

### 3. Discussion

#### a. Pre-discount Price

535. As a preliminary matter, we note that the pre-discount price is significant for two reasons. First, it is the total price that carriers would receive for the services they sell to schools and libraries. While schools and libraries would only pay the carrier a discounted rate, the carrier would receive the amount of the discount from universal service support mechanisms. Therefore, the pre-discount price is the price of most significance to providers of services to schools and libraries. The pre-discount price is also highly significant to schools and libraries because they must pay the undiscounted portion of the price. This gives schools and libraries a strong incentive to secure the lowest pre-discount price, while service providers desire the highest possible pre-discount price.

536. Competitive Environment. We expect that, in a competitive marketplace, schools and libraries would have both the opportunity and the incentive to secure the lowest price charged to similarly situated non-residential customers for similar services. In a competitive marketplace, we also expect that carriers would face competitive pressures to provide such a price to schools and libraries. Thus we note that, while some carriers support use of the tariffed rate as the pre-discount baseline,<sup>1797</sup> we see no reason to deny schools and libraries the benefits of competitive pressures that might lead carriers to cut their prices. In fact, Congress sought to create an environment that stimulated competition to enable all customers to benefit from the lower costs and lower prices produced by the competitive pressures of the marketplace. Additionally, we would not want to deprive schools and libraries of access to contracts negotiated by state governments for all state institutions, nor would we want to deny schools access to rates under the federal FTS 2000 contract, if those rates were to become available to them. In addition, carriers that do not file tariffs do not have tariffed rates.

537. We conclude that it would be beneficial to encourage schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract a competitor into the market which could influence the existing carrier to cut its prices. We also recognize the benefits that aggregation into consortia can create in terms of promoting more efficient shared use of facilities to which each school or library might need access, but which none alone would need for full capacity. We recognize that permitting schools and libraries to aggregate with other local customers, such as health care providers, community colleges, or commercial banks may raise administrative difficulties of enforcing the eligibility<sup>1798</sup> and resale limitations<sup>1799</sup> that Congress imposed. Nevertheless, we conclude that

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<sup>1797</sup> BellSouth comments at 19-20.

<sup>1798</sup> 47 U.S.C. § 254(h)(4).

the benefits from such aggregation outweigh the administrative difficulties. We discuss the latter in greater detail in the context of eligibility and resale, below.

538. Ideally, schools and libraries would be able to take full advantage of the competitive marketplace and aggregation with others to secure cost-based pre-discount prices for the services they desire. We are hopeful that competition to serve schools and libraries will arise in a large fraction of the market. As NTIA states in one of its six principles, "the most efficient use of the universal service fund support system should be promoted through the use of market-based techniques wherever possible."<sup>1800</sup> We are aware, however, that schools and libraries may not yet be aware of the impact of the 1996 Act on opening markets to competition. For example, many schools and libraries may not yet be aware of the McKinsey Report estimates stating that wireless service providers would offer the best prices to 27 percent of all schools.<sup>1801</sup> Schools and libraries may also not yet be aware that cable television wires currently pass more than 90 percent of homes nationwide.<sup>1802</sup>

539. Therefore, we find that fiscal responsibility compels us to recommend that schools and libraries be required to seek competitive bids for all services eligible for section 254(h) discounts. We recommend that schools and libraries be required to submit their requests for services to the fund administrator, who would then post a description of the services sought on a website for all providers of services to see and respond to as if they were requests for proposals (RFPs). Posting on the website would satisfy the competitive bid requirement. We reject ACE's argument that competitive bidding would represent an impermissible unfunded mandate.<sup>1803</sup> Clearly, Congress sought to stimulate competition with the 1996 Act, and we find that it would be inappropriate to treat the costs of such competition as an impermissible unfunded mandate.

540. Lowest Price Charged to Similarly Situated Non-Residential Customers for Similar Services. Some commenters assert that the Commission should require carriers to provide service to a school or library at its "lowest commercial rate."<sup>1804</sup> We recommend modifying that concept to encompass the lowest price charged to similarly situated non-residential customers for similar services (hereinafter "lowest corresponding price"). We

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<sup>1799</sup> 47 U.S.C. § 254(h)(3).

<sup>1800</sup> NTIA submission at 7.

<sup>1801</sup> McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* at 58 (1995).

<sup>1802</sup> Paul Kagan Associates, *Kagan Media Index* (1995).

<sup>1803</sup> ACE reply comments at 6.

<sup>1804</sup> See Union City reply comments at 12; EDLINC further comments at 27.

recommend that the lowest corresponding price apply in two contexts. In the context of competitive bidding, the lowest corresponding price would act as the ceiling on the pre-discount price offered to schools and libraries. Service providers would be required to self-certify to the administrator that the price offered to schools and libraries is no more than the lowest corresponding price, and no provider could seek to charge schools and libraries a price above that price. We would hope that providers would charge schools and libraries less than the lowest corresponding price, ideally the lowest price charged to any of their non-residential customers.

541. We recommend that the lowest corresponding price also apply in areas in which competition does not exist. In such areas, the lowest corresponding price would constitute the pre-discount price carriers are required to offer to schools and libraries. As stated above, we recommend that carriers be required to self-certify that the price offered to schools and libraries is actually the lowest corresponding price. We further recommend that schools, libraries, and carriers be permitted to seek recourse from the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they believe that the lowest corresponding price is unfairly high or low. Schools and libraries may request lower rates if they believe the rate offered by the carrier does not represent the lowest corresponding price. Carriers may request higher rates if they believe that the lowest corresponding price is non-compensatory.

542. To help ensure that schools and libraries are able to secure the lowest rates available in the market, Congress permitted them to receive discounts for services provided by any telecommunications carrier serving a geographic area.<sup>1805</sup> While Alaska Library urges that we interpret "geographic area" to mean the entire state,<sup>1806</sup> this would require any firm providing telecommunications services to any school in a state to serve any other school in the state. This interpretation might discourage new firms from entering a state for fear that they could be forced to serve any area within that state. For example, electric utilities might be discouraged from offering telecommunications services to schools if there was a requirement that once they had negotiated an attractive rate for serving one school or library system in a state where they operated, any other school or library in the state could also demand telecommunications services at rates comparable to those the utility offered to its initial "test" community.

543. We are also concerned that using an expansive definition of geographic area might be unfair to a small telephone company serving a single community, including its schools, for such a definition would permit it to be compelled to serve other schools and libraries outside its market. While the proposal that we use LATA boundaries instead of state

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<sup>1805</sup> See 47 U.S.C. § 254(h)(1)(B).

<sup>1806</sup> Alaska Library comments at 6.

boundaries alleviates this problem to some degree, we still believe that even this interpretation would be harmful to the public interest for the reasons just discussed. For example, a cable company that offered special rates to a school in a community in which the company's costs were particularly low might be reluctant to compete to serve a nearby LATA if the company knew that it could be forced to provide service to a school or library in that LATA at the prices it charged in the first community. We recommend that the Commission interpret geographic area to mean the area in which the service provider is seeking to serve customers, e.g., the telephone or cable company's franchise areas and a wireless company's serving area.

544. Using this definition of geographic areas, we recommend that the obligation to serve at lowest corresponding prices apply to all telecommunications carriers in that geographic area, including, for example, competitive LECs, private network operators, or cable companies, to the extent that they offer telecommunications for a fee to the public.<sup>1807</sup> Similarly, we agree with CCV that there is no reason to exclude carriers who do not provide core services, if they can offer eligible services to a school or library at the lowest rate. We believe that Congress desired that schools and libraries receive the services they need from the most efficient provider of those services.

545. TSLRIC. We find that TSLRIC should not be used to set the pre-discount price for services sought by schools and libraries. Our primary concern is based on the practicality of expecting schools and libraries to evaluate TSLRIC rates proposed by carriers. In the *Local Competition Order*, the Commission recognized that even sophisticated equally resourceful carriers may not be able to agree on the appropriate Total Element Long-Run Incremental Cost (TELRIC) price for network elements without arbitration.<sup>1808</sup> While such rates may eventually be established in many markets, these rates are different from TSLRIC rates, and in many markets, carriers may not negotiate TELRIC rates for many years, if ever. We doubt that schools and libraries would find it worthwhile to devote the resources necessary to secure the benefits of TSLRIC prices over the other prices offered by carriers in the same market. We also expect that calculating TSLRIC prices would be too time consuming for all parties involved. In the *Local Competition Order*, the Commission provided proxies for TELRIC rates of network elements specifically because it anticipated that state commissions would be unable to develop such models or evaluate those submitted by incumbent local exchange carriers as quickly as customers would demand.<sup>1809</sup> We find that it

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<sup>1807</sup> 47 U.S.C. § 153(46).

<sup>1808</sup> *Local Competition Order* at section VII.B.

<sup>1809</sup> *Local Competition Order* at section VII.C. On September 27, 1996, the 8th Circuit granted a temporary stay of the *Local Competition Order*, pending oral argument. On October 15, 1996, the court "decided to stay the operation and effect of only the pricing provisions and the 'pick and choose' rule contained in the FCC's First Report and Order pending . . . [its] final determination of the issues raised by the pending petitions for review." *Order Granting Stay Pending Judicial Review*, 1996 WL 589204 (8th Cir.), \_\_ F.3d \_\_.

is very important that schools and libraries have immediate access to the services available under section 254(h). We conclude that the use of TSLRIC should not be mandated for determining the pre-discount price for services sought by schools and libraries.

546. In summary, we recommend that schools and libraries be required to seek competitive bids for all services eligible for section 254(h) discounts. We recommend that schools and libraries be required to submit their requests for services to the fund administrator, who would post the descriptions of services sought on a web site for potential providers to see. The posting of a school or library's description of services would satisfy the competitive bid requirement. We recommend that the lowest corresponding price, defined as the lowest price charged to similarly situated non-residential customers for similar services, constitute the ceiling for the competitively bid pre-discount price. In areas in which there is no competition, we recommend that the lowest corresponding price constitute the pre-discount price. In both cases, the carrier would be required to self-certify that the price offered to schools and libraries is equal to or lower than the lowest corresponding price. We further recommend that schools, libraries, and carriers be permitted to appeal to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they believe that the lowest corresponding price is unfairly high or low.

#### **b. Discounts**

547. In General. The Act requires the Commission, with respect to interstate services and the states with respect to intrastate services, to establish a discount on designated services provided to schools and libraries. Pursuant to section 254(h)(1)(B), the discount must be an amount that is appropriate and necessary to ensure affordable access to and use of the services pursuant to section 254(c)(3).<sup>1810</sup> The discount must take into account the principle set forth in section 254(b)(5) that the federal universal service support mechanisms must be specific, sufficient, and predictable.<sup>1811</sup> We recommend that the Commission adopt a percentage discount mechanism, adjusted for schools and libraries that are defined as economically disadvantaged and those schools and libraries located in high cost areas. In particular, we recommend that the Commission adopt a matrix that provides discounts from 20 percent to 90 percent, to apply to all telecommunications services, Internet access, and internal connections, with the range of discounts correlated to the indicators of economic disadvantage and high cost for schools and libraries.

548. Discount Structure. Some commenters suggest that no discount is necessary for schools and libraries that are not identified as economically disadvantaged or located in high cost areas, if we recommend the adoption of a pre-discount price based on TSLRIC. Since,

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<sup>1810</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>1811</sup> 47 U.S.C. § 254(b)(5).

however, we decline to make such a recommendation, we find that this proposal is moot. We also do not endorse the disbursement of discounts in the form of block grants to states. As noted by the Senate Working Group:

Such grants would be incompatible with the statute's architecture of discounts based on affordability on flexible bona fide requests submitted by schools and libraries. Block grants are not based on individual needs and priorities of schools and libraries for education technology. Affordability cannot be determined under a block grant approach.<sup>1812</sup>

549. We recommend that the Commission adopt a rule which provides support to schools and libraries through a percentage discount mechanism<sup>1813</sup> because we find that such a mechanism would establish incentives for efficiency and accountability. First, requiring schools and libraries to pay a share of the cost should lead them to avoid unnecessary and wasteful expenditures because they would be unlikely to devote their pre-existing budgeted funds to purchases that they could not use effectively. Second, a percentage discount encourages schools and libraries to seek the best pre-discount price and to make informed knowledgeable choices among their options, thereby building in effective fiscal constraints on the discount fund. In fact, we understand that state or school or library boards generally require schools and libraries to seek competitive bids for all procurements above a specified minimum level, and we would expect a percentage discount mechanism to initiate the competitive bid process.

550. While NSBA I's proposal to discount services to a "95 percent affordability price point"<sup>1814</sup> appears sound, we conclude after careful analysis that it does not prove to be workable for two reasons. First, the price of higher bandwidth services, e.g., T-3 (44 Mbps) or OC-1 (52 Mbps), could be driven down to extremely low levels if they had to be priced to be affordable to 95 percent of schools and libraries, most of whom would have no use for the additional bandwidth such service would provide. Second, and of most concern, is that by definition five percent of the schools and libraries would not be able to afford basic services. Similarly, we find that the Pennsylvania Library Association's proposal for a discount set at

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<sup>1812</sup> Senate Working Group further comments at 2.

<sup>1813</sup> Some commenters support discounts and oppose "billing credits" as contrary to a discount mechanism. *See, e.g.*, ALA further comments at 12; Colorado State Library further comments at 9; EDLINC further comments at 22-23; Great City Schools further comments at 3-4. Actually, we would expect to implement a discount mechanism through billing credits and we assume that these commenters simply misunderstood this.

<sup>1814</sup> NSBA I reply comments at 21-22.

the wholesale price of a service<sup>1815</sup> is not germane in a market where the initial supplier of transport generally sells directly to customers at retail rates. We view this proposal as analogous to the proposal to set the pre-discount price based on TSLRIC, and we decline to endorse it for reasons similar to why we did not recommend adoption of a TSLRIC pre-discount standard.

551. 100 Percent Discounts. While we have noted the advantages of the percentage discount mechanism, it also may have the drawback of failing to enable the participation of those schools and libraries that cannot allocate any of their own funds toward the purchase of eligible discounted services. This creates the potential that the universal service support program for schools and libraries could increase the resource disparity that exists among schools. The most impoverished schools need to have access to the services that are included within the discount mechanism, despite their lack of financial resources. To address this concern, we have recommended substantially deeper discounts for the schools and libraries that are most economically disadvantaged, as discussed below. We decline, however, to recommend a 100 percent discount for any category of schools or libraries. We believe that it is essential that the discount program be structured in a way that maximizes the opportunity for its cost-effective operation. We believe that a minimal co-payment by the most economically disadvantaged schools and libraries will assure realization of that goal.

552. Discount Level and Cap. The Snowe-Rockefeller-Exon-Kerrey provision for providing support to schools and libraries is a new provision. Unlike high cost assistance, long-term support, and DEM weighting, there is no historical record of how much it will likely cost to provide the support Congress directed us to afford to schools and libraries. The McKinsey Report,<sup>1816</sup> the KickStart Initiative,<sup>1817</sup> and the other data sources we have reviewed<sup>1818</sup> provide some guidance, but they attempt to estimate costs in an area where technologies are developing rapidly and demand is inherently difficult to predict. Therefore, to fulfill our statutory obligation to create a specific, predictable, and sufficient universal service support mechanism, we recommend that the Commission establish an annual cap on the amount of funds available to schools and libraries.

553. The McKinsey Report provides the most comprehensive estimate, on the record, of the cost of deploying and supporting the ongoing costs of a communications

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<sup>1815</sup> Pennsylvania Library Ass'n reply comments at 6.

<sup>1816</sup> McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* (1995).

<sup>1817</sup> *KickStart Initiative: Connecting America's Communities to the Information Superhighway* (1996).

<sup>1818</sup> See, e.g., Russell Rothstein, *Networking K-12 Schools: Architecture Models and Evaluation of Costs and Benefits* (1996) (unpublished masters thesis, Massachusetts Institute of Technology); NCLIS, *Internet Cost and Cost Models for Public Libraries, Final Report* (June 1995).

network for public school on a nationwide basis.<sup>1819</sup> In the Public Notice, parties were asked to comment on the accuracy of the funding estimate contained in the McKinsey Report.<sup>1820</sup> Most commenting parties agree that the McKinsey Report at least constitutes an adequate starting point for estimating the costs associated with deploying and sustaining a pervasive communications network for public schools.<sup>1821</sup>

554. Extrapolating from the data provided by McKinsey,<sup>1822</sup> Rothstein,<sup>1823</sup> and NCLIS,<sup>1824</sup> we estimate that the total cost of the communications services eligible for discounts, as discussed above, would be approximately \$3.1 to 3.4 billion annually during an initial four year deployment period, and approximately \$2.4 to 2.7 billion annually during subsequent years. We reach these estimates based on the following assumptions and adjustments. First, we adjust the McKinsey base cost estimates for the full classroom model to account for discounts that McKinsey estimates: 10 percent to 30 percent volume discounts and a 10 percent discount from using volunteers to pull cable.<sup>1825</sup> We also adjust McKinsey figures downward to reflect the increased percentage of schools that have already installed internal connections since the McKinsey Report was prepared.<sup>1826</sup> We adjust our figures up to reflect the coverage of approximately 113,000 public and non-public schools, while McKinsey's estimates were only based on 84,500 public schools.<sup>1827</sup> We also add in the cost

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<sup>1819</sup> See generally McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* (1996).

<sup>1820</sup> Public Notice at question 23.

<sup>1821</sup> See, e.g., Bell Atlantic further comments at 7; New York DOE further comments at 10; U S West further comments at 12. See also MCI further comments at 10 (stating that the McKinsey Report appears to reflect tariffed rates accurately).

<sup>1822</sup> McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* (1995).

<sup>1823</sup> Russell Rothstein, *Networking K-12 Schools: Architecture Models and Evaluation of Costs and Benefits* (1996) (unpublished masters thesis, Massachusetts Institute of Technology).

<sup>1824</sup> NCLIS, *Internet Cost and Cost Models for Public Libraries, Final Report* (June 1995).

<sup>1825</sup> McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* at 35 (1995). McKinsey estimated that volume discounts would range from 10 percent to 60 percent. *Id.* at 59.

<sup>1826</sup> McKinsey assumed 7 percent of schools had internal connections. McKinsey and Company, *Connecting K-12 Schools to the Information Superhighway* at 59 (1995). We estimate that 20 percent is a more accurate figure today.

<sup>1827</sup> Our estimate of total K-12 schools comes from the United States Department of Education. See Letter from Emilio Gonzalez, United States Department of Education, to Mark Nadel, Federal Communications Commission (Nov. 4, 1996).

of Internet access, assuming that 75% of schools and libraries will take advantage of at least basic access in the first year of this program, and that all schools and libraries will use at least basic access in subsequent years.<sup>1828</sup> Furthermore, our estimates are based on deployment of one-quarter of all eligible schools and libraries in each of the initial four years. Finally, we estimate the telecommunications-related costs of schools that have not yet fully deployed internal connections or more advanced access based on an estimate that basic usage by schools is approximately \$485 million annually today.<sup>1829</sup>

555. We recommend that the following matrix of percentage discounts be applied in the schools and libraries programs. The matrix represents an example of an appropriate distribution of schools across the six discount levels, according to the specified metric for determining the wealth of a school. If a different metric for determining the wealth of a school is ultimately chosen for the purposes of this program, we would expect that a similar distribution of schools across the discount range would be reflected. The principles in determining the final matrix should ensure that the greatest discounts go to the most disadvantaged schools and libraries, while an equitable progression of discounts should be applied to the other categories, keeping within the parameters of 20 percent to 90 percent discounts.

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<sup>1828</sup> We estimate the cost of basic access to the Internet based on Rothstein's \$150 million annual figure and assume that by full deployment higher speed access will cost schools approximately \$630 million annually before any discounts. See Russell Rothstein, *Networking K-12 Schools: Architecture Models and Evaluation of Costs and Benefits* 50 (1996) (unpublished masters thesis, Massachusetts Institute of Technology).

<sup>1829</sup> Ameritech estimated that an average school in Ameritech territory spends approximately \$4,773 annually for basic telecommunications services. See Letter from Celia Nogales, Ameritech to Mark Nadel, Federal Communications Commission (Nov. 4, 1996).

DISCOUNT MATRIX	COST OF SERVICE (estimated percent in category)			
		low cost (67%)	mid-cost (26%)	highest cost (7%)
HOW DISADVANTAGED?  based on percent of students in the national school lunch program (estimated percent in category)	< 1 (3%)	20	20	25
	1-19 (30.7%)	40	45	50
	20-34 (19%)	50	55	60
	35-49 (15%)	60	65	70
	50-74 (16%)	80	80	80
	75-100 (16.3%)	90	90	90

556. In addition, we recommend that the Commission set an annual cap on spending of \$2.25 billion per year. In addition, any funds that are not disbursed in a given year may be carried forward and may be disbursed in subsequent years without regard to the cap. We further recommend that the Commission establish a trigger mechanism, so that if expenditures in any year reach \$2 billion, rules of priority would come into effect. Under the rules of priority, only those schools and libraries that are most economically disadvantaged and had not yet received discounts from the universal service mechanism in the previous year would be granted guaranteed funds, until the cap was reached. Other economically disadvantaged schools and libraries would have second priority for support if additional funds were available at the end of the year. Finally, all other eligible schools and libraries would be granted funding contingent on availability after economically disadvantaged schools and libraries had requested funding. We also recommend that the Joint Board, as part of its review in the year 2001, revisit the effectiveness of the schools and libraries program.

### c. Schools Located in High Cost Areas

557. Some parties argue that the Commission should not provide any additional support to schools and libraries in high cost areas because generic high cost support will be sufficient to address this problem.<sup>1830</sup> We reject this argument because high cost assistance does not include services to multi-connection businesses. Thus, alternative mechanisms are necessary to ensure that schools and libraries in high cost areas have affordable access to and use of covered services.

<sup>1830</sup> See Time Warner further comments at 24-25.

558. While Ameritech contends that the 1996 Act does not provide for additional levels of support for high cost areas,<sup>1831</sup> members of the Senate Working Group urge the Commission to consider the statutory requirement that access be affordable.<sup>1832</sup> As the Senate Working Group notes, affordability is clearly affected by the price of services, and which, in turn, is based primarily on the cost of service in the area.<sup>1833</sup> In fact, 26 Senators state that "[d]iscounts must also consider if the school or library is in a high cost area and ensure affordable access for all eligible schools and libraries."<sup>1834</sup> ALA notes that higher costs force libraries in high cost areas to devote a larger percent of their budgets to telecommunications services.<sup>1835</sup>

559. While AT&T opposes additional discounts for schools and libraries in high cost areas, it proposes a mechanism for providing such support. AT&T offers a model similar to the one mandated for health care providers, whereby eligible purchasers in rural, high cost areas would be permitted to purchase service at urban rates.<sup>1836</sup> While AT&T does not acknowledge the need to fund the difference between the urban and rural rates, that difference could represent a substantial discount. EDLINC proposes that the Commission provide additional support for schools and libraries in high cost areas based on a measure of population density. Furthermore, EDLINC proposes that state commissions be given authority to authorize additional discounts for "outliers" who demonstrate that their telecommunications expenditures exceed one percent of their budget and yet they are still unable to afford an adequate level of service. Two-thirds of that support would come from the federal universal service support fund while the state would contribute the remaining third.<sup>1837</sup>

560. We find the argument of the Senate Working Group to be compelling. We recommend that the statutory definition of "affordable" must take into account the cost of service in an area. Thus, we recommend that the Commission take into account the cost of providing services when setting discounts for schools and libraries. To achieve this, we recommend that the Commission consider a "step" approach that would calibrate the cost of service in some reasonable, practical, and minimally burdensome manner. For example, it

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<sup>1831</sup> Ameritech further comments at 21.

<sup>1832</sup> Senate Working Group further comments at 2-3.

<sup>1833</sup> Senate Working Group further comments at 2-3.

<sup>1834</sup> Letter from 26 Senators to Members of the Joint Board (Sept. 26, 1996).

<sup>1835</sup> ALA comments at ii.

<sup>1836</sup> AT&T further comments at 16.

<sup>1837</sup> EDLINC further comments at 38-39.

may be appropriate for the Commission to define high cost areas by considering the unseparated loop costs of the incumbent LEC. If unseparated loop costs exceed a nationwide threshold, then the area may be considered "high cost," and schools and libraries located in that area would be given a greater discount.<sup>1838</sup> Other methods for determining high cost may also be appropriate, and we encourage the Commission to seek additional information and parties' comments on this issue prior to adopting rules.

#### d. Economically Disadvantaged Schools

561. Both the statutory language and the legislative history of the 1996 Act lead us to recommend that the Commission promulgate a rule that provides a greater discount to economically disadvantaged schools and libraries for services within the definition of universal service. While section 254(h)(1)(B) does not explicitly mandate a greater discount for economically disadvantaged schools, it grants the Commission the discretion to determine whether such a discount is necessary to make access to and use of such services affordable for disadvantaged schools and libraries. We conclude that the numerous references to affordability in the legislative history also support our recommendation.<sup>1839</sup> Moreover, as discussed above in the section on schools and libraries located in high cost areas, the Senate Working Group also emphasizes that such discounted rates must take into consideration the "different needs and different resources" of schools and libraries that qualify for universal service support.<sup>1840</sup> A group of 26 Senators similarly emphasizes that discounts must be "real, significant and meaningful," and that discounted rates must consider the school's or library's ability to pay.<sup>1841</sup>

562. In addition, we agree with commenters who assert that access to telecommunications and other covered services should not increase existing disparities between economically disadvantaged students and their more affluent peers.<sup>1842</sup> NTIA notes, for example, that 62 percent of schools serving affluent children currently have access to the

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<sup>1838</sup> See 47 C.F.R. § 36.601 *et seq.*

<sup>1839</sup> See, e.g., Joint Explanatory Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 132 (1996); 141 Cong. Rec. S7984 (June 8, 1995).

<sup>1840</sup> Senate Working Group further comments at 2-3.

<sup>1841</sup> Letter from 26 Senators to Members of the Joint Board (Sept. 26, 1996).

<sup>1842</sup> Public Advocates comments at 18-19; AFT further comments at 3-4; National Coalition for the Homeless further comments at 8.

Internet, compared with 31 percent of schools serving economically disadvantaged students.<sup>1843</sup> Public Advocates states that California's NetDay '96 failed to reach economically disadvantaged schools, providing access to the Internet disproportionately to more affluent schools.<sup>1844</sup> In addition, at a recent Federal-State Joint Board meeting, United States Representative Major Owens highlighted the need to give greater discounts to economically disadvantaged schools.<sup>1845</sup> To give full effect to the directive that the discounts "ensure affordable access to and use of [telecommunications] services,"<sup>1846</sup> we recommend that economically disadvantaged schools and libraries be eligible for a greater discount.

563. We could recommend that the Commission grant a discount to all schools and libraries that would be large enough to make telecommunications and other covered services affordable to economically disadvantaged schools and libraries. We conclude, however, that such an approach would not be in the public interest because it would substantially increase the size of universal service support mechanisms beyond what is necessary to ensure affordable access to disadvantaged schools and libraries. We agree with commenters who assert that affordable access requires granting greater discounts for all covered services to schools and libraries serving large populations of economically disadvantaged students.<sup>1847</sup>

564. To minimize any additional recordkeeping or data gathering obligations, we seek the least burdensome manner to determine the degree to which a school or library is economically disadvantaged. The Public Notice asked whether the Commission should use an existing program for that purpose,<sup>1848</sup> and commenters suggest using Title I,<sup>1849</sup> poverty data provided by the Department of Education,<sup>1850</sup> Census Bureau data,<sup>1851</sup> or the national school

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<sup>1843</sup> NTIA submission at 4 (citing U.S. Department of Education survey, entitled *Advanced Telecommunications in U.S. Public Elementary and Secondary Schools, 1995*). See also National Coalition for the Homeless further comments at 8 (citing *AAP Speaker Says Content Will Remain King for Publishers, Educational Marketer* (Apr. 15, 1996)).

<sup>1844</sup> Public Advocates comments at 18-19 and Exhibit 5.

<sup>1845</sup> Testimony of United States Representative Major Owens before the Federal-State Joint Board on Universal Service (Oct. 17, 1996).

<sup>1846</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>1847</sup> See, e.g., AFT comments at 3; New Jersey Advocate comments at 22.

<sup>1848</sup> Public Notice at question 20.

<sup>1849</sup> AFT further comments at 4.

<sup>1850</sup> PacTel further comments at 26.

lunch program.<sup>1852</sup> The national school lunch program, for example, is a program that determines students' eligibility for free lunches or lunches at reduced prices based on family income levels.<sup>1853</sup> It is a single program with a well-defined set of eligibility criteria, is in place nationwide, and has data gathering requirements that are familiar to most schools. Title I also relies on family income levels and permits use of three different measures of economic disadvantage, one of which is participation in the national school lunch program.<sup>1854</sup> We recognize that poverty data is also an accurate gauge of economic disadvantage, and that EDLINC's proposal for calculating the level of discount for schools and libraries takes affordability into consideration.<sup>1855</sup> We conclude that using a single measure of economic disadvantage and a model already familiar to most schools and libraries would likely be the least administratively burdensome approach. We recognize that the national school lunch program fulfills both of these criteria, but we remain open to other approaches that may also prove to be both minimally burdensome for schools and libraries and accurate measures of economic disadvantage. We also recognize that non-public schools may not participate in the national school lunch program and, therefore, the data regarding student eligibility for the program may not be readily available to such schools. We recommend that the Commission seek additional information and parties' comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged non-public schools or, if not readily available, what information could be required that would be minimally burdensome.

565. The national school lunch program reflects the level of economic disadvantage for children enrolled in school. While using a model that measures the wealth of an entire school district may better reflect per-pupil expenditures in that district, we conclude that a model measuring the wealth of students enrolled in school will more accurately reflect the level of economic disadvantage in all of the schools and libraries eligible for universal service support under section 254, including both public and non-public schools. For example, a non-public school located in an economically disadvantaged school district that does not draw its students primarily from that district, may receive an unneeded windfall if it were to be given an additional discount based upon a model that reflects district-wide wealth. We find, therefore, that using the national school lunch program to determine eligibility for a greater

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<sup>1851</sup> NSBA I further comments at 23.

<sup>1852</sup> See, e.g., MCI further comments at 10; New York DOE further comments at 10.

<sup>1853</sup> Children from families whose incomes are 130 percent or less of the poverty level qualify for a free lunch, while children from families whose incomes are between 130 percent and 185 percent of the poverty level qualify for a reduced price lunch. See 47 U.S.C. § 1758(b).

<sup>1854</sup> 20 U.S.C. § 6301.

<sup>1855</sup> See EDLINC further comments at 38.

discount appears to fulfill more accurately the statutory requirement to ensure affordable access to and use of telecommunications and other covered services for schools and libraries.

566. If it decides to use the national school lunch program as the model for determining eligibility for a greater discount, we recommend that the Commission require the entity responsible for ordering telecommunications services or other covered services for schools to certify to the administrator and to the service provider the percentage of its students eligible for the national school lunch program when ordering telecommunications and other covered services from its service providers. For schools ordering telecommunications and other covered services at the individual school level, which should include primarily non-public schools, the person ordering such services should certify to the administrator and to the service provider the percentage of students eligible in that school for the national school lunch program. Each school's level of discount will then be calculated by the administrator based on the percentage of students eligible for the national school lunch program.

567. For schools ordering telecommunications and other covered services at the school district level, we seek to target the level of discount based on each school's percentage of students eligible for the national school lunch program, if the national school lunch program is selected as the appropriate measure of economic disadvantage. At the same time, we seek to minimize the administrative burden on school districts. That is, we do not seek to impose unduly burdensome reporting and accounting requirements on school districts, but we also seek to ensure that the individual schools with the highest percentages of economically disadvantaged students may receive the steepest discounts. For example, if the level of discount were calculated for the entire school district, a school serving a large percentage of students eligible for the national school lunch program that was located in a school district comprised primarily of more affluent schools would not benefit from the level of discount to which it would be entitled if discounts were calculated on an individual school basis. Therefore, we recommend that the district office certify to the administrator and to the service provider the number of students in each of its schools who are eligible for the national school lunch program. We recommend that the district office may decide to compute the discounts on an individual school basis or it may decide to compute an average discount. We further recommend that the school district assure that each school receive the full benefit of the discount to which it is entitled.

568. We recommend that schools or districts do not have to participate in the national school lunch program in order to demonstrate their level of economic disadvantage. Schools or districts that do not participate in the national school lunch program need only certify the percentage of their students who would be eligible for the program, if the school or district did participate. Since libraries do not participate in the national school lunch program, we recommend that they be eligible for greater discounts based on their location in a school district serving economically disadvantaged students. That is, the administrator would average the percentage of students eligible for the national school lunch program in all eligible

schools, both public and non-public, within the school district in which a library was located. The library would then receive the level of discount representing the average discount offered to the school district in which it was located. We find that this is a reasonable method of calculation because libraries are likely to draw patrons from an entire school district and this method does not impose an unnecessary administrative burden on libraries. We recommend that the Commission seek additional information and parties' comments on what measures of economic disadvantage may be readily available for identification of economically disadvantaged libraries or, if not readily available, what information could be required that would be minimally burdensome.

569. We also recommend that the Commission adopt a step approach for calculating the level of greater discount available to economically disadvantaged schools and libraries. A step approach would provide multiple levels of discount based on the percentage of students eligible for the national school lunch program. We agree with PacTel, which asserts that a step approach is easier to apply and administer than a sliding-scale approach,<sup>1856</sup> which would require adjustment for every change in the percentage of children eligible for the national school lunch program.

570. The national school lunch program, for example, is a three-step program based on family income: students are either eligible for a free lunch, eligible for a reduced price lunch, or not eligible for participation.<sup>1857</sup> We conclude, however, that the number of steps for determining greater discounts on telecommunications and other covered services should be principally based on the existing Department of Education categorization of schools eligible for the national school lunch program. The Department of Education places schools in five categories, based on percentage of students eligible for free or reduced price lunches: 0-19 percent, 20-34 percent, 35-49 percent, 50-74 percent; and 75-100 percent.<sup>1858</sup> We also recommend that the Commission establish a separate category for the least economically disadvantaged schools, those with less than one percent of their students eligible for the national school lunch program. Those schools should have comparatively sufficient resources within their existing budgets so that they may secure affordable access to services at lower discounted rates. In our effort not to duplicate research already conducted and to tailor greater discounts based on level of economic disadvantage more accurately, we recommend using the Department of Education's five-step breakdown to calculate the greater discounts on telecommunications and other covered services for economically disadvantaged schools.

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<sup>1856</sup> PacTel further comments at 26-27.

<sup>1857</sup> See 47 U.S.C. § 1758(b).

<sup>1858</sup> See National Data Research Center (1995), *Schools and Staffing Surveys, 1993-94* (unpublished tabulations commissioned by the U.S. Department of Education for the National Assessment of Title I).

### e. Existing Special Rates

571. State-Mandated Rates. We must also address the question we raised in the Public Notice concerning the relationship between any discount the Commission adopts and existing special rates that schools or libraries may already have negotiated with carriers or secured through state action.<sup>1859</sup> We turn first to special rates mandated by a state. To the extent that a state desires to supplement the discount financed through the federal universal service fund by permitting its schools and libraries to apply the discount to the special low rates, its actions would be consistent with sections 254(h) and 254(f). Furthermore, we believe that it would also be permissible for states to choose not to supplement the federal program and thus prohibit its schools and libraries from purchasing services at special state-supported rates if they intend to secure federal-supported discounts.

572. Private contract rates. Some commenters have also raised the matter of how discounts should apply to existing contracts between schools and libraries.<sup>1860</sup> If the Commission permits schools and libraries to use the best negotiated contract rate for which they can bargain in the market as the pre-discount price to which a discount would apply, it would seem reasonable that such discount would also apply to contracts negotiated prior to the adoption of rules under section 254(h). In both cases, schools and libraries with budgetary constraints have strong incentives to secure the lowest rates that they can as the pre-discount price, and the proposed discount methodology would apply a discount on that pre-discount rate. We recommend that the Commission not require any schools or libraries that had secured a low price on service to relinquish that rate simply to secure a slightly lower price produced by including a large amount of federal support. No discount would apply, however, to charges for any usage of telecommunications or information services prior to the effective date of rules promulgated pursuant to this proceeding.

### f. Interstate and Intrastate Discounts

573. Section 254(h)(1)(B) permits the Commission, with respect to interstate services, and the states, with respect to intrastate services, to determine the level of discount available to schools and libraries.<sup>1861</sup> We asked for comment, however, on how to harmonize that statement with the congressional intent to foster affordable access for schools and libraries nationwide.<sup>1862</sup> We recommend that the Commission recognize that it can provide for

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<sup>1859</sup> Public Notice at question 17.

<sup>1860</sup> See, e.g., CFA further comments at 9-10; Florida PSC further comments at 13; GCI further comments at 7; NCTA further comments at 5-6; Oakland School District further comments at 17; TCI further comments at 18.

<sup>1861</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>1862</sup> NPRM at para. 83.

federal universal service support to fund intrastate discounts. We also recommend that the Commission adopt rules that provide federal funding for discounts for schools and libraries on both interstate and intrastate services to the levels discussed above, and that establishment of intrastate discounts at least equal to the discounts on interstate services be a condition of federal universal service support for schools and libraries in that state. If a state wishes to provide an intrastate discount less than the federal discount, then it may seek a waiver of this requirement.

## E. Restrictions Imposed on Schools and Libraries

### 1. Background

574. Section 254 places four restrictions on schools and libraries receiving services funded under universal service support mechanisms. First, only certain entities are eligible for "preferential rates or treatment" under section 254(h).<sup>1863</sup> Schools must meet the statutory definitions of elementary and secondary schools found in the Elementary and Secondary Education Act of 1965,<sup>1864</sup> must not operate as a for-profit business, and must not have an endowment exceeding \$50 million.<sup>1865</sup> Libraries must be "eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act,"<sup>1866</sup> and

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<sup>1863</sup> 47 U.S.C. § 254(h)(4).

<sup>1864</sup> 47 U.S.C. § 254(h)(4) and (h)(5)(A). The Elementary and Secondary Education Act of 1965 defines "elementary school" as "a nonprofit institutional day or residential school that provides elementary education, as determined under State law." 20 U.S.C. § 8801(14). The Elementary and Secondary Education Act defines "secondary school" as "a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that such term does not include any education beyond grade 12." 20 U.S.C. § 8801(25).

<sup>1865</sup> 47 U.S.C. § 254(h)(4).

<sup>1866</sup> 47 U.S.C. § 254(h)(4). The Library Services and Construction Act defines libraries in the following manner:

- 'Public library' means a library that serves free of charge all residents of a community, district, or region, and receives its financial support in whole or in part from public funds. Such term also includes a research library, which, for the purposes of this sentence, means a library which -
- (A) makes its services available to the public free of charge;
  - (B) has extensive collections of books, manuscripts, and other materials suitable for scholarly research which are not available for the public through public libraries;
  - (C) engages in the dissemination of humanistic knowledge through services to readers, fellowships, educational and cultural programs, publication of significant research, and other activities; and
  - (D) is not an integral part of an institution of higher education.

must not operate as a for-profit business.<sup>1867</sup> Second, telecommunications services and network capacity provided to schools and libraries under section 254(h) "may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."<sup>1868</sup> Third, section 254(h)(1)(B) requires that schools and libraries make a "bona fide request" for services within the definition of universal service.<sup>1869</sup> Fourth, any such services requested by schools and libraries must be used for "educational purposes."<sup>1870</sup>

575. The NPRM and the Public Notice sought comment on five restrictions imposed on schools and libraries: eligibility, resale, bona fide request, educational purposes, and annual carrier notification requirement. First, the NPRM sought comment on eligibility requirements. The NPRM stated that "[c]onsortia of educational institutions providing distance learning to elementary and secondary schools are considered as educational providers eligible for universal service support."<sup>1871</sup> The NPRM proposed dictating that any certification requirement imposed by the Commission shall address the eligibility requirements enumerated in section 254(h).<sup>1872</sup> Second, the NPRM addressed resale restrictions when it sought comment on whether the resale prohibition in section 254(h) will affect the ability of schools and libraries receiving universal service support to share a network with parties not eligible for such support.<sup>1873</sup> The NPRM also sought comment on what mechanisms could ensure that the resale prohibition does not discourage partnerships between schools and libraries and their communities.<sup>1874</sup> The Public Notice sought further comment on whether the resale prohibition should be construed to prohibit only the resale of services to the public for profit, or whether it should be construed to allow end-user cost-based fees for services and whether such an interpretation would facilitate community networks and/or the aggregation of purchasing

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20 U.S.C. § 351a(5).

<sup>1867</sup> 47 U.S.C. § 254(h)(4).

<sup>1868</sup> 47 U.S.C. § 254(h)(3). *See also* Joint Explanatory Statement at 133 (stating that "[n]ew subsection (h)(3) clarifies that telecommunications services and network capacity provided to . . . schools and libraries may not be resold or transferred for monetary gain").

<sup>1869</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>1870</sup> 47 U.S.C. § 254(h)(1)(B).

<sup>1871</sup> NPRM at para. 87 (*citing* Joint Explanatory Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 134 (1996)).

<sup>1872</sup> NPRM at para. 87.

<sup>1873</sup> NPRM at para. 86.

<sup>1874</sup> NPRM at para. 86.

power.<sup>1875</sup> If end-user cost-based fees for services are permitted, the Public Notice asked whether discounts should be "available only for the traffic or network usage attributable to the educational entities that qualify for the section 254 discounts."<sup>1876</sup>

576. Third, the NPRM addressed the bona fide purchase requirement when it proposed that any person authorized under state or local law to order telecommunications services for schools or libraries be deemed capable of making a "bona fide request" for service for purposes of section 254(h).<sup>1877</sup> The Commission also sought comment and Joint Board recommendation on how to determine most accurately whether any such request is "bona fide."<sup>1878</sup> The Public Notice sought further comment on the least administratively burdensome approach to fulfilling the bona fide purchase requirement.<sup>1879</sup> Fourth, the NPRM dealt with the "educational purposes requirement when it sought comment on what steps should be taken to ensure that services eligible for a schools and libraries discount will be used for "educational purposes," including a proposal requiring schools and libraries to submit written certification that the requested services will be used for educational purposes and will not be resold.<sup>1880</sup> Finally, the NPRM addressed carrier notification when it sought comment on a proposal requiring "each carrier to inform annually each school and library within its geographic serving area of the available discounts."<sup>1881</sup>

## 2. Comments

577. Eligibility. Numerous commenters address what constitutes eligibility under the schools and libraries provisions of section 254.<sup>1882</sup> Several commenters, for example, support allowing consortia of different types to qualify for universal support under section 254. The U.S. Distance Learning Ass'n explains that, "to meet certain educational goals, schools enter into resource sharing arrangements with other schools and with outside entities, including community colleges, which may, on their face, be considered ineligible for universal service

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<sup>1875</sup> Public Notice at question 10.

<sup>1876</sup> Public Notice at question 11.

<sup>1877</sup> NPRM at para. 85.

<sup>1878</sup> NPRM at para. 85.

<sup>1879</sup> Public Notice at question 15.

<sup>1880</sup> NPRM at para. 84.

<sup>1881</sup> NPRM at para. 84.

<sup>1882</sup> See, e.g., Cheyenne River Sioux Tel. comments at 4; Missouri PSC comments at 15; U.S. Distance Learning Ass'n comments at 18; ALA reply comments at 17.

support under the [1996] Act."<sup>1883</sup> U.S. Distance Learning Ass'n asks that such consortia be specifically recognized as eligible for universal service support, to the extent that they further educational objectives for students who attend eligible schools.<sup>1884</sup>

578. Libraries also participate in non-profit consortia that share resources such as common databases, computer link-ups to databases, electronic access to periodical databases, and access to the Internet.<sup>1885</sup> Numerous libraries and organizations representing libraries contend that such consortia should be eligible for universal service support.<sup>1886</sup> ALA maintains that "eligible institutions participating in consortia with non-eligible parties should qualify for appropriate discounts to the extent that they follow accounting procedures that clearly separate telecommunications costs among the participants."<sup>1887</sup> Washington Library asserts that the eligible party's portion of telecommunications costs can easily be separated from the costs of other members of the consortia, and suggests that the Commission may want to require separate, auditable records of the school's or library's portion of usage.<sup>1888</sup>

579. Some commenters support classifying several miscellaneous entities as parties eligible for universal service support under section 254(h). Missouri PSC and NSBA I, for example, support including community information networks within the definition of library for purposes of universal service support eligibility.<sup>1889</sup> National Public Telecomputing Network asserts that community networks, such as "Free-Nets," should be eligible for universal service support under section 254(h) in exchange for providing free or low cost

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<sup>1883</sup> U.S. Distance Learning Ass'n comments at 18-19.

<sup>1884</sup> U.S. Distance Learning Ass'n comments at 19.

<sup>1885</sup> North of Boston Library Exchange comments at 1-2.

<sup>1886</sup> *See, e.g.*, North of Boston Library Exchange comments at 1-2; Washington Library comments at 17; ALA reply comments at 14-16.

<sup>1887</sup> ALA reply comments at 17.

<sup>1888</sup> Washington Library comments at 15.

<sup>1889</sup> Missouri PSC comments at 15; NSBA I reply comments at 16. Missouri PSC defines community information networks as non-profit public benefit corporations established by governments and other public entities that develop and maintain computing services for the general public and serve many of the functions of a library. *See* Missouri PSC comments at 15.

access for schools, libraries, and health care providers in a particular geographic area.<sup>1890</sup> APTS contends that consortia of educational television stations that provide services to elementary and secondary schools should be eligible for support. It argues that affording wider access to educational programming is consistent with the 1996 Act.<sup>1891</sup> U.S. Distance Learning Ass'n contends that vocational and technical training at the secondary school level that is conducted in conjunction with community colleges should be considered as an extension of an eligible public school for purposes of universal service eligibility.<sup>1892</sup> Early Childhood states that if preschools affiliated with elementary schools are eligible for universal service support, "stand-alone" preschool and early childhood programs should be similarly eligible.<sup>1893</sup> Cheyenne River Sioux Telephone Company notes that schools and libraries established under tribal authority may not be eligible for support because only state elementary and secondary schools and libraries eligible for participation in state-based plans are eligible institutions under section 254.<sup>1894</sup> Cheyenne River Sioux Telephone Company maintains that "[t]he Commission should begin . . . a separate proceeding to address tribal universal service issues and general federal Indian law issues as they relate to telecommunications regulation on tribal lands."<sup>1895</sup>

580. Resale. Numerous commenters support a strict interpretation of the resale provision set forth in section 254 and state that resale of any kind should be prohibited.<sup>1896</sup> Puerto Rico Tel. Ass'n maintains that the statutory language is clear and that community networks and other aggregations of users are not among the entities deemed eligible for

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<sup>1890</sup> Nat'l Public Telecomputing Network reply comments at 10. "Free-Nets" are defined as "multi-user, public access computer networks with much of the power and sophistication of commercial online services and Internet service providers. Yet each system is locally owned and operated by a nonprofit, community-based organization whose governing body is made up of people active in local community affairs." *Id.* at 3-4.

<sup>1891</sup> APTS comments at 11.

<sup>1892</sup> U.S. Distance Learning Ass'n comments at 18. *See also* Community Colleges comments at 4 (maintaining that "comparable institutions," such as community colleges, should be eligible for universal service support).

<sup>1893</sup> Early Childhood comments at 2.

<sup>1894</sup> Cheyenne River Sioux Tel. comments at 4 n.7.

<sup>1895</sup> Cheyenne River Sioux Tel. comments at 4.

<sup>1896</sup> *See, e.g.,* Ameritech further comments at 16; BellSouth further comments at 20-21; Great City Schools further comments at 3; MCI further comments at 7; NCLIS further comments at 4; NECA further comments at 8; New York DOE further comments at 7; Puerto Rico Tel. Co. further comments at 6; SWBT further comments at 12; USTA further comments at 11.

discounted services under section 254.<sup>1897</sup> Great City Schools asserts that permitting additional parties to benefit from the discounts intended for schools and libraries "would divert essential resources away from the deepest possible discounts for the narrow set of expressly targeted entities in the legislation."<sup>1898</sup> Ameritech states that end-user cost-based fees would constitute the transfer of service and would, therefore, be in direct violation of section 254(h)(3),<sup>1899</sup> while USTA contends that permitting schools to resell discounted services would result in ineligible parties benefiting from the universal service discount.<sup>1900</sup> In addition, USTA asserts that, if resale is permitted, "[i]t is not technically feasible to accurately attribute network usage to multiple institutions using shared networks."<sup>1901</sup> BellSouth maintains that a school or library wishing to resell telecommunications services "should be required to do so as a reseller without the benefit of any universal service discounts."<sup>1902</sup> NECA states that the Commission should promulgate rules that limit section 254 discounts to the entities expressly named in the 1996 Act because, in light of previous Commission decisions, a prohibition against resale may not be adequate to prevent abuse of services discounted under section 254.<sup>1903</sup>

581. Other commenters interpret section 254(h)(3) to prohibit only resale for profit and to allow the recovery of end-user cost-based fees for services.<sup>1904</sup> Bell Atlantic, for

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<sup>1897</sup> Puerto Rico Tel. Co. further comments at 6. *See also* Great City Schools further comments at 3 (asserting that "[i]f Congress had wanted to include other entities, it would have done so directly").

<sup>1898</sup> Great City Schools further comments at 3.

<sup>1899</sup> Ameritech further comments at 16. *See also* MCI further comments at 7; NCLIS further comments at 4.

<sup>1900</sup> USTA further comments at 11. *See also* BellSouth further comments at 21.

<sup>1901</sup> USTA further comments at 11. *See also* BellSouth further comments at 21 (stating that "it would appear to be an insurmountable task to distinguish between eligible and non-eligible uses of the same telecommunications service by multiple entities").

<sup>1902</sup> BellSouth further comments at 21.

<sup>1903</sup> NECA further comments at 8 (*citing Resale and Shared Use of Common Carrier Services*, 60 FCC 2d 261, *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom. American Tel. & Tel. Co. v. FCC*, 572 F.2d 17 (2d Cir. 1978) for the premise that "the term 'resale' does not encompass the non-profit sharing of facilities and services among unaffiliated users").

<sup>1904</sup> *See, e.g.*, ALA further comments at 8-10; AT&T further comments at 13; Bell Atlantic further comments at 4; Benton further comments at 4-5; California Library Ass'n further comments at 2; Century further comments at 12; EDLINC further comments at 17-18; ITC further comments at 5-6; Information Renaissance further comments at 7; NCTA further comments at 4; National Public Telecomputing Network further comments at 9; Oakland School District further comments at 6-7; PacTel further comments at 19; Senate Working Group further comments at 2; U S West further comments at 8; Washington UTC further comments at 10-11.

example, contends that schools and libraries should be permitted to recover administrative costs by charging a reasonable fee to the public for use of telecommunications services.<sup>1905</sup> Bell Atlantic also maintains that, while schools should not be allowed to charge students for use of telecommunications services, they should be permitted to charge a fee to the public for use of the services outside of normal school hours.<sup>1906</sup> Information Renaissance believes that permitting user fees for such services as dial-up access to a community network based at a school, library, or community center should be permitted under section 254.<sup>1907</sup> Colorado State Library maintains that the prohibition on resale should not preclude such items as computer lab fees for students.<sup>1908</sup> AT&T argues that the statutory language "should be strictly construed to carry out Congress's intent and, most fundamentally, to limit the demand on and to keep the NUSF within reasonable limits, so that public support remains strong to ensure its survival,"<sup>1909</sup> and supports permitting end-user cost recovery for schools and libraries.<sup>1910</sup>

582. Several commenters contend that not allowing the recovery of end-user cost-based fees by schools and libraries for use of their telecommunications services will invalidate or impede efforts to aggregate demand for telecommunications services.<sup>1911</sup> Senate Working Group asserts that, while the 1996 Act clearly prohibits the resale of telecommunications services for monetary gain, "this prohibition should not hinder or preclude the creative development of consortia among education institutions to provide distance learning and fairly share the actual costs."<sup>1912</sup> U S West maintains that aggregation of traffic "for the exclusive use of schools and libraries eligible for universal service funding, would not circumvent the provisions of the 1996 Act and would provide increased purchasing power to those entities."<sup>1913</sup> U S West asserts, therefore, that the discount mechanisms developed under

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<sup>1905</sup> Bell Atlantic further comments at 4.

<sup>1906</sup> Bell Atlantic further comments at 4.

<sup>1907</sup> Information Renaissance further comments at 7.

<sup>1908</sup> Colorado State Library reply comments at 3. *See also* NSBA I comments at 24 (asserting that "schools and libraries should not be prohibited from charging lab fees or user fees to defray expenses related to the use of a network").

<sup>1909</sup> AT&T further comments at 13.

<sup>1910</sup> AT&T further comments at 13.

<sup>1911</sup> *See, e.g.*, ALA further comments at 8-9; California Library Ass'n further comments at 2-3; Information Renaissance further comments at 7; Washington UTC further comments at 10-11.

<sup>1912</sup> Senate Working Group further comments at 2. *See also* U.S. Distance Learning Ass'n comments at 20.

<sup>1913</sup> U S West further comments at 8.

section 254 should provide enough flexibility to allow schools and libraries to purchase aggregated telecommunications services from educational consortia.<sup>1914</sup> In addition, Maryland DOE argues that the rules should also allow eligible libraries to delegate communications management and procurement responsibilities to a central administrative agent, such as Sailor.<sup>1915</sup>

583. Several commenters support drawing a distinction between telecommunications mechanisms, on the one hand, and the telecommunications service itself, in applying the prohibition on resale.<sup>1916</sup> Washington Library suggests the following applications of such a distinction:

For instance, a library may not resell its discounted access to its city government, but it may levy a fee for Internet classes, or [for] setting up and maintaining an Internet account through the library, or for maintaining a web site for its unit of local government. Such an application would appear to satisfy the intent of the Telecommunications Act, but this distinction would be more easily known and understood by all concerned if the FCC clarifies it.<sup>1917</sup>

584. Several parties that support recovery of end-user cost-based fees for services address how the discount should be applied when eligible and ineligible parties aggregate and share a network.<sup>1918</sup> Some commenters advocate providing the discount only to the traffic or network usage attributable to eligible entities under section 254.<sup>1919</sup> California Library Ass'n states that such entities should be able to formulate recordkeeping and/or billing procedures to

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<sup>1914</sup> U S West further comments at 8.

<sup>1915</sup> Maryland DOE further comments at 1.

<sup>1916</sup> See, e.g., BellSouth further comments at 21; California Library Ass'n further comments at 2; EDLINC further comments at 18; Washington Library comments at 15.

<sup>1917</sup> Washington Library comments at 15. See also BellSouth further comments at 21 (stating that "[f]or instance, if a school or library obtained telecommunications services from a telecommunications provider and used them to gain access to non-telecommunications services such as the Internet or other enhanced service offerings, then the public institutional telecommunications user would be free to charge the public a fee for utilization of the Internet or other enhanced services (although not for the telecommunications service itself)").

<sup>1918</sup> See, e.g., California Library Ass'n further comments at 3; Maryland DOE further comments at 1-2; Oakland School District further comments at 7.

<sup>1919</sup> See, e.g., California Library Ass'n further comments at 3; U S West further comments at 8; Washington UTC further comments at 11.