carrier common line (CCL) charge.[379] Therefore, the Florida Commission argues that, because the PICC was intended to recover "IXC costs," IXCs should pay all PICCs.[380]

3. Discussion

122. Consistent with our efforts to make toll-blocking service easily affordable to low-income consumers, we adopt our tentative conclusion in the *Second Further Notice* to waive the PICC for Lifeline customers who elect toll blocking.[381] For the reasons discussed here and in succeeding paragraphs, we agree with SBC and AT&T and conclude that support for PICCs for Lifeline customers who have toll blocking, but nevertheless remain presubscribed to an IXC, will be provided by the universal service support mechanisms in addition to the support for Lifeline customers established in the *Order*. In the *Order*, the Commission noted that studies demonstrate that a primary reason subscribers terminate access to telecommunications services is failure to pay long-distance telephone bills.[382] The Commission concluded that, because voluntary toll blocking allows customers to block toll calls, and toll-control service allows customers to ensure that they will not spend more than a predetermined amount on toll calls, these services assist Lifeline customers in avoiding involuntary termination of their access to telecommunications services. The Commission concluded that, in order to increase the use of toll-blocking and toll-control services by low-income consumers, Lifeline customers should receive these services at no charge.[383] It would make little sense, and would undermine the very basis for providing Lifeline customers free access to toll blocking, to assess the PICC on Lifeline customers who select toll blocking. In addition, in light of our decision herein to permit eligible carriers to offer either toll control or toll blocking, it would be particularly unfair to assess the PICC on Lifeline customers who do not have the option of selecting toll control, but that are limited to toll blocking. To do so would discriminate against Lifeline customers who may only select toll blocking, and thus

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[379] Florida Commission comments to *Second Further Notice* at 3-4.

[380] Florida Commission comments to *Second Further Notice* at 3-4.

[381] The PICC is a charge through which incumbent LECs recover a portion of the costs of their local networks. Generally, incumbent LECs recover the PICC for each line from the IXC designated as the presubscribed interexchange carrier (PIC) for that line. Where the customer has not designated a PIC, we permit incumbent LECs to recover the PICC from the end user.

[382] *Order*, 12 FCC Rcd at 8980-8981 (*citing* Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, *Notice of Proposed Rulemaking*, 10 FCC Rcd 13003, 13005-06 (1995)).

[383] *Order*, 12 FCC Rcd at 8980-8981. Although eligible telecommunications carriers will be prohibited from disconnecting Lifeline customers for failure to pay toll bills, this is not a substitute for access to toll-limitation services. The Commission sought to enable low-income consumers to take measures to ensure that they do not incur excessive toll charges in the first place.

would have no reason to presubscribe to an IXC. In contrast, a Lifeline subscriber who is able to select toll control likely will presubscribe to an IXC, because that subscriber's access to toll calling is limited, but not blocked entirely.

123. We thus conclude that, because toll blocking for low-income consumers is a supported service that carriers must provide to such customers and the PICC payment issue arises as a direct result of the toll blocking requirement, the PICC, in these instances, is sufficiently related to the provision of toll blocking that it should be supported for low-income consumers. Thus, such costs should be recovered in a competitively neutral manner that is consistent with section 254 of the Act. Therefore, all interstate telecommunications carriers, not just IXCs, should bear the costs of the waived PICCs.

124. Moreover, we agree with petitioners that the low-income program of the federal universal service support mechanisms should support PICCs attributable to all qualifying low-income consumers who have toll blocking. As stated above, we will support PICCs attributable to qualifying low-income consumers who have toll blocking but do not have a presubscribed IXC. We anticipate that most low-income consumers who receive toll blocking will do so voluntarily and that most will not have presubscribed IXCs. In the event, however, that a low-income consumer is required to elect toll blocking (*e.g.*, as a condition of receiving local service) or in the event that a low-income consumer remains presubscribed to an IXC even though the consumer receives toll blocking, the federal low-income program also will support the PICCs attributable to consumers in those circumstances. We disagree with Bell Atlantic that these revisions to our rules are unnecessary to protect the availability of toll blocking to low-income consumers. Low-income consumers who elect toll blocking, but who remain presubscribed to an IXC, would not receive toll blocking free-of-charge unless we waive the PICC for the consumers. If an IXC were required to pay the PICC attributable to a low-income consumer who elects toll blocking, that IXC would not be able to recover the PICC through per-minute charges associated with toll usage. Thus, absent changes to our rules, the IXC may seek to recover the PICC from the consumer in the form of a flat-rate charge. As we have noted above, toll blocking helps consumers to control their toll usage and should be available free-of-charge to qualifying low-income consumers. Therefore, to ensure the availability of toll blocking to all qualifying low-income consumers free-of-charge, we conclude that the low-income program of the federal universal service support mechanisms should support PICC charges attributable to all low-income consumers who have toll blocking.

125. We also agree with AT&T that all competitive eligible carriers that provide Lifeline service to customers who elect toll blocking should be able to recover an amount equal to the PICC that would be recovered by the incumbent LEC in that area from the low-income program of the federal universal service support mechanisms even though such carriers are not required to charge PICCs. Competitive eligible carriers should be able to receive support amounts equal to the PICCs because, like incumbent LECs, they will be

unable to recover any portion of their costs associated with a toll-blocked customer from IXCs originating interexchange traffic on that customer's line. To avoid creating incentives for carriers to pass additional costs to low-income consumers through increased rates, we conclude that competitors should receive this additional support for Lifeline customers who elect to receive toll blocking. In addition, in order to ensure competitive neutrality, a competing local carrier serving a Lifeline customer should be able to receive the same amount of universal service support that an incumbent LEC would receive for serving the same customer. Because an incumbent LEC serving a low-income customer who elected toll blocking would receive support for the PICC associated with that customer, in order to ensure that competing local carriers are not operating at an unfair advantage, competing local carriers should be eligible to receive the same amount of support that the incumbent LEC would receive.

C. Florida Commission's Petition Pertaining to State Lifeline Participation

1. Background

126. The Commission's Lifeline program currently reduces end-user charges that low-income consumers in participating jurisdictions pay for some state-specified level of local service.[384] Support from the federal jurisdiction is provided in the form of a waiver of the federal SLC. To participate, states are required to generate a matching reduction in intrastate end-user charges. Participating states may generate their state support from any intrastate source.[385]

127. In the *Order*, the Commission concluded that a baseline amount of federal Lifeline support should be available in all states, irrespective of whether a state generates support from the intrastate jurisdiction.[386] With respect to states that generate intrastate Lifeline support, the Commission did not prescribe a method by which states must generate such support.[387] In the *Order*, the Commission found "no reason at this time to intrude in the first instance on states' decisions about how to generate intrastate support for Lifeline."[388] Thus, the Commission did not require states to establish a state Lifeline fund, noting that many methods exist, including the competitively neutral surcharges on all carriers or the use of general revenues, that would not place the burden on any single group of carriers.

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[384] 47 C.F.R. § 69.104(j)-(l).

[385] *Order*, 12 FCC Rcd at 8967-8968.

[386] *Order*, 12 FCC Rcd at 8961.

[387] *Order*, 12 FCC Rcd at 8967-8968.

[388] *Order*, 12 FCC Rcd at 8967-8968.

128. The Commission further determined in the *Order* that states that provide intrastate matching funds may set their own consumer qualification standards, but must base such standards on income or factors directly related to income.[389] With respect to states that do not participate in Lifeline by providing intrastate matching support, the Commission adopted a federal default Lifeline qualification standard. To qualify for Lifeline under the federal default standard, consumers must participate in Medicaid, food stamps, Supplementary Security Income (SSI), federal public housing assistance or Section 8, or Low-Income Home Energy Assistance Program.[390]

2. Pleadings

129. The Florida Commission seeks a declaratory ruling as to whether its state Lifeline program qualifies as a program that provides intrastate matching funds for purposes of determining whether its state-imposed consumer qualification standard or the federal default standard applies.[391] The Florida Commission explains that the state of Florida does not have Lifeline support mechanisms to which all carriers must contribute.[392] Rather, Florida state law provides that " . . . a telecommunications company serving as a carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff . . . ."[393] Thus, as the Florida Commission explains, incumbent LECs provide a rate reduction of $3.50 per month to Lifeline consumers, but no state mechanism requires other carriers to contribute to state Lifeline support mechanisms.[394] The Florida Commission maintains that, "[w]hile the FCC has not mandated the creation of a state fund for carriers to obtain the $1.75 federal contribution above the baseline, it is not clear to [us] that our program will qualify as 2-for-1 matching for state participation in Lifeline."[395]

130. In response to the Florida Commission's petition, the Citizens of Florida, through the Office of Public Counsel (Citizens of Florida), asserts that Florida's Lifeline program qualifies as state participation and is thus eligible for federal matching funds in the

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[389] *Order*, 12 FCC Rcd at 8973.

[390] *Order*, 12 FCC Rcd at 8973-8974.

[391] Florida Commission Petition for Declaratory Statement, Waiver, and Clarification and Request for Expedited Ruling, CC Docket No. 96-45 (Oct. 9, 1997) (Florida Commission Oct. 9 petition).

[392] Florida Commission Oct. 9 petition at 3-4.

[393] FLA. STAT. § 364.10(2).

[394] Florida Commission Oct. 9 petition at 3-4.

[395] Florida Commission Oct. 9 petition at 4.

amount of $.50 for every $1.00 provided by the state.[396] Citizens of Florida maintains that the *Order* "did not intend to disqualify existing state Lifeline programs from federal matching funding" and asserts that the Commission "went out of its way to state that it would not prescribe the methods states must use to generate intrastate Lifeline support."[397]

131. If we determine that Florida's state Lifeline program does not qualify as state participation, the Florida Commission seeks a waiver of the federal default consumer qualification standard to include the Temporary Assistance to Needy Families (TANF) program. The Florida Commission points out that the Commission did not include Aid to Families with Dependent Children (AFDC) in the federal default consumer qualification standard and that, although AFDC was significantly curtailed by the recently enacted welfare reform law, AFDC-successor programs funded under TANF should be included in the federal default standard.[398] Alternatively, the Florida Commission seeks a waiver to allow the Florida Commission to set eligibility requirements or implement a grandfather provision for certain Lifeline recipients.[399]

3. Discussion

132. Consistent with the Commission's earlier finding that we should not prescribe the methods that states use to generate intrastate Lifeline support in order to qualify for federal support, we conclude that, although all carriers are not required to contribute to Florida's Lifeline support mechanisms, Florida's Lifeline program nevertheless qualifies as providing intrastate matching funds. We, however, encourage states to develop Lifeline matching programs that are competitively neutral and emphasize that, as noted in the *Order*, states must meet the requirements of section 254(e) in providing equitable and non-discriminatory support for state universal service support mechanisms.[400] Because we find that Florida's Lifeline program qualifies as state participation, we need not address the Florida Commission's request for a waiver of the federal default Lifeline qualification standard. For the same reason, we also decline to address the Florida Commission's request for a waiver allowing it to set eligibility requirements or implement a grandfather provision for certain

[396] Comments by the Citizens of Florida on the Florida Public Service Commission's Petition for Declaratory Statement, Waiver, and Clarification, filed with William F. Caton, FCC, October 31, 1997 (Citizens of Florida *ex parte*), at 7-8.

[397] Citizens of Florida *ex parte* at 7.

[398] Florida Commission Oct. 9 petition at 2-3.

[399] Florida Commission Oct. 9 petition at 5.

[400] *Order*, 12 FCC Rcd at 8967-8968.

Lifeline recipients.[401]

VI. SCHOOLS, LIBRARIES, AND RURAL HEALTH CARE PROVIDERS

A. Lowest Corresponding Price

1. Background

133. In the *Order*, the Commission concluded that, to ensure that inexperience does not prevent schools and libraries from receiving competitive prices, service providers must offer services to eligible schools and libraries at prices no higher than the lowest price the provider charges to similarly situated non-residential customers for similar services.[402] The Commission concluded that this requirement would not impose an unreasonable burden on service providers because all providers would be able to receive a remunerative price for their services. The *Order* stated that a provider need not offer the same lowest corresponding price to different schools and libraries in the same geographic service area if they are not similarly situated and do not subscribe to a similar set of services.[403] The Commission clarified that, for the purpose of determining the lowest corresponding price, similar services would include those provided under contract as well as those provided under tariff.[404] The Commission established a rebuttable presumption that rates offered within the previous three years are still compensatory.[405]

134. The Commission held that it would not require a service provider to match a price offered to a customer who is receiving a special regulatory subsidy or that was negotiated under very different conditions, if offering the service at such price would result in a rate below Total-Service Long-Run Incremental Cost (TSLRIC).[406]

135. The Commission also provided that, if schools, libraries, or providers believe that the lowest corresponding price is unfair, they may seek recourse from the Commission,

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[401] We note that Florida's Lifeline consumer qualification standard must be based on income or factors directly related to income, pursuant to the *Order*. *See Order*, 12 FCC Rcd at 8973.

[402] *Order*, 12 FCC Rcd at 9031-9032.

[403] *Order*, 12 FCC Rcd at 9033-9034.

[404] *Order*, 12 FCC Rcd at 9032.

[405] *Order*, 12 FCC Rcd at 9034.

[406] *Order*, 12 FCC Rcd at 9034.

regarding interstate rates, and from state commissions, regarding intrastate rates.[407] Eligible schools and libraries may request a lower rate if they believe the rate offered by the provider is not the lowest corresponding price. Providers "may request higher rates if they believe that the lowest corresponding price is not compensatory."[408] The Commission concluded that service providers will be permitted to charge schools and libraries prices higher than those charged to other similarly situated customers if the services sought by a school or library will generate significantly different traffic volumes or the provision of such services is significantly different from that of another customer with respect to any other factor that the state public service commission has recognized as being a significant cost factor.[409]

2. Pleadings

136. USTA seeks reconsideration of the Commission's decision to establish a rebuttable presumption that rates offered by a service provider within the previous three years are compensatory for purposes of calculating the lowest corresponding price that the provider must offer to an eligible school or library.[410] USTA contends that the three-year "look back" provision is unnecessarily burdensome, would impede the timeliness of the bidding process, and is not competitively neutral because it disadvantages larger providers with more potential contracts or prices to review.[411] USTA contends that each additional year that a provider must "look back" to determine the lowest corresponding price increases the number of customer contracts that a service provider must review.[412] GTE agrees with USTA and suggests that a one-year period would be more appropriate.[413]

137. USTA contends that the *Order* could be construed to require a carrier to provide service to a school or library at the same rate as another service provided under a special regulatory subsidy or negotiated under very different conditions.[414] USTA argues that

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[407] *Order*, 12 FCC Rcd at 9034.

[408] *Order*, 12 FCC Rcd at 9034.

[409] *Order*, 12 FCC Rcd at 9034.

[410] USTA petition at 17.

[411] USTA petition at 17-18.

[412] USTA petition at 17.

[413] GTE comments at 14.

[414] USTA petition at 18-19.

such a result is untenable.[415] In addition, USTA contends that many service providers must provide service rates at regulated tariffs, and that to require service providers to base their lowest corresponding price on historical or expired tariff rates would force the provider to offer a price that would be unlawful for that provider.[416] GTE contends that the Commission should clarify that promotional offerings are excluded from the comparable rates upon which the lowest corresponding price is determined.[417] Bell Atlantic contends that some states have established special rates for schools and libraries in anticipation of the *Order*, "under the assumption that the support in section 254(h)(1)(B) would apply to the difference between generally-available rates and the special school and library rate."[418] Bell Atlantic contends that there is no justification for classifying these special rates as the pre-discount price.[419]

138. USTA also requests that limits be placed upon the customer's ability to challenge the pre-discount price it has been offered.[420] USTA argues that, without such limits, customers could abuse the process by filing frivolous claims to obtain even more favorable rates.[421]

3. Discussion

139. Neither USTA nor any other party offers persuasive evidence that the three-year "look back" provision for determining the lowest corresponding price is either unnecessarily burdensome or will unfairly delay a service provider's participation in the bidding process.[422] Commenters do not assert that the relevant records are not maintained or are not accessible. We note that the universe of records that the provider must review to determine the lowest corresponding price is limited to charges involving similarly situated, non-residential customers for similar services.

140. We do not agree with USTA that the three-year "look back" provision violates

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[415] USTA petition at 19.

[416] USTA petition at 18.

[417] GTE comments at 15.

[418] Bell Atlantic comments at 13.

[419] Bell Atlantic comments at 13.

[420] USTA petition at 19-20.

[421] USTA petition at 19-20.

[422] The "lowest corresponding price" is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services. *See* 47 C.F.R. § 54.500.

the principle of competitive neutrality by disadvantaging larger providers. We note that this requirement applies equally to all providers and that, although larger providers may have a greater number of records to review for purposes of determining the lowest corresponding price, these providers also likely have greater resources and more sophisticated methods of recordkeeping.

141. We agree with USTA, however, that we should modify our earlier holding to clarify the application of our lowest corresponding price requirement.[423] We conclude that, for purposes of calculating the lowest corresponding price, a provider will not be required to match a price it offered to a customer under a special regulatory subsidy or that appeared in a contract negotiated under very different conditions. For example, we previously concluded that service providers will be permitted to charge schools and libraries prices higher than those charged to other similarly situated customers if the services sought by a school or library include significantly different traffic volumes or the provision of such services is significantly different from that of another customer with respect to any other factor that the state public service commission has recognized as being a significant cost factor.[424] Under our modified rules, a service provider will not be required to demonstrate further that matching such a price would force the provider to offer service at a rate below the compensatory rate for that service. The use of a rate below the compensatory rate would not be practical, given the limited resources of schools and libraries to participate in lengthy negotiations, arbitration, or litigation. Regarding Bell Atlantic's concern that special regulatory rates established by states for schools and libraries should not be treated as the pre-discount prices, we reiterate that special regulatory subsidies need not be considered in determining the lowest corresponding price. Consistent with our findings above, we conclude that each such situation should be examined on a case-by-case basis to determine whether the rate is a special regulatory subsidy or is generally available to the public. We also note that the universal service discount mechanism is not funding the difference between generally available rates and special school rates, as suggested by Bell Atlantic, but is applied to the price at which the service provider agrees to provide the service to eligible schools and libraries.

142. We disagree with USTA that earlier versions of tariffs that have been modified by regulators should be excluded from the comparable rates upon which the lowest corresponding price is determined. Unless a regulatory agency has found that the tariffed rate should be changed, and affirmatively ordered such change, or absent a showing that the rate is not compensatory, we find no reason to conclude that former tariffed rates do not represent a fair and reasonable basis for establishing the lowest comparable rate.

143. We decline to adopt GTE's proposal to exclude all promotional offerings from

[423] USTA petition at 18-19.

[424] *Order*, 12 FCC Rcd at 9034.

the comparable rates upon which a provider must determine the lowest corresponding price. Instead, we conclude that only promotions offered for a period not exceeding 90 days may be excluded from the comparable rates upon which the lowest corresponding price must be determined. This conclusion is consistent with the decision of the U.S. Court of Appeals for the 8th Circuit upholding the portion of the Commission's interconnection decision finding that discounted and promotional offerings are telecommunications services that are subject to the resale requirement of section 251(c)(4), and that promotional prices lasting more than 90 days qualify as retail rates subject to wholesale discount.[425] Excluding shorter term promotional rates from consideration here balances the need to provide compensatory rates to providers while ensuring that eligible schools and libraries receive competitive, cost-based rates that are comparable to rates paid by similarly situated non-residential customers for similar services. Consistent with the Commission's rationale in the *Implementation of Section 254(g) Order*,[426] we agree that a 90-day period in which customers may receive discounted rates as part of a promotion is sufficient time for a targeted promotional offering to attract interest in new or revised services, but not so long as to undermine the requirement that the price offered to schools and libraries be no greater than the lowest corresponding price the carrier has charged in the last three years or is currently charging in the market.

144. As previously noted, providers and eligible schools and libraries will have the opportunity to seek recourse from the Commission, regarding interstate rates, and from state commissions, regarding intrastate rates if they believe that the lowest corresponding price is unreasonably low or unreasonably high.[427] We decline to adopt the suggestion of USTA that we impose limits on a customer's ability to challenge the pre-discount price it has been offered. We have no basis in this record for assuming that the possibility of such abuse by schools and libraries is greater than the potential for service providers to assert frivolously that the rates are too low. We will monitor parties' use of the dispute process and, if we find a pattern of frivolous challenges by schools, libraries, or service providers, we will take steps to remedy any such abuse at that time.

B. Reporting Requirements for Schools and Libraries

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[425] *Iowa Utilities Board v. FCC*, 120 F.3d 753, 818-820 (8th Cir. 1997) (holding that rule restricting ability of incumbent carriers to circumvent their resale obligations by offering services to subscribers at perpetual promotional rates was reasonable interpretation of statute).

[426] *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1996, *Report and Order*, CC Docket No. 96-61, FCC 96-331, 11 FCC Rcd 9564, 9578 (1996) (finding that a 90-day period in which customers may receive discounted rates as part of a promotion is sufficient time for a targeted promotional offering to attract interest in new or revised services, but not so long as to undermine the Commission's geographic rate averaging requirement) (*Implementation of Section 254(g) Order*).

[427] *Order*, 12 FCC Rcd at 9034.

1. Background

145. In the *Order*, the Commission determined that eligible schools and libraries seeking universal service discounts shall be required to: (1) conduct an internal assessment of the components necessary to use effectively the discounted services they order; (2) submit a complete description of services they seek so that it may be posted for competing providers to evaluate; and (3) certify to certain criteria under penalty of perjury.[428] The Commission required eligible schools and libraries to prepare and submit technology plans as part of their application for service. To ensure that technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program, the Commission required approval of an applicant's technology plan, by the state or another entity.[429] The Commission noted that it would consult with the Department of Education in designing an application for this process.[430] Schools and libraries seeking universal service support must file FCC Form 470 and FCC Form 471.[431]

2. Pleadings

146. Global Village Schools Institute (Global) contends that section 254(h)(1)(B) requires only that eligible schools and libraries submit a bona fide request for services.[432] Global seeks reconsideration of the Commission's decision to require schools and libraries to prepare or include reports of technology inventories or assessments in their applications for telecommunications services. Global asks that the Commission not require specific local education technology planning activities, independent approval of local education technology plans, or submission of local educational technology plans as part of the application for telecommunications services.[433] It argues that these application requirements are not essential elements of the purchasing process, that they usurp state and local authority for educational decision-making, and that they represent a reporting burden in excess of what is allowed

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

[429] *Order*, 12 FCC Rcd at 9078. The Commission also sought guidance from the Department of Education and the Institute for Museum and Library Services on alternative technology plan approval measures.

[430] *Order*, 12 FCC Rcd at 9076-9077.

[431] On December 8, 1997, the Commission's Common Carrier Bureau submitted to the Schools and Libraries Corporation the application forms to receive support under the federal universal service support mechanisms for schools and libraries. *See* Letter from A. Richard Metzger, Jr., FCC, to Ira Fishman, Schools and Libraries Corporation, dated December 8, 1997.

[432] Global petition at 3.

[433] Global petition at 8.

under the Paperwork Reduction Act.[434]

147. Florida Department of Management Services, requests authorization for Florida to use that state's Advanced Telecommunications Service Request Form during the first year of the new universal service support mechanisms to apply for support.[435]

3. Discussion

148. We conclude that the reporting requirements established in the *Order* for eligible schools and libraries are not unreasonably burdensome, and that they represent a reasonable means of ensuring that schools and libraries are capable of utilizing the requested services effectively. Section 254(h)(1)(B) provides for discounts on services that are used for educational purposes and that are provided in response to a bona fide request.[436] In the *Order*, the Commission agreed with the Joint Board that Congress intended to require accountability on the part of schools and libraries and therefore, consistent with section 254(h)(1)(B), required eligible schools and libraries to conduct an internal assessment of the components necessary to use effectively the discounted services they order.[437] We note that the application requirements established in the *Order* were recommended by the Joint Board and supported by a majority of commenters on this issue.[438] We affirm our decision, because we find that it is in the public interest to ensure that funds are distributed only to support eligible services that serve the needs of the school or library requesting support. We find that the mere submission of a bona fide request is not an adequate substitute to ensure that these public interest goals are met.

149. The Commission determined in the *Order* that it would not be unduly burdensome to require eligible schools and libraries to conduct a technology assessment, prepare a plan for using these technologies, and receive independent approval of such plans.[439] Moreover, the Commission took steps to eliminate unnecessary burdens, and prevent the need for duplicative review of technology plans. The Commission noted that many states have already undertaken state technology initiatives and that plans that have been approved for other purposes, e.g., for participation in federal or state programs, such as "Goals 2000," will

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[434] Global petition at 8-9.

[435] Florida Department of Management Services petition at 2.

[436] 47 U.S.C. § 254(h)(1)(B).

[437] *Order*, 12 FCC Rcd at 9076. *See also* section VI.C, *infra*.

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

[439] *Order*, 12 FCC Rcd at 9077.

be accepted without need for further independent approval.[440] We also note that the reporting requirements have been reviewed and approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.[441] Because we conclude that the reporting requirements are not unduly burdensome, help ensure that funds are allocated in a manner that serves the policy goals set forth in section 254(b)(6) and section 254(h), and do not violate section 254(h)(1)(B), we deny Global's petition for reconsideration of those requirements.

150. We also deny Florida Department of Management Services' request to apply, during the first year of the federal support mechanisms, for universal service discounts using a form created by the state of Florida. We find that requiring all applicants to use the same forms serves several important purposes. First, the forms were designed to ensure accountability, and protect against fraud and abuse. For example, the forms require applicants to provide information designed to ensure that each school or library receives the discount to which it is entitled under the Commission's rules.[442] The forms also are designed to ensure that support is provided only with respect to eligible entities,[443] and only for services eligible for support,[444] and that applicants are otherwise in compliance with all applicable Commission requirements. Second, the forms were designed to facilitate the use of competitive bidding.[445] In addition, the forms were designed to be competitively neutral, so that no potential provider is precluded from offering service to a school or library.[446] Third, the use of a single set of forms will substantially ease burdens of administering the support mechanism, and thereby minimize the costs of administration. Moreover, if funds are allocated pursuant to a single set of forms, it may be easier to audit the administrative processes of the Schools and Libraries Corporation.[447] Fourth, the use of a single set of forms will facilitate tracking of the schools and libraries support mechanism over time. For example, it will make it easier to determine

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[440] *Order*, 12 FCC Rcd at 9078.

[441] 62 Fed. Reg. at 66,368 (1997).

[442] *See, e.g.*, FCC Form 470 Block 2; FCC Form 471 Blocks 5 and 6.

[443] *See e.g.*, FCC Form 470 Blocks 1 and 5; FCC Form 471 Block 1.

[444] *See, e.g.*, FCC Form 470 Block 3; FCC Form 471 Blocks 3 and 5.

[445] For example, FCC Form 470 Block 3, Item (11) asks whether the applicant has available a Request for Proposals (RFP), and if so, asks the applicant to provide the website address of such RFP, if there is one.

[446] For example, Block 3 of FCC Form 470, which asks the applicant for a summary description of needs or services requested, is phrased in a manner that ensures that both wireline and wireless carriers may bid to provide service.

[447] *See* 47 C.F.R. § 69.621 (requiring an annual independent audit of the Schools and Libraries Corporation).

what types of services schools and libraries need, and how those needs change over time. Such information is useful for deciding what if any adjustments should be made with respect to the schools and libraries mechanism. Congress expressly provided for such adjustments.[448]

151. We note that the Commission invited, and received, substantial input on the application forms as they were developed. The Commission, in conjunction with the Schools and Libraries Corporation, held a public workshop, and draft application forms were posted on the Commission's website.[449] The application forms reflect comments and suggestions from schools and library representatives, service providers, the Department of Education and the Schools and Libraries Corporation. We anticipate that, as parties begin to use the application forms, they will discover ways to improve them, and we encourage suggestions for modifying and improving the application forms. For the reasons set forth above, however, we conclude that requiring all applicants to use the same application forms will serve the public interest. We find that it is particularly important, in the first year of implementation, to take all reasonable steps to make sure the Schools and Libraries Corporation is able to administer the support mechanism as efficiently and effectively as possible. We therefore deny Florida Department of Management Services' request to use its own application form.

C. Non-Public Schools and Libraries

1. Background

152. In the *Order*, the Commission determined that a school, whether public or private, is eligible for universal service discounts, if it falls within definitions contained in the Elementary and Secondary Education Act of 1965, does not operate as a for-profit business, and does not have an endowment exceeding $50 million.[450]

153. In order to fulfill the mandate of section 254(h)(1)(B) that only eligible entities receive discounted services, that such services be provided in response to a bona fide request, and that those services be used for educational purposes, the Commission determined that it was necessary to require eligible schools and libraries to conduct an internal assessment of the components necessary to use effectively the discounted services they order.[451] The Commission required all applications for universal service discounts from schools and libraries

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[448] 47 U.S.C. § 254(c). *See also* 47 U.S.C. § 254(b)(7).

[449] *See* Public Notice, October 10 Workshop Sponsored by the Common Carrier Bureau and the Schools and Libraries Corporation on Application Forms, DA Number 97-2152 (rel. Oct. 3, 1997).

[450] 47 C.F.R. § 54.501(b). The Elementary and Secondary Education Act of 1965 can be found at 20 U.S.C. § 8801(14) and (25); *Order*, 12 FCC Rcd at 9068.

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

to include a technology inventory assessment of the telecommunications-related facilities the school or library already has in place or plans to acquire.[452] In addition, the Commission directed schools and libraries to prepare specific plans for using these technologies, both during the near term and in the future, and to describe how schools and libraries plan to integrate the use of these technologies in their curricula.[453] To ensure that these technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program, the *Order* also required independent approval of an applicant's technology plan, "ideally by a state agency that regulates schools or libraries."[454] In the *NECA Report and Order*, the Commission concluded that the Schools and Libraries Corporation, the entity charged with administering significant aspects of the universal service support mechanisms for schools and libraries, may approve schools' and libraries' technology plans when a state agency has indicated that it will be unable to review such plans within a reasonable time.[455] In that *Order*, the Commission also stated that it anticipated that the Department of Education and the Institute for Museum and Library Services may recommend alternative review measures.[456] The Commission stated its intent to review any such proposals and determine whether to adopt additional review measures.[457]

2. Pleadings

154. The National Association of Independent Schools contends that institutions with technology plans approved under such programs as Goals 2000 or the Technology Literacy Challenge will have an advantage over those institutions that require independent technology plan approval.[458] It also contends that non-public schools and libraries that do not have pre-approved technology plans or whose state agency refuses to review technology plans will be at a competitive disadvantage "as this highly time consuming application step will have been

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[452] *Order*, 12 FCC Rcd at 9077.

[453] *Order*, 12 FCC Rcd at 9077.

[454] *Order*, 12 FCC Rcd at 9078.

[455] Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket No. 97-21, CC Docket No. 96-45, FCC 97-253 (rel. July 18, 1997) (*NECA Report and Order*) at para. 67.

[456] *NECA Report and Order* at para. 67.

[457] *NECA Report and Order* at para. 67.

[458] Letter from Jefferson Burnett, National Association of Independent Schools, to William Caton, FCC, dated October 2, 1997 (National Association of Independent Schools October 2 *ex parte*) at 1.

eliminated" for some schools and libraries.[459] Therefore, the National Association of Independent Schools suggests that technology plan approval should be waived for all schools and libraries for the first year, or at least six months, in order to provide sufficient time to develop alternative approval mechanisms.[460] In the event that such a waiver is not granted, the National Association of Independent Schools proposes that eligible schools and libraries should be permitted to check a box on the application form indicating that approval of a technology plan is pending and attach a copy of the technology plan to the application.[461] It argues that this approach would allow schools and libraries to initiate the application process in a timely manner. In addition, under the proposal of the National Association of Independent Schools, schools and libraries would indicate on FCC Form 471 that the technology plan had been approved during the four-week posting period or that it was still being reviewed. In the event of pending review, the allowable discount on the request for telecommunications services would be placed "in escrow" by the Schools and Libraries Corporation until such time as the technology plan is approved.[462] Thus, under this proposal, support would not be distributed unless and until the technology plan was approved.

155. The National Association of Independent Schools also recommends consideration of alternative approval mechanisms through either the state education agency or peer review panels.[463] It recommends that consideration be given to providing as many options as possible, including peer review panels comprised of representatives of the following groups:

1) local, state, or regional private school associations;
2) a technologically advanced model school, which would be appointed by a state or regional private school association;
3) a school consortium or central school authority, e.g., a diocese;
4) the U.S. Department of Education's Office of Nonpublic Education;
5) state Education and Library Network Coalition (EdLiNC); and
6) the Schools and Libraries Corporation.[464]

156. On July 31, 1997, the "E-Rate Implementation Working Group" (Working

[459] National Association of Independent Schools October 2 *ex parte* at 1.

[460] National Association of Independent Schools October 2 *ex parte* at 1.

[461] National Association of Independent Schools October 2 *ex parte* at 1.

[462] National Association of Independent Schools October 2 *ex parte* at 1-2.

[463] National Association of Independent Schools October 2 *ex parte* at 2.

[464] National Association of Independent Schools October 2 *ex parte* at 2.

Group) filed a report with the Commission in response to the Commission's request to the U.S. Department of Education for guidance on certain issues regarding universal service support for schools and libraries.[465] The Working Group recommends that state agencies be allowed to delegate responsibility for approving technology plans to a peer review panel.[466] As an alternative mechanism for approving technology plans for schools and libraries that are not required by applicable state or local law to obtain state approval, the Working Group suggests that the Schools and Libraries Corporation should authorize "peer reviews" administered by independent entities, including existing peer reviews used by nonpublic schools for accreditation.[467]

3. Discussion

157. It is our expectation that states will approve technology plans in a reasonably timely manner. As noted above, however, the Schools and Libraries Corporation has authority to review and certify the technology plans of schools and libraries if the applicant provides evidence that a state agency is unwilling or unable to do so in a reasonably timely fashion.[468] We here conclude that a school or library may apply directly to the Schools and Libraries Corporation for technology plan approval if the school or library is not required by state or local law to obtain approval for technology plans and telecommunications expenditures. The Schools and Libraries Corporation has stated its intent to create a process for reviewing technology plans of private schools and other eligible entities whose states are unable to review their plans.[469] The Schools and Libraries Corporation may structure the

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[465] In the *Order*, the Commission sought guidance from the U.S. Department of Education on, for example, design of the schools and libraries applications and alternative technology plan approval measures. *Order*, 12 FCC Rcd at 9076-9078. The U.S. Department of Education formed a Working Group to assist in this process. The Working Group is comprised of the U.S. Department of Education, Institute of Museum and Library Services, National Telecommunications and Information Administration, Rural Utilities Service, and Education and Library Network Coalition. *See* U.S. Department of Education, Institute of Museum and Library Services, National Telecommunications and Information Administration, Rural Utilities Service, Education and Library Network Coalition, *Report by the E-Rate Implementation Working Group* (July 31, 1997) (Working Group Report).

[466] The Working Group also recommends that the state be required to notify the Schools and Libraries Corporation of any such delegation of authority to approve technology plans. Working Group Report at 19.

[467] Working Group Report at 19.

[468] *NECA Report and Order* at para. 67.

[469] Letter from Ira Fishman, Schools and Libraries Corporation, to Magalie Roman Salas, FCC, dated December 2, 1997 (SLC Dec. 2 *ex parte)*. *See also* 47 C.F.R. § 69.619(c) (stating that "[t]he Schools and Libraries Corporation may review and certify schools' and libraries' technology plans when a state agency has indicated that it will be unable to review such plans within a reasonable time.").

review process in any manner it deems necessary to complete review in a timely fashion, consistent with the purposes of the review. We emphasize, however, that schools and libraries that are subject to a state review process by state or local law may not circumvent the state process by submitting plans directly to the Schools and Libraries Corporation for review. Eligible schools and libraries that are required by state or local law to obtain approval for technology plans and telecommunications expenditures will be allowed to submit technology plans to the Schools and Libraries Corporation for review only when the state is unwilling or unable to review such plans in a reasonably timely fashion. In addition, if a technology plan is rejected at the state level, a school or library may not then submit the plan to the Schools and Libraries Corporation in an attempt to circumvent the state review process.

158. In addition, FCC Forms 470 and 471 will allow applicants to indicate that their technology plans either have been approved or will be approved by a state, Schools and Libraries Corporation, or by another authorized body. This provision will allow schools and libraries that are required to obtain technology plan approval from an entity other than a state agency to submit both FCC Forms 470 and 471 without any delay due to a lack of technology plan approval. Schools and libraries will not be able to receive actual discounts, however, until their technology plans are approved.

159. Given the Schools and Libraries Corporation plan to institute an approval process that "will occur in sufficient time to meet the needs of those schools that choose to apply under the 75 day window,"[470] we see no need to adopt the suggestion of the National Association of Independent Schools that we waive the technology plan approval requirement for all schools and libraries for the first six to twelve months of the schools and libraries program in order to provide sufficient time to develop alternative approval mechanisms. We understand that the Schools and Libraries Corporation is moving forward with due diligence to ensure that their technology plan review process is put into place as quickly as possible. We reiterate that approval of an applicant's technology plan will assist in ensuring that technology plans are based on the reasonable needs and resources of the applicant and are consistent with the goals of the program.

D. Option to Post Requests for Proposals on Websites

1. Background

160. In the *Order*, the Commission required that schools, libraries, and rural health

[470] SLC Dec. 2 *ex parte*. *See also* Schools and Libraries Corporation and Rural Health Care Corporation Adopt Length of Filing Windows, *Public Notice*, CC Docket No. 96-45, DA 97-2349 (rel. Nov. 6, 1997) (noting that "all requests for support filed pursuant to a signed contract and received by the Schools and Libraries Corporation within 75 days of the day the Schools and Libraries Corporation begins to receive requests will be treated as if they were simultaneously received.")

care providers, as a condition of their eligibility to receive universal service discounts, comply with a competitive bid requirement.[471] Pursuant to this requirement, schools, libraries, and rural health care providers must submit a request for services to the Administrator.[472] To allow schools, libraries, and rural health care providers to take advantage of the competitive marketplace, this request will be posted on either the school and library website or the rural health care provider website.[473] In the *Order*, the Commission stated, " . . . while schools and libraries may submit formal and detailed [requests for proposals] RFPs to be posted, . . . we will also permit them to submit less formal descriptions of services."[474] On July 18, 1997, the Commission released an order establishing the structure of the three corporations charged with administering the federal universal service support mechanisms.[475] On August 15, 1997, the Commission authorized NECA to perform certain functions on behalf of these corporations until the corporations are operational and can assume their respective duties.[476] Among other duties, the Commission authorized NECA to begin developmental work to create and design the websites that will be used to post competitive bids under the schools and libraries program and the rural health care program.[477]

2. Pleadings

161. The Working Group recommends that, at least during the interim phase, the administrative corporations not post RFPs on the websites. It found, based on input from service providers, that "large quantities of information that has simply been digitized in textual

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[471] *Order*, 12 FCC Rcd at 9028-9029, 9078-9079, 9133 9134.

[472] *Order*, 12 FCC Rcd at 9028-9029, 9078-9079, 9133-9134.

[473] *Order*, 12 FCC Rcd at 9028-9029, 9078-9079, 9133-9134.

[474] *Order*, 12 FCC Rcd at 9078-9079; *see also Order*, 12 FCC Rcd at 9133-9134 (stating, that "[a]s with schools and libraries, the [rural health care provider's] request [for services] may be as formal and detailed as the health care provider desires . . . .").

[475] *NECA Report and Order* (directing the creation of USAC, the Schools and Libraries Corporation, and the Rural Health Care Corporation) at paras. 30, 57-60.

[476] Changes to the Board of Directors of the National Exchange Carriers Association, Inc., Federal-State Joint Board on Universal Service, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, CC Docket No. 97-21, CC Docket No. 96-45, FCC 97-292 (rel. Aug. 15, 1997) (*NECA Second Report and Order*) at paras. 8-12.

[477] *NECA Second Report and Order* at para. 11.

form will be of limited usefulness."[478] The Working Group further recommends that RFPs should not be transmitted to the Schools and Libraries Corporation, but should instead be made available to potential bidders upon request.[479] On October 6, 1997, NECA submitted an *ex parte* letter to the Commission seeking clarification that the Commission's rules require posting of only a summary of the requested services sufficient for providers to draft bids and not the posting of full RFPs.[480] NECA contends that requiring applicants to post a summary request for services, rather than a full RFP, will help to ensure that systems for posting requests for services are operational by the commencement date of the universal service program.[481]

3. Discussion

162. In light of the concerns expressed by the Working Group and NECA, including significant costs and potential delays associated with requiring the administrative companies to post RFPs on the school and library and rural health care provider websites, we reconsider the Commission's requirement that the administrative companies post on the websites RFPs submitted by applicants. An RFP is a detailed request for the services and facilities that an entity is interested in procuring. RFPs may vary greatly in length, numbering over a hundred pages in some cases, including diagrams and specifications of the procurement of facilities. FCC Form 470,[482] submitted by school and library applicants, and FCC Form 465,[483] submitted by eligible health care applicants, will instruct applicants to describe the services they seek and to include information sufficient to enable service providers to identify potential customers.[484] We conclude that this information is adequate to serve the purposes underlying

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[478] Working Group Report at 12. *See supra* section VI.C.2 for a discussion of the composition of the Working Group.

[479] Working Group Report at 12 (recommending in lieu of such transmissions, the use of standardized checklists, along with a short summary description of the applicant's objective in procuring the services).

[480] Letter from William Stern, NECA, to William Caton, FCC, dated October 6, 1997 (NECA October 6 *ex parte*).

[481] NECA October 6 *ex parte*.

[482] FCC Form 470 (Schools and Libraries Universal Service Program - Description of Services Requested and Certification Form).

[483] FCC Form 465 (Rural Health Care Providers Universal Service Program - Description of Services Requested and Certification Form).

[484] For example, FCC Form 465 requires rural health care providers to state whether a full RFP is available on the Internet or to provide a contact person that is able to provide a copy of the RFP. FCC Form 470 asks school and library applicants to provide the website where their RFP is available if their RFP is posted on a

the website posting requirement by allowing schools and libraries to take advantage of the competitive marketplace. We conclude that any additional information contained in an RFP that is not submitted for posting on the website under FCC Forms 470 and 465 can be made available to interested service providers at the election of the school, library, or rural health care provider applicant. We encourage eligible school, library, and rural health care provider applicants to make RFPs available upon request to interested service providers. We do not, however, require the Schools and Libraries Corporation or the Rural Health Care Corporation to post RFPs on the websites, but instead require the administrative companies to post FCC Forms 470 and 465, respectively.

E. State Telecommunications Networks and Wide Area Networks

1. Background

163. Section 254(e) provides that only an "eligible telecommunications carrier" under section 214(e) may receive universal service support.[485] Section 254(h)(1)(B)(ii), however, states that any telecommunications carrier providing services to schools and libraries may receive reimbursement from universal service support mechanisms, notwithstanding the provisions of section 254(e).[486] Consequently, the Commission concluded in the *Order* that Congress intended that any telecommunications carrier, even one that did not qualify as an eligible telecommunications carrier, should be eligible for support for services provided to schools and libraries.[487] The Act defines "telecommunications carrier" as any provider of "telecommunications services. . . ."[488] The Act 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."[489]

164. In the *Order*, the Commission found that the definition of "telecommunications service," in which the phrase "directly to the public" appears, is intended to encompass only telecommunications provided on a common carrier basis.[490] The Commission further noted

website.

[485] 47 U.S.C. § 254(e).

[486] 47 U.S.C. § 254(h)(1)(B)(ii).

[487] *Order,* 12 FCC Rcd at 9015.

[488] 47 U.S.C. § 153(44).

[489] 47 U.S.C. § 153(46).

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

that "precedent holds that a carrier may be a common carrier if it holds itself out 'to service indifferently all potential users'"[491] 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.'"[492]

165. Section 254(h)(2)(A) directs the Commission to "establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries."[493] The Commission concluded that section 254(h)(2)(A), in conjunction with section 4(i),[494] authorizes the Commission to provide discounts and funding mechanisms for advanced services provided by non-telecommunications carriers.[495] The Commission reasoned that providing universal service support to non-telecommunications carriers "empower[s] schools and libraries to take the fullest advantage of competition to select the most cost-effective provider of Internet access and internal connections, in addition to telecommunications services, and allows us not to require schools and libraries to procure these supported services only as a bundled package with telecommunications services."[496]

166. The Commission set forth in the *Order* the criteria that schools and libraries must meet in order to be eligible for discounts on telecommunications and information services.[497] The Commission concluded that schools and libraries not eligible for discounts

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[491] *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*).

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

[493] 47 U.S.C. § 254(h)(2)(A).

[494] Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i).

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

[496] *Order*, 12 FCC Rcd 9086-87.

[497] 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. *See 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. *See Order*, 12 FCC Rcd at 9069-9072.

should not be permitted to gain eligibility for discounts by participating in consortia with those that are eligible.[498] The Commission encouraged eligible entities, however, to participate in consortia with other eligible schools, libraries, and health care providers and public sector (governmental) entities,[499] because such participation should enable them to secure telecommunications and information services and facilities under more favorable terms and conditions than they could negotiate alone.[500] The Commission concluded that "[t]his approach also includes the large state networks upon which many schools and libraries rely for their telecommunications needs among the entities eligible to participate in consortia."[501] 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."[502]

167. The Commission recognized, however, that its decision to permit purchasing consortia that include both eligible and ineligible entities creates some tension with section 254(h)(3)'s prohibition on resale.[503] Section 254(h)(3) bars entities that obtain discounts from reselling the discounted services.[504] The Commission interpreted section 254(h)(3) to restrict any resale whatsoever of services purchased pursuant to a section 254 discount to entities that are not eligible for support.[505] Thus, the Commission pointed out, it may be difficult to allow eligible institutions to aggregate their demand with ineligible entities while attempting to

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[498] *Order*, 12 FCC Rcd at 9072.

[499] Such governmental entities include, but are not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities. *See* 47 C.F.R. § 54.501(d).

[500] *Order*, 12 FCC Rcd at 9072-73. The Commission provided that, while consortium participants ineligible for support would pay the lower pre-discount prices negotiated by the consortium, only eligible schools and libraries would receive the added benefit of universal service discounts. *Order*, 12 FCC Rcd at 9073. The Commission concluded that those portions of the bill representing charges for services purchased by or on behalf of and used by an eligible entity would be reduced by the discount percentage to which the school or library using the services was entitled under section 254(h). *Order*, 12 FCC Rcd at 9073.

[501] *Order*, 12 FCC Rcd at 9028.

[502] 47 C.F.R. § 54.501(d)(3).

[503] *Order*, 12 FCC Rcd at 9075.

[504] Section 254(h)(3) states that "[t]elecommunications services and network capacity provided [to schools and libraries at a discount] may not be sold, resold, or otherwise transferred by such user in consideration for money or any other thing of value." 47 U.S.C. § 254(h)(3).

[505] *Order*, 12 FCC Rcd at 9074.

guard against the illegal resale of discounts to services used by ineligible entities.[506] The Commission noted, however, that "many schools and libraries rely primarily, if not solely, on access to the Internet through networks managed by their states," and that permitting schools and libraries to aggregate with such ineligible public sector institutions could enable the eligible entities to secure lower pre-discount prices.[507] The Commission therefore concluded that, despite the difficulties of allocating costs and preventing abuses, the benefits of permitting schools and libraries to join in consortia with other customers outweigh the danger that such aggregations will lead to significant abuse of the prohibition on resale.[508] The Commission reasoned that: (1) severely limiting consortia would not be in the public interest; (2) illegal resale, whereby eligible schools and libraries use their discounts to reduce the prices paid by ineligible entities, can be substantially deterred by a rule requiring providers to keep and retain careful records of how they have allocated the costs of shared facilities in order to charge eligible schools and libraries the appropriate amounts; and (3) the growing bandwidth requirements of schools and libraries will make it unlikely that other consortia members will be able to rely on using more than their paid share of the use of a facility.[509]

168. The Commission also concluded that schools and libraries should be able to enter into pre-paid, multi-year contracts for services eligible for universal service support.[510] Schools and libraries with multi-year contracts, however, may only apply for discounts on the portion of a long-term contract that is scheduled to be delivered or installed during the funding year for which the school or library is seeking discounts.[511] The Commission observed that "funding in advance for multiple years of recurring charges could enable a wealthy school to guarantee that its full needs over a multi-year period were met, even if other schools and libraries that could not afford to prepay multi-year contracts were faced with reduced percentage discounts if the administrator estimated that the funding cap would be exceeded in a subsequent year."[512]

2. Pleadings

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[506] *Order*, 12 FCC Rcd at 9075.

[507] *Order*, 12 FCC Rcd at 9075.

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

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

[510] *Order*, 12 FCC Rcd at 9062.

[511] *Order*, 12 FCC Rcd at 9062.

[512] *Order*, 12 FCC Rcd at 9062.

169. According to the National Association of State Telecommunications Directors (NASTD),[513] most states, through their respective legislatures, have established state telecommunications networks that procure, oversee, and manage telecommunications resources.[514] As several petitioners explain, state telecommunications networks procure a variety of telecommunications services and hardware components from multiple service and equipment vendors and bundle such components into packages available to eligible entities such as schools, libraries, and health care providers.[515] NASTD maintains that state telecommunications networks procure such services pursuant to a system of competitive bidding mandated by state procurement laws.[516] In turn, eligible entities pay state telecommunications networks their proportionate share of costs based on the services each agency, school, or library uses.[517] Several petitioners assert that, by aggregating the demand for services by eligible entities throughout the state, state telecommunications networks can obtain significant volume discounts from the carriers and other vendors with which they contract.[518] Thus, NASTD states, "the volume purchasing power of aggregated government needs lowers the cost per unit of service for all government entities" on the state

[513] According to NASTD's petition, NASTD is an organization comprised of state government telecommunications managers who administer the state organizations that provide state government communications facilities. Such organizations "function as aggregators of service volumes for all eligible users, obtaining term and volume discounts based on total requirements." In most cases, NASTD explains, volume discounted services are bundled and provided to customers as a complete turnkey service, and services are procured through the competitive bid process. NASTD petition at 1.

[514] Letter from NASTD to William F. Caton, FCC, dated September 26, 1997 (NASTD *ex parte*). As NASTD points out, although "most states" have telecommunications networks, each state implements its telecommunications network program differently. *See* NASTD *ex parte* at 2.

[515] *See, e.g.,* NASTD *ex parte* at 2-3; Georgia Department of Administrative Services - Information Technology (DOAS-IT) petition at 1, 3. DOAS-IT explains that it competitively procures, provides, and administers telecommunications and information system services (e.g., voice, data, video networks, wireline and wireless services and equipment, radio and microwave systems, and distance learning and telemedicine networks via landline and satellite) that serve a wide array of state and local entities throughout the state. DOAS-IT asserts that such services are provided and operated as "consolidated joint-use systems and a tightly integrated backbone telecommunications network". *Id. See also* Letter from Florida DMS to William F. Caton, FCC, dated September 22, 1997 at 1-2 (Florida DMS *ex parte*); Letter from the Commonwealth of Virginia, Office of the Governor (Commonwealth of Virginia), to William F. Caton, FCC, dated October 31, 1997 (Commonwealth of Virginia *ex parte*) at 1-2.

[516] NASTD lists the following services as among those procured by state telecommunications networks: local and long distance voice communications; video transmission; dedicated and shared data networks; Internet access; and premises wiring.

[517] NASTD *ex parte* at 5.

[518] *See, e.g.,* NASTD *ex parte* at 3; DOAS-IT petition at 3; Commonwealth of Virginia *ex parte* at 1-2.