HTM#N517210.

[51] U.S. Census Bureau, 2002 NAICS Definitions, "517211 Paging"; http://www.census.gov/epcd/naics02/def/NDEF517.HTM.

[52] 13 C.F.R. § 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[53] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization," Table 5, NAICS code 517211 (issued Nov. 2005).

999 or fewer employees, and three firms had employment of 1,000 employees or more.[54] Thus, we estimate that the majority of paging firms are small.

15. In addition, in the *Paging Second Report and Order*, the Commission adopted a size standard for "small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[55] 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.[56] The SBA has approved this definition.[57] An initial auction of Metropolitan Economic Area ("MEA") licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold.[58] Fifty-seven companies claiming small business status won 440 licenses.[59] A subsequent auction of MEA and Economic Area ("EA") licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold.[60] One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. [61]

16. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service*, 281 carriers reported that they were engaged in the provision of "paging and messaging" services.[62] Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees.[63] We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

c. Internet Service Providers

17. The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.*, cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.*, dial-up ISPs). The former are within the category of Wired

[54] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[55] *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Second Report and Order, 12 FCC Rcd 2732, 2811-2812, paras. 178-181 ("*Paging Second Report and Order*"); *see also Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration, 14 FCC Rcd 10030, 10085-10088, paras. 98-107 (1999).

[56] *Paging Second Report and Order*, 12 FCC Rcd at 2811, para. 179.

[57] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau ("WTB"), FCC (Dec. 2, 1998) ("*Alvarez Letter 1998*").

[58] *See* "*929 and 931 MHz Paging Auction Closes*," Public Notice, 15 FCC Rcd 4858 (WTB 2000).

[59] *See id.*

[60] *See* "*Lower and Upper Paging Band Auction Closes*," Public Notice, 16 FCC Rcd 21821 (WTB 2002).

[61] *See* "Lower and Upper Paging Bands Auction Closes," Public Notice, 18 FCC Rcd 11154 (WTB 2003). The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction.

[62] "Trends in Telephone Service" at Table 5.3.

[63] "Trends in Telephone Service" at Table 5.3.

Telecommunications Carriers,[64] which has an SBA small business size standard of 1,500 or fewer employees.[65] The latter are within the category of All Other Telecommunications,[66] which has a size standard of annual receipts of $25 million or less.[67] The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers.[68] That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year.[69] Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24, 999,999.[70] Consequently, we estimate that the majority of ISP firms are small entities.

d. Vendors of Internal Connections

18. *Telephone Apparatus Manufacturing*. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways."[71] The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: all such firms having 1,000 or fewer employees.[72] According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year.[73] Of this total, 511 had employment of under 1,000, and an additional 7 had employment of 1,000 to 2,499.[74] Thus, under this size standard, the majority of firms can be considered small.

---

[64] U.S. Census Bureau, 2007 NAICS Definitions, "517110 Wired Telecommunications Carriers"; http://www.census.gov/naics/2007/def/ND517110.HTM#N517110.

[65] 13 C.F.R. § 121.201, NAICS code 517110 (updated for inflation in 2008).

[66] U.S. Census Bureau, 2007 NAICS Definitions, "517919 All Other Telecommunications"; http://www.census.gov/naics/2007/def/ND517919.HTM#N517919.

[67] 13 C.F.R. § 121.201, NAICS code 517919 (updated for inflation in 2008).

[68] U.S. Census Bureau, "2002 NAICS Definitions: 518111 Internet Service Providers"; http://www.census.gov/epcd/naics02/def/NDEF518.HTM.

[69] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 518111 (issued Nov. 2005).

[70] An additional 45 firms had receipts of $25 million or more.

[71] U.S. Census Bureau, 2002 NAICS Definitions, "334210 Telephone Apparatus Manufacturing"; http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.

[72] 13 C.F.R. § 121.201, NAICS code 334210.

[73] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334210 (released May 26, 2005); http://factfinder.census.gov. 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 location 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 2002, which was 450.

[74] *Id.* An additional 4 establishments had employment of 2,500 or more.

19. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."[75] The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees.[76] According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.[77] Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999.[78] Thus, under this size standard, the majority of firms can be considered small.

20. *Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment)."[79] The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees.[80] According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year.[81] Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999.[82] Thus, under this size standard, the majority of firms can be considered small.

---

[75] U.S. Census Bureau, 2007 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; http://www.census.gov/naics/2007/def/ND334220.HTM#N334220..

[76] 13 C.F.R. § 121.201, NAICS code 334220.

[77] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); http://factfinder.census.gov. 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 location 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 2002, which was 929.

[78] *Id.* An additional 18 establishments had employment of 1,000 or more.

[79] U.S. Census Bureau, 2002 NAICS Definitions, "334290 Other Communications Equipment Manufacturing"; http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342.

[80] 13 C.F.R. § 121.201, NAICS code 334290.

[81] U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334290 (released May 26, 2005); http://factfinder.census.gov. 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 location 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 2002, which was 471.

[82] *Id.* An additional 3 establishments had employment of 1,000 or more.

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

21. 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

22. 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.[83]

23. In this NPRM, we seek comment on a package of potential reforms to the E-rate program that can be implemented in funding year 2011 (July 1, 2011 – June 30, 2012). We seek to improve and modernize the program by streamlining the E-rate application process, providing greater flexibility to choose the most cost-effective and educationally useful broadband services, and expanding the reach of broadband to the classroom. More particularly, these proposed reforms include: improving and simplifying the current E-rate application process; codifying the requirement that competitive bidding processes be "fair and open"; simplifying the way schools calculate their discounts; conforming the E-rate definition of "rural" to the Department of Education's definition; allowing greater flexibility in the use of wireless Internet access for educational purposes away from school grounds; allowing recipients the option of leasing low-cost fiber; expanding the reach of broadband in residential schools that serve populations facing unique challenges; creating a predictable funding mechanism that would provide a per student amount for internal connections each year, while eliminating support for basic maintenance of internal connections; indexing the current $2.25 billion cap on E-rate disbursements to inflation; and creating a process for schools and libraries to dispose of obsolete equipment.

24. As note, we believe the proposals and options being put out for comment will not have a significant economic impact on small entities under the E-rate program. Indeed the proposals and options will benefit small entities by simplifying the application process, eliminating burdensome restrictions on the purchase of certain broadband technologies, creating a more stable and predictable funding pool, and allowing more applicants to receive program funding, while ensuring that the amount of funding available keeps pace with the rate of inflation. Because this NPRM does not propose additional regulation for service providers and equipment vendors, these small entities will experience no significant additional burden. We nonetheless 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, and possible alternatives.

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

25. None.

[83] *See* 5 U.S.C. § 603(c).

STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

For our children to compete in the 21st century, our schools and libraries must be connected to world-class broadband networks. The National Broadband Plan laid out a vision of cutting-edge classrooms where students and teachers have innovative digital tools, access to best online educational content in the world, and the skills to take advantage of them.

A few months ago we took our first step to modernize E-rate for broadband by allowing schools to open their services to their communities. Today, we take another step toward the vital goal of updating E-rate for broadband with a series of essential reforms.

E-rate -- enacted by Congress through the leadership of Senator Jay Rockefeller (D-WV), Senator Olympia Snowe (R-ME), and Congressman Ed Markey (D-MA) -- was a revolutionary achievement that has expanded opportunities for schoolchildren and communities across the country. Through the E-rate program, 97 percent of American schools and nearly all public libraries now have Internet access.

But the National Broadband Plan found that many schools need significant upgrades to meet broadband speed and capacity demands, and that many E-rate policies are out-of-date. Building on the National Broadband Plan, today we propose a number of significant reforms, drawing on the agency's years of knowledge and experience with E-rate – and the vast array of feedback we've received from participants, educational experts, and other stakeholders through the National Broadband Plan process.

First, we propose giving schools and libraries greater flexibility to choose the most cost-effective and educationally useful broadband services -- including mobile services that students can use outside the classroom. Teachers across the country -- in urban and rural areas -- have told us that the use of broadband to enable learning should not stop at the schoolyard gate.

Second, we propose to simplify the E-rate application process; cut red tape by eliminating federal requirements that overlap with state or local contracting requirements; and reduce some of the limitations on residential schools that serve populations facing unique challenges.

And finally, in view of persuasive recommendations from many strong supporters of the E-rate program, we propose to index the E-rate cap to keep pace with inflation.

Together, these proposals will accomplish real and important objectives on behalf of families, children and teachers.

Updating E-rate is a key pillar of comprehensive reform of universal service, one of the primary recommendations of the National Broadband Plan. Today's item also reflects our commitment to smart and fiscally prudent policies that eliminate inefficiencies and target universal service support effectively to have the greatest possible impact.

I look forward to working with my colleagues to improve the E-rate program for the 21st century, and I thank the staff for their hard work on this item.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

Three months ago, the Commission approved an Order which would allow schools to make E-Rate funded facilities and services available to the general public outside of regular school hours. That Order was this Commission's first official action toward achieving the goals of the National Broadband Plan. Of all the programs and initiatives that I've seen at the FCC, E-Rate is, to my mind, easily the best. By connecting schools and libraries to the Internet, it has connected a generation of young people to the enabling technology of the Twenty-first century. Thanks to E-Rate, students and communities across the land can access the digital tools necessary to learn, to compete, to find opportunity and to prosper. I can't think of a better program to put front-and-center as we move forward to implement the National Broadband Plan.

So I am pleased to support this item to improve and modernize E-Rate by considering ways to streamline the application process, to provide greater flexibility for program participants to select among broadband services and expand the reach of broadband to the classroom. E-Rate, which has accomplished so much for so many, can have a future even more illustrious than the achievements it has already logged. This program deserves to be empowered so it can keep up with the latest technologies and with all the new educational tools that are coming online. The item before us considers a broad array of possibilities—some may turn out to be, upon examination by commenters in the weeks ahead, better than others. And there will be many ideas we haven't even thought of here. But—a note of realism—we must always be cognizant that this is a capped program, so some priorities trump others. The basic task is to get high speed, high capacity broadband out to these institutions—and that challenge takes precedence over some of the other very meritorious ideas which could bring added luster to E-rate. Providing access is the precondition for harvesting the rich fruits of that access.

I thank my colleagues for their continuing support of the E-Rate program, and I also want to express my gratitude to the Bureau for its hard and creative work on this item. I look forward to developing a really good and innovative record on this Notice and moving forward to actions that will make this hugely successful program even better.

STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

First, I commend the Chairman for his commitment to comprehensive universal service reform. It is an understatement to say that responsible reform is badly needed. Review of the E-Rate program is an important component to any reform endeavor. Today's Notice of Proposed Rulemaking (NPRM) highlights many areas where the E-Rate program could be improved to ensure that the program continues to be successful in supplementing our nation's educational system.

Additionally, I thank the staff for their diligence on this NPRM. In particular, I appreciate the clarification that the proposed change to the definition of "rural area" was not intended to put rural America at a disadvantage compared to urban areas. Rather, the change in the definition was proposed to explore whether there is a better way to ensure that the E-Rate funds are targeted appropriately in rural parts of the country. It is important to note that many rural students do not have the luxury of traveling down the road for their educational needs which may be lacking in their schools. In fact, some rural schools are not even connected to the outside world by a road system at all.

In closing, I have a couple overall thoughts regarding universal service reform, in general, and in particular regarding this NPRM. In the context of any reform measures, we should always look to find ways to stem waste, fraud and abuse. As managers of this fund, we must conduct reform in a way to ensure that we collect only what we need, and spend what we collect, in the most efficient and effective manner possible. Finally, I note that this NPRM seeks comment as to whether the existing cap on the E-Rate program should be indexed for inflation. I will be interested to review comments on that proposal and note that any final changes that we make to any one part of the system should be made in the context of comprehensive reform so that we do not inadvertently expand the growth of the overall fund.

There are a lot ideas packed into this NPRM. I look forward to reviewing the record and working with all of my colleagues and stakeholders on a transparent and fair process in pursuit of fiscally prudent reforms.

STATEMENT OF
COMMISSIONER MIGNON L. CLYBURN

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

Many of the millions of Americans who do not have broadband rely on their local schools and libraries – our nation's critical community anchor institutions – for basic broadband access. Such access has been made possible by the incomparable E-rate program. Without it, our Nation would be lagging even further behind in terms of broadband adoption.

For us to continue to support broadband adoption in our local communities, we must update the E-rate program to meet our current needs. Today's Further Notice proposes a number of ways in which we can maximize our use of E-rate funds in order to better prepare our students and citizens to succeed. For example, increased flexibility for recipients to choose the most cost-effective and educationally useful broadband services may enable recipients to better leverage and stretch their E-rate dollars. In addition, by streamlining the application process, we can likely reduce the cost of participating in the program, potentially making it more accessible to schools and libraries that have not previously participated. We also may want to index the E-rate funding cap to inflation in order to protect the purchasing power of recipients, thereby allowing them to acquire critical broadband elements they need to serve and educate.

These are all constructive ideas as we look to modernize the program and ensure that we are making the most of what it has to offer.

STATEMENT OF
COMMISSIONER MEREDITH A. BAKER

Re: *Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, *A National Broadband Plan for Our Future*, GN Docket No. 09-51

I am pleased to support this Notice. The E-rate program has been instrumental in bringing broadband to communities across the country through their schools and libraries. In the wake of the National Broadband Plan, it makes sense to launch a proceeding to examine how the E-rate mechanism is working well now and how it could be improved to more efficiently and effectively help achieve the important goal of ensuring broadband access by all people of the United States.

As we consider changes to the E-rate going forward, I continue to have concerns that our efforts to modernize the various components of the Universal Service Fund should not result in further growth in the overall size of the Fund. It is also critical that all future changes to the program include adequate safeguards against waste, fraud and abuse. It is our obligation to ensure that money is spent wisely to achieve the goals set out by Congress.

Thanks to the bureau for all your work on this.