telecommunications network.[519]

170. The Iowa Communications Network (ICN) explains that it owns and operates, among other things, significant fiber capacity, switches, and high speed data hubs.[520] ICN further maintains that it integrates these facilities with services purchased from telecommunications carriers to provide DS-3 level connections to each school district.

171. DOAS-IT states that the network ultimately provides services to both public entities that are eligible and ineligible for universal service discounts.[521] DOAS-IT asserts, nevertheless, that it is impractical, and perhaps impossible, to separate the costs associated with providing services to entities eligible for universal service discounts from costs associated with providing services to entities that are ineligible for such discounts.[522]

172. The Florida Department of Management Services (DMS) states that, pursuant to state law, the Florida DMS must "develop and maintain the SUNCOM Network as the state communications system for providing local and long distance communications service to state agencies (including universities, community colleges, and libraries), political subdivisions of the state (including counties and school districts), and certain nonprofit corporations (including private universities and health care providers)."[523] According to Florida DMS, the SUNCOM Network transmits a variety of communications signals, including voice, data, video, image, and radio signals.[524] Florida DMS further explains that "ninety-nine percent of the services offered by the SUNCOM Network are leased from the telecommunications industry in Florida," including local and long-distance telephone service, Internet access, dedicated data service, and router transport service.[525] Furthermore, Florida DMS explains that state law requires Florida DMS to provide Florida's residents with better access to education and health services through advanced telecommunications services.

173. Regarding state telecommunications networks' costs associated with providing service to entities eligible for universal service discounts, NASTD maintains that: (1) the cost

[519] NASTD *ex parte* at 3.

[520] ICN petition at 4.

[521] DOAS-IT petition at 2.

[522] DOAS-IT petition at 2.

[523] Florida DMS petition at 1.

[524] Florida DMS petition at 1.

[525] Florida DMS *ex parte* at 1-2.

of services is passed on equitably to the eligible entities based on the cost of providing the services;[526] and (2) states predominantly operate the state telecommunications networks on a cost-recovery basis. In other words, because such networks typically do not receive direct state funding with which to acquire and maintain services, NASTD maintains that they allocate the costs of the aggregated services, along with "a small administrative charge to cover costs of the [state telecommunications networks'] employees, contract administration and other administrative expenses" among the entities eligible for support.[527] DOAS-IT asserts that no profit is included in the rates charged, and that such rates are regularly audited by both state and federal auditors.[528] ICN provides services at cost, and the state of Iowa provides a subsidy for certain of these services.[529] NASTD attributes much of the success of state telecommunications networks to "the centralization of service and billing."[530] The Kansas Department of Administration (DoA) explains that its Division of Information Systems and Communications (DISC) maintains detailed records for inventory and billing that are "sufficient to provide the necessary detail to identify the dollar amounts of individual [universal service] discounts for each eligible entity."[531] The Kansas DoA asks that any additional record keeping requirements imposed on state telecommunications networks remain simple and compatible with its current system.[532]

174. Several petitioners argue that state telecommunications networks should be eligible to receive direct reimbursement from the support mechanisms for services provided at a discount to eligible schools and libraries.[533] In its reply, NASTD states that, "[w]hile for the

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[526] NASTD *ex parte* at 3. *See also* DOAS-IT petition at 2 (asserting that the cost of providing, operating, and managing the network is recovered fully from its users, as required by the state statutes that govern DOAS-IT and that the cost of service is billed to customers based on rates designed to recover the costs of the underlying carrier's services and other costs associated with providing the network).

[527] NASTD *ex parte* at 4. *See also* Florida DMS *ex parte* at 2 (providing that its rates "include those service and overhead costs incurred in providing services to comply with the statute that requires a system of equitable billing and charges.")

[528] DOAS-IT petition at 2.

[529] ICN petition at 6.

[530] NASTD *ex parte* at 4.

[531] Letter from Kansas DoA, DISC, to William F. Caton, FCC, dated October 14, 1997 (Kansas DoA *ex parte*) at 2.

[532] Kansas DoA *ex parte* at 2.

[533] *See, e.g.*, NASTD petition at 3; NASTD *ex parte* at 5; ICN reply at 2-3; Florida DMS petition at 2; Florida DMS *ex parte* at 4 (stating that "[a]s aggregator for the consortia of eligible facilities in Florida, DMS seeks recognition as agent to directly obtain discounts from the [universal service support mechanisms] based on

sake of administrative efficiency, NASTD believes that state networks should at least have the option of paying full price to service providers and being reimbursed directly from the universal service fund themselves, such an arrangement is for administrative convenience only, and does not place the state networks in the role of supported service providers."[534] In its *ex parte* letter, however, NASTD argues that, pursuant to the Commission's interpretation of section 254(h)(2), which permits non-telecommunications carriers to receive universal service support, state telecommunications networks, as providers of packages of service that include advanced telecommunications and information services, should be eligible to receive direct reimbursement from the support mechanisms. NASTD maintains that, based on the Commission's determination in the *Order* that section 254(h)(2) grants it broad authority "to enhance access to advanced telecommunications and information services, constrained only by the concepts of competitive neutrality, technical feasibility, and economic reasonableness,"[535] state telecommunications networks should be eligible for universal service support.[536] NASTD, therefore, asserts that the concepts of competitive neutrality, technical feasibility, and economic reasonableness are "inherent in the [state telecommunications network] structures."[537]

175. NASTD also argues that, based on the Commission's provision in the *Order* that, "to take advantage of the discounts provided by section 254(h)(1), non-telecommunications carriers can bid with telecommunications carriers through joint ventures, partnerships, or other business arrangements,"[538] state telecommunications networks that purchase services should be eligible to receive universal service support.[539] NASTD asserts that, "as representatives of their state governments tasked with the responsibility of aggregating services and equipment for schools, libraries and other state organizations, and because of the state-mandated procurement processes through which they must conduct business with the carriers, [state telecommunications networks] occupy a unique business

DMS published prices"); Letter from STS of North Carolina to William F. Caton, FCC, dated September 29, 1997 (STS of North Carolina *ex parte*) at 4; Kansas DoA *ex parte* at 2; DOAS-IT petition at 3; Commonwealth of Virginia *ex parte* at 2.

[534] NASTD reply at 1 n.1.

[535] *Order*, 12 FCC Rcd at 9086-86.

[536] NASTD *ex parte* at 9-10.

[537] NASTD *ex parte* at 9-10.

[538] *Order*, 12 FCC Rcd at 9085.

[539] NASTD *ex parte* at 7-8.

relationship with such telecommunications providers."[540]

176. STS of North Carolina argues that state telecommunications networks should be eligible to receive universal service support, provided such networks: (1) were created as part of a state agency or department pursuant to state statute; (2) are a "cost recovery operation" subject to rate review and oversight by a state authoritative body that is independent of the state telecommunications network; (3) are required by state procurement law to solicit competitive bids for services where competition exists; and (4) provide services only to those eligible entities that choose to receive services from state telecommunications networks (i.e., eligible entities should not be required to receive service from state telecommunications networks).[541]

177. ICN, unlike NASTD and DOAS-IT, argues that ICN is a telecommunications carrier and is therefore eligible for direct reimbursement from the support mechanisms.[542] ICN explains that it "provides services to a wide variety of users, not just schools and libraries" and owns and operates significant fiber capacity, switches, and high-speed data hubs."[543] DOAS-IT, on the other hand, asserts that it should be eligible to receive universal service support without being designated a telecommunications carrier.[544]

178. Several parties, on the other hand, contend that, under section 254(h)(1)(B), state telecommunications networks are ineligible to receive direct reimbursement from the support mechanisms.[545] USTA emphasizes that the Act defines "telecommunications carrier" as any provider of "telecommunications services" and further defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."[546] USTA and others argue that state telecommunications networks are ineligible for universal service support because they do not offer telecommunications "for a fee directly to

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[540] NASTD *ex parte* at 8.

[541] STS of North Carolina *ex parte* at 6-7.

[542] ICN reply at 2.

[543] ICN reply at 2-3.

[544] DOAS-IT petition at 3.

[545] GTE opposition at 13-14; USTA opposition at 6; Letter from BellSouth, Bell Atlantic, and Ameritech to William F. Caton, FCC, dated October 7, 1997 (BellSouth, Bell Atlantic, Ameritech *ex parte*) at 2.

[546] 47 U.S.C. § 153(46).

the public . . . ."[547]

179. In response to the American Association of Educational Service Agencies' letter to the Commission asking whether it could treat its member agencies as both schools and providers,[548] GTE argues that permitting state telecommunications networks to receive universal service support would violate the resale provisions of the Act, stating that section 254(h)(3) prohibits services provided at a discount to a user to be "sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value."[549] GTE, therefore, asserts that state telecommunications networks should be ineligible for universal service support, although they could be eligible for discounts as a purchaser of eligible services.[550] Similarly, BellSouth, Bell Atlantic, and Ameritech contend that state telecommunications networks should be able to aggregate schools' and libraries' demand for services and obtain pro-rata discounts for such entities.[551] These parties argue that, operating in this capacity, state telecommunications networks should be considered consortia. BellSouth, Bell Atlantic, and Ameritech also assert that allowing state telecommunications networks to receive direct reimbursement from the support mechanisms "will tend to shield more information from scrutiny, risking the funding of an inappropriate portion of state-wide networks at the hands of the [schools and libraries] fund, jeopardizing the availability of the limited funding for intended purposes."[552]

180. Although it argues that ICN constitutes a telecommunications carrier, ICN contends that ICN and other entities "that exist solely to reduce the costs of telecommunications services to eligible entities such as schools and libraries" should not be required to contribute to the universal service support mechanisms pursuant to section 254(d).[553] ICN maintains that section 254(d) authorizes the Commission to adopt contribution mechanisms that are "'equitable,' a term that gives it considerable discretion to determine

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[547] *See, e.g.*, USTA opposition at 6; BellSouth, Bell Atlantic, Ameritech *ex parte* at 2.

[548] Letter from the American Association of Educational Service Agencies to Chairman Reed E. Hundt, FCC, dated July 16, 1997.

[549] GTE comments at 13.

[550] GTE comments at 13.

[551] BellSouth, Bell Atlantic, Ameritech *ex parte* at 2.

[552] BellSouth, Bell Atlantic, Ameritech *ex parte* at 2.

[553] ICN petition at 7-8. Section 254(d) provides that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis," to the universal service support mechanisms. 47 U.S.C. § 254(d).

what entities are required to contribute to the fund and the nature of those contributions."[554] ICN further argues that the Commission should not require non-profit entities to contribute to the universal service support mechanisms.[555]

181. In contrast to petitioners that argue that state telecommunications networks should receive direct reimbursement from the support mechanisms, Florida DOE seeks clarification with regard to whether state telecommunications networks will be eligible for discounts on supported services.[556] Florida DOE maintains that, while the Florida Information Resource Network (FIRN) does not meet the definition of "school" or "library," state telecommunications networks such as FIRN should be included in the category of recipients eligible for discounts.[557] Florida DOE explains that FIRN purchases network access and other telecommunications services in order to "provide access to schools and libraries across the state . . . [t]he services are not directly purchased on behalf of the libraries and schools, in the sense of aggregate purchases which are then conveyed to the libraries and schools. . . [h]owever, these services are purchased on behalf of the schools and libraries in the sense that FIRN purchases them and provides electronic access to them."[558] Florida DOE asks whether "services purchased must be conveyed directly to the schools and libraries, or whether the services can be purchased for the benefit of the eligible entities."[559]

3. Discussion

182. We conclude that state telecommunications networks that procure supported telecommunications and make them available to schools and libraries constitute consortia that will be permitted to secure discounts on such telecommunications on behalf of eligible schools and libraries. We further conclude that, with respect to Internet access and internal connections, state telecommunications networks may either secure discounts on such telecommunications on behalf of schools and libraries, or receive direct reimbursement from

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[554] ICN petition at 7-8.

[555] ICN petition at 7.

[556] Specifically, Florida DOE asks whether state telecommunications networks can receive discounts for providing "statewide access and technical support to eligible facilities." Florida DOE petition at 2.

[557] Florida DOE petition at 2-3, 4.

[558] Florida DOE petition at 3.

[559] Florida DOE petition at 3. According to Florida DOE, the Florida Information Resource Network (FIRN) electronically links all of Florida's public education entities to computing resources that serve public education and purchases services and provides an Internet Gateway for the direct use of those services by schools and libraries throughout the state.

the universal service support mechanisms, pursuant to section 254(h)(2)(A), for providing such services. Finally, we conclude, on our own motion, that to the extent schools and libraries build and purchase wide area networks to provide telecommunications, such networks will not be eligible for universal service discounts.

a. State telecommunications networks

1. Procuring telecommunications

183. We conclude that state telecommunications networks that procure supported telecommunications and make them available to eligible schools and libraries constitute consortia that will be permitted to secure discounts on such services on behalf of their eligible members.[560] We recognize the significant benefits that state telecommunications networks provide to schools and libraries in terms of, among other things, purchasing services in bulk and passing on volume discounts to schools and libraries. In order for eligible schools and libraries to receive discounts pursuant to the universal service support mechanisms for schools and libraries and to continue to receive the benefits currently provided by state telecommunications networks, such networks, consistent with the universal service rules,[561] may obtain discounts on telecommunications from the universal service support mechanisms on behalf of eligible schools and libraries and pass on such discounts to the eligible entities. We emphasize that, with respect to telecommunications, state telecommunications networks only will be permitted to pass on discounts for such services to eligible schools and libraries, but will not, as discussed below, be able to receive direct reimbursement from the universal service support mechanisms for providing such services. We conclude that a state telecommunications network itself will not qualify for discounts on telecommunications. Because it does not meet the definition of an eligible school or library as set forth in the *Order*,[562] a state telecommunications network only may secure such discounts on behalf of the

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[560] In its discussion encouraging schools and libraries to participate in consortia, the Commission included the "large state networks upon which many schools and libraries rely for their telecommunications needs among the entities eligible to participate in consortia." *Order*, 12 FCC Rcd at 9028. Furthermore, in the rules addressing consortia of schools and libraries, the Commission provided that, "state agencies may receive discounts on the purchase of telecommunications and information services that they make on behalf of and for the direct use of eligible schools and libraries, as through state networks." 47 C.F.R. § 54.501(d)(3).

[561] 47 C.F.R. § 54.505(d).

[562] The Commission concluded that a school must meet the statutory definition of an elementary or secondary school found in the Elementary and Secondary Education Act of 1965, must not operate as a for-profit business, and must not have an endowment exceeding $50 million. *Order*, 12 FCC Rcd at 9068-69. Regarding libraries eligible for universal service support, the Commission adopted the Library Services and Technology Act's definition of library for purposes of section 254(h), but concluded that a library's eligibility for universal service funding will depend on its funding as an independent entity. *Order*, 12 FCC Rcd at 9061-72. Furthermore, the Commission concluded in the *Order* that schools and libraries not explicitly eligible for

schools and libraries it serves and pass through the discounts to those schools and libraries. Because schools and libraries will benefit from both the universal service discounts and the ability of state telecommunications networks to aggregate demand and secure prices based on volume discounts, the approach we adopt here will be advantageous to eligible schools and libraries. Furthermore, this approach will help maintain the integrity of the universal service support mechanisms, because eligible schools and libraries will be able to secure pre-discount prices for telecommunications that are lower than the prices for such telecommunications if they had not been purchased in bulk.

184. In order to receive and pass through discounts on supported telecommunications for eligible schools and libraries, state telecommunications networks must make a good faith effort to ensure that each eligible school or library receives a proportionate share of shared services.[563] State telecommunications networks must take reasonable steps to ensure that service providers apply appropriate discount amounts on the portion of the supported telecommunications used by each eligible school or library. The service providers will submit to the state telecommunications network a bill that includes the appropriate discounts on eligible telecommunications rendered to eligible entities. The state telecommunications network then will direct the eligible consortium members to pay the discounted prices. Eligible consortium members may pay the discounted prices to their state telecommunications network, which will then remit the discounted amount to the service providers. Service providers will receive direct reimbursement from the support mechanisms in an amount equal to the difference between the pre-discount price of the eligible telecommunications and the discounted amount.[564] We emphasize that state telecommunications networks purchasing services on behalf of schools and libraries are required to comply with the applicable competitive bid requirements established in the *Order*.[565]

185. We note that, even where state telecommunications networks have procured telecommunications on behalf of schools and libraries through competitive bidding or are exempt from the competitive bid requirement, it may be advantageous for schools and

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discounts should not be permitted to gain eligibility for discounts by participating in consortia with those that are eligible. *Order*, 12 FCC Rcd at 9072.

[563] We note that this requirement is consistent with our determination in section VI.G, *supra*, regarding services shared among consortium members.

[564] The pre-discount price is the total amount that carriers will receive for the services they sell to schools and libraries: the sum of the discounted price paid by a school or library and the discount amount that the carrier can recover from universal service support mechanisms for providing such services. *Order*, 12 FCC Rcd at 9026-27.

[565] *Order*, 12 FCC Rcd at 9029. We note that services provided pursuant to certain preexisting contracts are exempt from the competitive bid requirement, as set forth in section VI.I.

libraries themselves to seek competitive bids on their requested services. In so doing, schools and libraries may be better able to ensure that they obtain the best price on the services that are most closely tailored to meet their needs. We have attempted to design the universal mechanisms so that schools, libraries, and rural health care providers utilize, and obtain the advantages of, competition, to the fullest extent possible. 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. We recognize that schools, libraries, and health care providers may need to transition to the new universal service mechanisms, and we have made reasonable accommodation for eligible entities that have preexisting contracts for telecommunications, internal connections, or access to the Internet.[566] We intend to continue to monitor our decision to exempt certain preexisting contracts from the competitive bidding requirement, to ensure that the exemption does not reduce the benefits that competitive bidding will provide. We thus encourage schools and libraries to seek competitive bids on their requests for services in order to obtain the best price for the desired services. We note that schools and libraries have an incentive to obtain the best price for services, because such schools and libraries will be responsible for paying a portion of the cost. We also note that, after seeking competitive bids, schools and libraries may nevertheless decide to obtain telecommunications that are procured by a state telecommunications network.

186. Because it appears that state telecommunications networks generally make telecommunications available to both eligible and ineligible entities, we emphasize that, pursuant to section 254(h)(4),[567] such networks may obtain and pass through universal service discounts only with respect to schools and libraries that are eligible to receive such discounts. In order to protect the integrity of the schools and libraries program, we direct state telecommunications networks to develop and retain records listing eligible schools and libraries and showing the basis on which the eligibility determinations were made. Such networks also must keep careful records demonstrating the discount amount to which each eligible entity is entitled and the basis on which such a determination was made. Additionally, consistent with the *Order*, service providers must develop and retain detailed records showing how they have allocated the costs of facilities shared by eligible and ineligible entities in order to charge such entities the correct amounts.[568]

187. We disagree with parties that argue that state telecommunications networks should be able to receive direct reimbursement from the support mechanisms for providing

[566] *See* Section VI.I., below.

[567] 47 U.S.C. § 254(h)(4).

[568] *Order*, 12 FCC Rcd at 9075-76.

schools and libraries with services other than access to the Internet and internal connections.[569] Because they do not meet the definition of "telecommunications carrier," state telecommunications networks are not eligible to receive direct reimbursement from the support mechanisms pursuant to section 254(h)(1)(B). Section 254(h)(1)(B) provides that only telecommunications carriers may receive support for providing schools and libraries with the telecommunications supported under section 254(h)(1)(B). Based on the record before us, we agree with USTA that, because they do not offer telecommunications "for a fee directly to the public, or to such classes of users as to be directly available to the public," state telecommunications networks do not meet the definition of "telecommunications carrier." As the Commission determined in the *Order*, the definition of "telecommunications service" is intended to encompass only telecommunications provided on a common carrier basis.[570] The Commission further noted that " . . . precedent holds that a carrier may be a common carrier if it holds itself out 'to service indifferently all potential users'"[571] and that "a carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.'"[572]

188. We are not persuaded by the record before us that state telecommunications networks offer service "indifferently [to] all potential users." Rather, the evidence indicates that state telecommunications networks offer services to specified classes of entities. Because the record does not contain any credible evidence that a state telecommunications network offers or plans to offer service indifferently to any requesting party, we find that state telecommunications networks do not offer service "directly to the public or to such classes of users as to be directly available to the public" and thus will not be eligible for reimbursement from the support mechanisms pursuant to section 254(h)(1). We further find that prohibiting state telecommunications networks from receiving direct reimbursement from the support mechanisms pursuant to section 254(h)(1) is consistent with the Commission's determination in the *Order* that consortia of schools and libraries may receive discounts on eligible

[569] We clarify that connections between or among multiple instructional buildings that comprise a school campus or multiple non-administrative buildings that comprise a library branch are considered internal connections. For example, connections between three instructional buildings on a single school campus would qualify as internal connections eligible for support under the universal service discount program, whereas connections between instructional buildings located on different campuses would not qualify as internal connections eligible for such support.

[570] *Order*, 12 FCC Rcd at 9177-78.

[571] *Order*, 12 FCC Rcd at 9177-78, *citing National Association of Regulatory Utility Commissioners v. FCC*, 553 F.2d 601, 608 (D.C. Cir. 1976) (*NARUC II*).

[572] *Order*, 12 FCC Rcd at 9177-78, *citing NARUC II*, 553 F.2d at 608.

services,[573] but that such consortia will not be permitted to receive direct reimbursement from the support mechanisms.[574]

189. We recognize that it may be more administratively burdensome for state telecommunications networks to obtain and pass through discounts on behalf of schools and libraries, rather than to receive direct reimbursement from the support mechanisms for procuring telecommunications and making such telecommunications available to schools and libraries.[575] As discussed above, however, state telecommunications networks do not meet the definition of "telecommunications carrier" and thus will not be permitted to receive direct reimbursement for the provision of telecommunications. Additionally, parties have not suggested any reason why state telecommunications networks should be treated differently from other consortia and thus be allowed to receive support directly from the universal service support mechanisms for providing telecommunications other than Internet access and internal connections. Furthermore, even if they were able to receive direct reimbursement from the support mechanisms for providing telecommunications, state telecommunications networks would still need to determine which entities are eligible for discounts and the discount rate to which each eligible entity is entitled. Therefore, any additional administrative burden created by requiring state telecommunications networks to pass through the discount amounts, rather than allowing them to receive direct reimbursement from the support mechanisms, may not be as significant as some parties suggest.

2. Internet access and internal connections

190. With respect to Internet access and internal connections, we conclude that state telecommunications networks may either secure discounts on the purchase of such telecommunications purchased from other providers on behalf of schools and libraries in the manner discussed above with regard to telecommunications, or receive direct reimbursement from the support mechanisms for providing Internet access and internal connections to schools and libraries, pursuant to section 254(h)(2)(A). As the Commission concluded in the *Order*, section 254(h)(2)(A), in conjunction with section 4(i),[576] authorizes the Commission to permit

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[573] *Order*, 12 FCC Rcd at 9028, 9072.

[574] The *Order* provides that only telecommunications carriers, and non-telecommunications carriers that provide access to advanced services, may receive direct reimbursement from the support mechanisms. *Order*, 12 FCC Rcd at 9005-23, 9084-90; 47 C.F.R. §§ 54.501(a), 54.517.

[575] For example, state telecommunications networks will be required to separate the costs associated with providing service to eligible and ineligible entities, pass through the discount to the eligible entities, and submit to USAC and the Schools and Libraries Corporation copies of a form designating the services made available to the eligible school or library and the support amount due to the service provider.

[576] 47 U.S.C. § 154(i).

discounts and funding mechanisms to enhance access to advanced services provided by non-telecommunications carriers.[577] On this basis, the Commission stated that it would permit discounts for Internet access and internal connections provided by non-telecommunications carriers.[578] Thus, although we conclude that state telecommunications networks do not constitute telecommunications carriers that are eligible for reimbursement for making available telecommunications pursuant to section 254(h)(1)(B), we do find that networks that make Internet access and internal connections available to schools and libraries are eligible, under the *Order* and section 54.517 of our rules, as non-telecommunications carriers for direct reimbursement from the support mechanisms for providing these services.

191. NASTD suggests that the Commission's statement in the *Order* that it was "constrained only by the concepts of competitive neutrality, technical feasibility, and economic reasonableness" in implementing section 254(h)(2)(A) means that state telecommunications networks should be eligible for reimbursement from the support mechanisms for providing "bundled service packages" that include telecommunications and access to the Internet and internal connections. As explained above, however, the Act defines "telecommunications carrier" as any provider of "telecommunications service" and does not equate "telecommunications" (the term used in section 254(h)(2)(A)) with "telecommunications service." Therefore, because state telecommunications networks do not provide "telecommunications service," they do not meet the definition of "telecommunications carrier" and will not be permitted to receive direct reimbursement for the provision of services other than Internet access and internal connections. To the extent that they make available Internet access and internal connections, state telecommunications networks are non-telecommunications carriers. As non-telecommunications carriers, they are eligible, as we determined in the *Order*, pursuant to section 254(h)(2)(A), for direct reimbursement from the support mechanisms when they make available to eligible entities Internet access and internal connections.

192. Finally, we emphasize that, consistent with the *Order*, eligible schools and libraries will be required to seek competitive bids for all services eligible for section 254(h) discounts, including those services that state telecommunications networks provide using their own facilities.[579] Thus, schools and libraries in Iowa may not obtain support from the universal service support mechanisms if they select ICN as their provider of access to the Internet and internal connections without first seeking competitive bids. Schools and libraries are not required to select the lowest bids offered, although the Commission stated that price

[577] *Order*, 12 FCC Rcd at 9085.

[578] *Order*, 12 FCC Rcd at 9084-85.

[579] *Order*, 12 FCC Rcd at 9029.

should be the "primary factor."[580] If eligible schools and libraries in Iowa choose ICN as their provider of access to the Internet and internal connections, we conclude that ICN may receive reimbursement from the support mechanisms for providing such services.

b. Wide area networks

193. On our own motion, we further conclude that, to the extent that states, schools, or libraries build and purchase wide area networks to provide telecommunications, the cost of purchasing such networks will not be eligible for universal service discounts. We reach this conclusion because, from a legal perspective, wide area networks purchased by schools and libraries and designed to provide telecommunications do not meet the definition of services eligible for support under the universal service discount program. First, the building and purchasing of a wide area network is not a telecommunications service because the building and purchasing of equipment and facilities do not meet the statutory definition of "telecommunications."[581] Moreover, as the Commission determined in the *Order*, the definition of "telecommunications service" is intended to encompass only telecommunications provided on a common carrier basis.[582] Second, wide area networks are not internal connections because they do not provide connections within a school or library.[583] We herein establish a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.[584] Third, wide area networks built and purchased by schools and libraries do not appear to fall within the narrow provision that allows support for

[580] Schools and libraries are permitted to take into account service quality and the offering or offerings that meet their needs most effectively and efficiently. The Commission included the following factors as among those that schools and libraries may consider in selecting a service provider: prior experience, including past performance, personnel qualifications, including technical excellence, and management capability. *Order*, 12 FCC Rcd 9029-30. *See also* section VI.A. for a discussion of the lowest corresponding price that providers must offer to an eligible school or library.

[581] 47 U.S.C. § 151(43) ("the term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received").

[582] *Order*, 12 FCC Rcd at 9177-78.

[583] It should be noted, however, that connections between multiple instructional buildings that comprise a single school or library would not be considered part of a wide area network, but would instead be considered internal connections. For example, connections between multiple instructional buildings on a single school campus would constitute internal connections. Connections between multiple separate schools, however, would not constitute internal connections and would instead be considered part of a wide area network. *See infra* section VI.H for a further discussion of the definition of internal connections.

[584] *See, e.g.*, 47 C.F.R. § 68.3 (definition of demarcation point).

access to the Internet because wide area networks provide broad-based telecommunications.[585] For these reasons, therefore, we conclude that the purchase of wide area networks to provide telecommunications services will not be eligible for universal service discounts.

F. State Support

1. Background

194. In the *Order*, the Commission determined that eligible schools and libraries may receive discounts of between 20 percent and 90 percent on the cost of all telecommunications services, Internet access, and internal connections.[586] Service providers will receive universal service support based on the pre-discount price of the services they sell to schools and libraries. The Commission defined the pre-discount price as the price of services to schools and libraries prior to the application of a discount.[587] Certain states currently subsidize telecommunications services received by schools and libraries located within their jurisdiction. The *Order* did not address whether discounts under the federal universal service support mechanisms should be applied prior to the application of such state support or, alternatively, on the cost of service calculated after the application of any state support.

2. Pleadings

195. Iowa Telecommunications and Technology Commission asks the Commission to conclude that the provision of discounted telecommunications services to schools and libraries pursuant to a state subsidy program will not reduce the federal universal service support available to eligible entities.[588] Iowa Telecommunications and Technology Commission contends that federal support should be based upon the full cost of a service, rather than on the post-support cost calculated after the deduction of any state support.[589] It contends that, absent such confirmation by the Commission, states will be reluctant to adopt their own support programs that would further reduce costs to eligible entities.[590] Iowa

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[585] This does not preclude schools and libraries from receiving universal service discounts on a wide area network run over leased telephone lines because such an arrangement constitutes a telecommunications service.

[586] *Order*, 12 FCC Rcd at 9002.

[587] *Order*, 12 FCC Rcd at 9026-9027.

[588] Iowa Telecommunications and Technology Commission petition at 6.

[589] Iowa Telecommunications and Technology Commission petition at 6.

[590] Iowa Telecommunications and Technology Commission petition at 6.

Telecommunications and Technology Commission also contends that states that have existing subsidy programs may be able to redirect some of their funding to costs that the federal program does not support, such as computers, modems and software, if federal universal service discounts are applied before the deduction of any state subsidy.[591] In its opposition to the Iowa Telecommunications and Technology Commission petition, USTA contends that this request "would appear to suggest that all telecommunications providers subsidize Iowa's state-wide network."[592]

3. Discussion

196. We conclude that, for services provided to eligible schools and libraries, federal universal service discounts should be based on the price of the service to regular commercial customers or, if lower than the price of the service to regular commercial customers, the competitively bid price offered by the service provider to the school or library that is purchasing eligible services, prior to the application of any state-provided support for schools or libraries. To find otherwise would penalize states that have implemented support programs for schools and libraries by reducing the level of federal support that those schools and libraries would receive. We anticipate that our conclusion will encourage states to implement or expand their own universal service support programs for schools and libraries.

197. Our determination to calculate discounts on the price of a service to eligible schools and libraries prior to the reduction of any state support will not require an adjustment in the $2.25 billion in annual support that the Commission estimated was necessary to fulfill the statutory obligation to create sufficient universal service support mechanisms for schools and libraries.[593] In estimating the level of universal service support needed to serve schools and libraries, the Commission purposefully did not take into consideration state universal service support to schools and libraries.[594] Thus, our determination to calculate federal universal service support levels on the price of service to schools and libraries prior to the application of any state-provided support should not threaten the sufficiency of the federal support mechanisms for schools and libraries.

198. Finally, we do not agree with USTA that allowing federal support levels to be based upon the price of service to schools and libraries prior to the application of any state-provided support for schools or libraries will force all telecommunications carriers to subsidize

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[591] Iowa Telecommunications and Technology Commission petition at 6.

[592] USTA opposition at 6-7.

[593] *Order*, 12 FCC Rcd at 9054.

[594] *Order*, 12 FCC Rcd at 9054-9056.

state-wide networks. Pursuant to section 254(h), universal service support for schools, libraries, and rural health care providers can be provided only to designated educational and health care providers.[595] Moreover, USTA has not explained why applying the federal discount rate before applying any state discounts would reduce the overall amount that a carrier will receive for providing a supported service.

G. Aggregate Discount Rates

1. Background

199. In the *Order*, the Commission adopted discounts from 20 percent to 90 percent for all telecommunications services, Internet access, and internal connections, with the range of discounts correlated to indicators of economic disadvantage and high prices for schools and libraries.[596] The Commission also adopted a step function to define the level of discount available to schools and libraries based on the level of poverty in the areas they serve.[597]

200. The Commission encouraged schools and libraries to aggregate their demand with others to create a consortium with sufficient demand to attract competitors and thereby negotiate lower prices.[598] The Commission determined that schools and libraries should keep and retain careful records of how they have allocated costs of shared facilities in order to determine support to eligible schools and libraries in the appropriate amounts.[599] The Commission also determined that service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries individually or as part of a consortium.[600] The Commission's rules provide that consortia applying for discounted services on behalf of their members shall calculate the portion of the total bill eligible for a discount using a weighted average based on the share of the pre-discount price for which each eligible school or library agrees to be financially liable.[601] Each eligible school, school

[595] 47 U.S.C. § 254(h).

[596] *Order*, 12 FCC Rcd at 9035.

[597] *Order*, 12 FCC Rcd at 9049.

[598] *Order*, 12 FCC Rcd at 9027.

[599] *Order*, 12 FCC Rcd at 9076.

[600] 47 C.F.R. § 54.501(d)(4).

[601] 47 C.F.R. § 54.505(d).

district, library, or library consortia "will be credited with the discount to which it is entitled."[602] The Commission established that, for eligible schools ordering telecommunications and other supported services at the school district or state level, the individual schools with the highest percentages of economically disadvantaged students should continue to receive the higher discount for which they are eligible.[603] The Commission concluded that the school district or state may compute the discounts on an individual school basis or it may compute an average discount; in either case, "the state or the district shall strive to ensure that each school receives the full benefit of the discount to which it is entitled."[604] For libraries ordering telecommunications and other supported services at the library system level, the Commission concluded that library systems should be able to compute discounts on either an individual branch basis or based on an average of all branches within the system.[605]

2. Pleadings

201. The Working Group recommends that the Commission clarify the methodology for determining the applicable discount rate for schools and libraries to ensure that the goal of targeting poor and rural schools for higher discounts is achieved in a minimally burdensome manner, and that the same methodology and process apply both to "higher-level governance units for schools and libraries and to consortia."[606] The Working Group contends that the choice of methodology to determine the discount rate for schools and libraries that participate in a consortium should depend on the extent to which usage of the services can be allocated to individual schools and libraries.[607] The Working Group asserts that, when a single

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[602] 47 C.F.R. § 54.505(d).

[603] *Order*, 12 FCC Rcd at 9051.

[604] *Order*, 12 FCC Rcd at 9051. For example, a school district would divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. Alternatively, the district could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible. *See* 47 C.F.R. § 54.505(b)(1).

[605] *Order*, 12 FCC Rcd at 9051-9052. Library systems applying for discounted services on behalf of their individual branches shall calculate the system-wide percentage of eligible families using an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities. *See* 47 C.F.R. § 54.505(b)(2).

[606] Working Group Report at 14. *See supra* section VI.C.2 for a discussion of the composition of the Working Group.

[607] Working Group Report at 14.

application is filed for a contract covering multiple schools and libraries that will pay their own bills directly, there should be no need to calculate an aggregate discount rate. In this situation, the applicable individual discount rate should apply to each bill.[608] The Working Group further recommends that the appropriate methodology for the calculation of discount rates for contracts involving central billing for services provided to multiple schools or libraries is "to average the individual discount rates for those users weighted by the projected allocation of directly allocable services and the projected distribution of nonallocable common or shared services."[609] The Working Group recommends that the applicant rather than the Schools and Libraries Corporation be required to calculate the discount rate for the contract.[610] The Working Group also suggests that the Schools and Libraries Corporation create a list of individual discount rates for every school and library for which the necessary data are publicly available and post that list on the school and library website.[611]

202. The Working Group recommends that the Commission require applicants to adhere to the following principles in calculating weighted averages for applications involving multiple schools or libraries:

1) For those services that can be directly attributed to an individual school or library, the discount level for that school or library must be directly applied to that service.

2) For those services that are "shared" or "common" to multiple schools or libraries, the applicant will need to determine a rational cost-allocation method. In determining such a method, the applicant should have flexibility in determining the appropriate methodology for projecting allocation of eligible services that cannot be disaggregated and directly allocated. For example, such methods may include a calculation of the number of networked computers in each school or library divided by the total number of networked computers in the school district or library system.

3) The "work papers" that an applicant used to calculate a discount level should be maintained and available for auditing and inspection by the public. These records should contain not only the applicant's actual calculations, but also a short explanation of the rationale for calculating the aggregate discount rate,

[608] Working Group Report at 14-15.

[609] Working Group Report at 15-16.

[610] Working Group Report at 18.

[611] Working Group Report at 18.

including how the applicant assures that each school or library receives the full benefit of the discount.

4) The applicant must certify that the discount rate has been calculated according to the principles outlined above.[612]

203. In response to a Public Notice seeking comment on this issue,[613] several commenters support the Working Group proposal as a viable method of ensuring that schools and libraries that participate in consortia receive the full benefit of the discounts to which they are entitled.[614] Others disagree with the Working Group's view of how school districts and library districts bill for and purchase telecommunications services. The Colorado DOE and NY Public Library contend that the assumption that each school or library is treated as an independent entity within the system is not always correct.[615] Mississippi Council for Education Technology argues that the Working Group proposal is too complicated to be practical.[616] It contends that, although some individual entities may not receive the higher discount rate to which they would be entitled if they filed individually, it is the entities' decision to file in an aggregate application.[617]

204. USTA observes that the Commission's rules do not address how discounts for rural schools will be treated if there is a mix of rural and urban schools in a consortium.[618] USTA also points out that there are no rules for multiple districts and for combining schools and libraries into a single consortium.[619] USTA contends that the Working Group proposal overly complicates the requirements of the Administrator and the billing requirements of the

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[612] Working Group Report at 16-17.

[613] Common Carrier Bureau Seeks Comment on Universal Service Support Distribution Options for Schools, Libraries, and Rural Health Care Providers, *Public Notice*, CC Docket No. 96-45, DA 97-1957 (rel. Sept. 10, 1997) (*Sept. 10 Public Notice*).

[614] *See, e.g.*, CNMI *Sept. 10 Public Notice* comments at 3; Florida DMS *Sept. 10 Public Notice* comments at 2-3; Great City Schools Council *Sept. 10 Public Notice* comments at 3.

[615] Colorado DOE *Sept. 10 Public Notice* comments at 5; NY Pub. Library *Sept. 10 Public Notice* comments at 1.

[616] Mississippi Council for Ed. Tech. *Sept. 10 Public Notice* comments at 5-6.

[617] Mississippi Council for Ed. Tech. *Sept. 10 Public Notice* comments at 6.

[618] USTA *Sept. 10 Public Notice* comments at 5.

[619] USTA *Sept. 10 Public Notice* comments at 5.

service provider.[620] USTA argues that the Working Group seems to confuse the rules for determining aggregated discount rates and the rules for allocating bills from its member participants.[621] USTA states that the Commission has determined that the rules for determining discounts will be based on two factors, poverty and geography, and that the Commission should not specifically define how schools' and libraries' governance authorities should allocate the bill among its member participants.[622] USTA contends that the Working Group proposal is dependent on data that are not commonly known by the Administrator and are subject to frequent changes.[623] EdLiNC contends that the Commission should not attempt to impose a required methodology for dividing costs among members of consortia.[624] EdLiNC argues that the imposition of a required cost allocation methodology would encourage school districts and library systems to apply on an individual basis and increase the administrative burden.[625] It contends that, in many cases, consortia have already determined how they will divide the cost of service among their participants, and the participants have agreed that the method chosen is fair and equitable.[626]

3. Discussion

205. Our current rules require consortia to calculate the discount level by using a weighted average that is based on the share of the pre-discount price for which each school or library agrees to be "financially liable."[627] Our rules also provide that each "eligible school, *school district*, library, or *library consortium* will be credited with the discount to which it is entitled."[628] We hereby adopt a modified version of the Working Group's proposal regarding the application of discounts for schools and libraries that apply through consortia, including school districts, rather than on an individual basis. Because the discount is determined based on the weighted average of the amount for which each individual school or library agrees to be financially liable, we conclude that the amount of support likewise should be determined,

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[620] USTA *Sept. 10 Public Notice* comments at 11.

[621] USTA *Sept. 10 Public Notice* comments at 7.

[622] USTA *Sept. 10 Public Notice* comments at 7.

[623] USTA *Sept. 10 Public Notice* comments at 12.

[624] EdLiNC *Sept. 10 Public Notice* comments at 4-5.

[625] EdLiNC *Sept. 10 Public Notice* comments at 4-5.

[626] EdLiNC *Sept. 10 Public Notice* comments at 4-5.

[627] *See* 47 C.F.R. § 54.505(d).

[628] 47 C.F.R. § 54.505(d) (emphasis added).

where possible, on the discount rate to which each individual school or library is entitled. In other words, both the discount rate and the provision of support should be determined for each individual school or library if it is not unreasonably burdensome to do so. We therefore agree with the Working Group that, for services that will be used only by an individual institution, the applicable discount rate for the services should be determined based on the applicable discount rate for the individual school or library, not the consortium. Thus, for example, if a school applies for support as part of a consortium, but seeks support for internal connections that it alone will use, the amount of support for that internal connection should be calculated based on the specific discount rate applicable for that school. We find that this decision is consistent with our earlier decision that the level of support should be based on the economic level and geographic location of the institution seeking support.

206. We recognize, however, that we must balance the desire for equitable distribution of support against the need to keep the application process as simple and efficient as possible. Thus, while we require the state, school district, or library system to "strive to ensure" that each school and library in a consortium receives the full benefit of the discount on shared services to which it is entitled, we will not require school districts or library systems to compute their discount rate for shared services based on estimates of the actual usage that each of their schools or library branches will make and the respective discounts that these individual units are entitled to receive.[629] Shared services are those that cannot, without substantial difficulty, be identified with particular users or be allocated directly to particular entities. We conclude that the administrative burden of such a requirement would not be justified by the benefit in light of existing rules in this area. We recognize that states already prohibit unreasonable discrimination against disadvantaged schools in the state, and that the courts have upheld such rules of equity, even against the state itself.[630] Although we do not mandate consortia to adopt a particular methodology for distributing shared services, we seek to ensure that economically disadvantaged institutions receive the discounts to which they are entitled. Accordingly, we require that consortia certify that each individual institution listed as a member of a consortium and included in determining the discount rate will receive a proportionate share of the shared services within each year in which the institution is used to calculate the aggregate discount rate.[631] Consortia may, for example,

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[629] *Order*, 12 FCC Rcd at 9051.

[630] *Abbott v. Burke*, 693 A.2d 471 (N.J. 1997) (holding that the state must provide money to low income districts allowing them to spend at the same level per pupil as higher income districts); *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (holding that the school financing system, based in part upon local property taxes, violated state constitutional provision requiring maintenance of an "efficient" system).

[631] FCC Form 471 (Schools and Libraries Universal Service - Services Ordered and Certification Form), one of the forms that schools and libraries must submit in order to receive universal service discounts, requires that applicants certify "that the discount level used for shared services is conditional, in future years, upon ensuring that the most disadvantaged schools and libraries that are treated as sharing in the service receive an appropriate

satisfy this obligation by keeping track of the usage level of shared services with respect to each institution that was included in calculating the discount rate, or they may adopt other methods to ensure that each institution receives a proportionate share of shared services. This requirement is appropriate because the discount rate for calculating support for shared services will be based on all entities listed in the request for services. By the same token, this requirement is not unduly burdensome because it does not require applicants to develop complex weighting methodologies or to calculate different discount rates for different entities that use shared services. Our determination that the state or district must "strive to ensure" that each school or library receives the full benefit of the discount to which it is entitled will help ensure that this goal is met.[632] Moreover, the Schools and Libraries Corporation, pursuant to its obligation to review and approve schools' and libraries' applications and service providers' bills,[633] is developing cost allocation procedures to further ensure that schools and libraries receive the discounts to which they are entitled.[634]

207. Finally, we agree with the Working Group that an applicant that is comprised of multiple eligible schools and libraries must keep adequate records showing how the distribution of funds was made, and the basis for distribution. Our rules currently require such records.[635]

H. Limiting Internal Connections to Instructional Buildings

1. Background

208. In the *Order*, the Commission determined that eligible schools and libraries may, under sections 254(c)(3) and 254(h)(1), secure support for the installation and maintenance of internal connections.[636] Consistent with section 254(h)(1)(B)'s requirement that services requested by schools and libraries must be used for educational purposes, the

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share of benefits from those services." *See* FCC Form 471, Item 27.

[632] *Order*, 12 FCC Rcd at 9051-9052.

[633] *See NECA Report and Order* at para. 65; 47 C.F.R. § 69.619(a)(4).

[634] Letter from Debra M. Kriete, Schools and Libraries Corporation, to Magalie Roman Salas, FCC, dated December 22, 1997. In addition, billed entities completing FCC Form 471 (Schools and Libraries Universal Service - Services Ordered and Certification Form) are required to provide a list of each school and library for which universal service discounts are being sought and each entity's individual discount rate. *See* FCC Form 471, item 14.

[635] 47 C.F.R. § 54.516. *See also* 47 C.F.R. § 54.501(d)(4) (requiring service providers to maintain records of rates charged to and discounts allowed by consortia members).

[636] *Order*, 12 FCC Rcd at 9015-9016.

Commission found that a given 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."[637]

2. Discussion

209. We take this opportunity to make clear, on our own motion, that the *Order* limits support for internal connections to those essential to providing connections within instructional buildings. Thus, discounts are not available for internal connections in non-instructional buildings of a school district or administrative buildings of a library unless those internal connections are essential for the effective transport of information to an instructional building or library. Hence, discounts would be available for routers and hubs in a school district office if individual schools in the school district were connected to the Internet through the district office. The *Order* stated that "a given 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."[638] This focus on access to classrooms followed from the Commission's conclusion that "Congress intended that telecommunications and other services be provided directly to classrooms."[639] The Commission reached this conclusion based on its analysis of the statute (where classrooms are explicitly mentioned)[640] and of the legislative history (where Congress explicitly refers repeatedly to classrooms).[641] Similarly, to the extent that a library system has separate administrative buildings, support is not available for internal connections in those buildings. Sections 254(h)(1)(B) and (h)(2) provide for universal service support for "libraries."[642] Imposing this restriction on support to non-administrative library facilities is consistent with the approach to support for internal connections to instructional school buildings discussed above.

210. Consistent with this clarification, we modify our rules to reflect that 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 or buildings used by a library for strictly administrative functions. Thus, discounts would be available for the internal connections installed in a school district

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[637] *Order*, 12 FCC Rcd at 9021.

[638] *Order*, 12 FCC Rcd at 9021.

[639] *Order*, 12 FCC Rcd at 9015-9016.

[640] *Order*, 12 FCC Rcd at 9017, *citing* 47 U.S.C. § 254(h)(2)(A).

[641] *Order*, 12 FCC Rcd at 9018, *citing* Joint Explanatory Statement at 132-133.

[642] 47 U.S.C. §§ 254(h)(1)(B) and (h)(2).

office if that office were used as the hub of a local area network (LAN) and all schools in the district connect to the Internet through the internal connections in that office. We further hold that "internal connections" include connections between or among multiple instructional buildings that comprise a single school campus or multiple non-administrative buildings that comprise a single library branch, but do not include connections that extend beyond that single school campus or library branch. Thus, for example, connections between two instructional buildings on a single school campus would constitute internal connections eligible fo universal service support, whereas connections between instructional buildings located on different campuses would not constitute internal connections eligible for such support.

I. Existing Contracts

1. Background

211. In the *Order*, the Commission concluded that eligible schools and libraries must solicit competitive bids for all services eligible for section 254(h) discounts.[643] The Commission required a school or library to submit an application to the Administrator that includes a description of the services that a school or library seeks and also required the Administrator to post this information on a website.[644] These descriptions are to be available for all potential service providers to review, thus facilitating schools' and libraries' ability to benefit from the opportunity to seek competitive bids for the covered services.[645]

212. In the *Order*, the Commission held that schools and libraries could obtain section 254(h) discounts without complying with the competitive bid requirement if the school or library had signed a contract before November 8, 1996, the date of the Recommended Decision.[646] In so holding, the Commission adopted the Joint Board's recommendation that the Commission not require schools or libraries to renegotiate existing contracts in order to benefit from federal universal service support.[647] The Commission concluded that this exemption from the competitive bid requirement was necessary to ensure that eligible schools

[643] *Order*, 12 FCC Rcd at 9028-9029.

[644] *Order*, 12 FCC Rcd at 9078-9079. We note that, in the *NECA Report and Order* setting forth the structures of the three corporations that the Commission charged with administering the new universal service support mechanisms, the Commission assigned to the Schools and Libraries Corporation responsibility for posting to a website schools' and libraries' application information. *See NECA Report and Order* at para. 11.

[645] *Order*, 12 FCC Rcd at 9028-9029, 9078-9080.

[646] *Order*, 12 FCC Rcd at 9062-9063.

[647] *Order*, 12 FCC Rcd at 9062-9063.

and libraries that signed contracts prior to November 8, 1996, could obtain affordable access to the services supported by federal universal service support mechanisms.[648] The Commission determined that it would not be in the public interest to penalize schools and libraries that had already entered into contracts for service by refusing to allow them to apply discounts to their existing contract rate.[649] The Commission concluded that schools and libraries had sufficient incentive to negotiate for low rates when they were paying the full undiscounted contract price.[650] The Commission did not, however, authorize schools and libraries to obtain discounts on contracts signed on or after November 8, 1996.

213. In the *July 10 Order*, the Commission concluded that it would provide a limited extension of the competitive bid exemption in order to accommodate schools and libraries that negotiate and sign contracts prior to the date that the competitive bid system becomes "fully operational."[651] The Commission defined the competitive bid system as fully operational when: 1) the Universal Service Administrator is ready to accept and post requests for service from schools and libraries on a website; and 2) that website may be used by potential service providers.[652] The Commission concluded that any contract signed on or after November 8, 1996 and prior to the date that the competitive bid system becomes operational will be considered an "existing contract" and, therefore, exempt from the competitive bid requirement if the contract terminates by December 31, 1998.[653] The Commission concluded that extending the exemption from the competitive bid requirement was necessary to avoid penalizing schools or libraries that elect or are compelled to negotiate contracts prior to the date that the universal service competitive bid system is operational.[654] The Commission also found that limiting the duration of this exemption would prevent schools, libraries, and service providers from avoiding the competitive bid requirement altogether by signing contracts for extended periods.[655] The Commission did not address issues pertaining to existing contracts for services furnished to rural health care providers in either the *Order* or the *July 10 Order*.

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[648] *Order*, 12 FCC Rcd at 9063.

[649] *Order*, 12 FCC Rcd at 9064.

[650] *Order*, 12 FCC Rcd at 9064.

[651] *July 10 Order*, 12 FCC Rcd at 10,097-10,098.

[652] *July 10 Order*, 12 FCC Rcd at 10,099.

[653] *July 10 Order*, 12 FCC Rcd at 10,098.

[654] *July 10 Order*, 12 FCC Rcd at 10,098.

[655] *July 10 Order*, 12 FCC Rcd at 10,098-10,099.